

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Credit Union Share Guaranty Corporation Rules

Rule Number(s): 1301:9-3-01 (No Change); 1301:9-3-02 (No Change); 1301:9-3-03 (No Change); 1301:9-3-04 (No Change); 1301:9-3-05 (Amend); 1301:9-3-06 (Amend); 1301:9-3-07 (No Change); 1301:9-3-08 (No Change); 1301:9-3-09 (Amend); 1301:9-3-10 (No Change); 1301:9-3-11 (No Change); 1301:9-3-12 (No Change); 1301:9-3-13 (Amend); 1301:9-3-14 (No Change); 1301:9-3-15 (Amend); 1301:9-3-16 (No change)

Date: October 30, 2015

**Rule Type:**

New	<b>X 5-Year Review</b>
<b>X Amended</b>	Rescinded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**

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**1. Please briefly describe the draft regulation in plain language.**

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

**1301:9-3-05, Necessity of reinsurance or line of credit (Amend)** – This rule expands on and clarifies the language of ORC 1761.06(B) by setting forth conditions under which the Division of Financial Institutions may require a credit union share guaranty corporation to obtain reinsurance or a line of credit. The various thresholds of this rule are being amended to better reflect their corresponding Ohio Revised Code sections and to account for the current marketplace for reinsurance and lines of credit.

**1301:9-3-06, Notice of termination, nonrenewal or any other lapse of reinsurance or line of credit (Amend)** – This rule expands on the requirement set forth in ORC 1761.06(B) that a credit union share guaranty corporation must make certain notifications upon the lapse of that corporation's reinsurance or line of credit. The rule is being amended to clarify that such notification is not required if the lapsed reinsurance or line of credit is replaced by similar reinsurance or line of credit.

**1301:9-3-09, Participating credit union financial information (Amend)** – This rule clarifies that certain regulatory information submitted to a credit union share guaranty corporation remains confidential in their possession. The rule is being amended to accurately reflect the exception found in ORC 1761.08(B) that financial statements submitted to such a corporation are public.

**1301:9-3-13, Approval of investments (Amend)** – This rule expands on the types of allowable investments for a credit union share guaranty corporation's funds. The rule's statutory reference to ORC 1761.13 is being corrected to accurately reflect a recent amendment to that statute.

**1301:9-3-15, Actuarial study of capital adequacy and disclosure of examination reports (Amend)** – This rule expands on the requirement of ORC 1761.16(C) that a credit union share guaranty corporation be subject to an audit examination by the Division of Financial Institutions, which must include an actuarial study. The rule is being amended to more accurately reflect the statutory language of ORC 1761.16(C).

**NO CHANGE RULES**

**1301:9-3-01, Advancement and withdrawal of capital contribution by participating credit unions (No change)** – This rule addresses the requirements that apply to the capital

contributions of participating credit unions made to a credit union share guaranty corporation.

**1301:9-3-02, Documents filed with the superintendent of insurance (No change)** – This rule establishes when a credit union share guaranty corporation must file documents with the Division of Financial Institutions.

**1301:9-3-03, Issuance and renewal of certificate of compliance (No change)** – This rule describes the requirement and process for a credit union share guaranty corporation to obtain a certificate of compliance from the Division of Financial Institutions.

**1301:9-3-04, Credit union share guaranty corporation activity (No change)** – This rule sets forth the circumstances under which a credit union share guaranty corporation must notify the Division of Financial Institutions prior to assisting or aiding a participating credit union.

**1301:9-3-07, Communication with regulatory significance (No change)** – This rule defines "written communication with regulatory significance" as that term is used in ORC 1761.06.

**1301:9-3-08, Public representation of credit union share guaranty corporation's status or legal existence (No change)** – This rule expands on the prohibitions found in ORC 1761.06(D) against a credit union share guaranty corporation holding itself out as an agency of the state or federal government.

**1301:9-3-10, Qualified audit report of a participating credit union (No change)** – This rule describes when notification to the Division of Financial Institutions and Department of Insurance is necessary as it pertains to a credit union share guaranty corporation's order that a participating credit union have its books and records audited.

**1301:9-3-11, Normal operating level of guarantee fund (No change)** – This rule expands on the requirements of ORC 1761.10 pertaining to the operating level the guarantee fund established by a credit union share guaranty corporation.

**1301:9-3-12, Credit union share guaranty corporation payout on shares (No change)** – This rule expands upon ORC 1761.11(B) by requiring a credit union share guaranty corporation notify the Division of Financial Institutions and Department of Insurance when the proceeds of a liquidated credit union are insufficient to pay the full amount of each guaranteed share account.

**1301:9-3-14, Credit union share guaranty corporation annual report (No change)** – This rule expands on the annual reporting requirement set forth in ORC 1761.16 as it pertains to a credit union share guaranty corporation.

**1301:9-3-16, Quarterly reporting (No change)** – This rule expands on the reporting requirement of ORC 1761.16(F), and requires a credit union share guaranty corporation to submit a quarterly report to the Division of Financial Institutions.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** Revised Code Section 1761.04 is the authorizing statute for each of the aforementioned rules.
3. **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?**  
No to both questions.
4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** Not applicable.
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)?** These rules are being promulgated in response to questions and comments from stakeholders, and so that the Division, as one of the primary regulators of Ohio’s only credit union share guaranty corporation, can better administer the Chapter 1761 of the Revised Code. The rules will provide guidance and clarification on a number of issues that have come to the Division’s attention since the most recent five year rule review.
6. **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.

### **Development of the Regulation**

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** Ohio currently has only one credit union share guaranty corporation, American Share Insurance, and they were contacted and given draft regulations for review and comment as part of this rule review process.
8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** As part of the five year rule review process, a meeting was held with American Share Insurance (“ASI”). ASI had several comments and

suggestions that were taken into consideration and ultimately incorporated by the Division, as most involved amending the rules to better reflect corresponding language in Chapter 1761 of the Revised Code.

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?** Not applicable.
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?** Given that these regulations are subject to their five year rule review, every rule was reviewed and numerous alternatives were considered as part of the process.
11. **Did the Agency specifically consider a performance-based regulation? Please explain.**  
No, these regulations are necessary to carry out the provisions Chapter 1761 of the Revised Code. However, any amendments or proposed rules resulting from the five year rule review are being made for purposes of clarifying existing law or as a result of stakeholder input.
12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** The Division is one of two primary regulators of credit union share guaranty corporations, and is not aware of any duplicative regulations.
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.** 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, including outreach events, newsletters, and through the Credit Union Council. Additionally, Division staff will be trained on the regulations to ensure their consistent application.

### **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;** These rules apply to "credit union share guaranty corporations", as that term is defined by Revised Code section 1761.01. These rules do not impose any new fines, fees, or penalties.  
**Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);**

- b.** *1301:9-3-01, Advancement and withdrawal of capital contribution by participating credit unions* – A credit union share guaranty corporation may need to expend minimal time and resources to comply with the written notification requirements of this rule. These notifications are necessary for the Division of Financial Institutions and Department of Insurance to adequately monitor the safety and soundness of such corporations and their participating credit unions.

*1301:9-3-02, Documents filed with the superintendent of insurance* – The only cost of compliance for a credit union share guaranty corporation would simply be to copy the Division of Financial Institutions on any documents required to be filed with the Department of Insurance. Such notifications are necessary to keep the Division apprised of any relevant regulatory communications.

*1301:9-3-03, Issuance and renewal of certificate of compliance* – This rule will not increase the cost of compliance as it merely expands on the requirement set forth in ORC 1761.05(A)(7) that the Division of Financial Institutions certify a credit union share guaranty corporation is in compliance with Chp. 1761 of the Ohio Revised Code.

*1301:9-3-04, Credit union share guaranty corporation activity* – A credit union share guaranty corporation may need to expend minimal time and resources to comply with the written notification requirements of this rule. However, such notifications are necessary for the Division of Financial Institutions and Department of Insurance to adequately monitor the safety and soundness of these corporations.

*1301:9-3-05, Necessity of reinsurance or line of credit* – This rule would only result in a cost of compliance for a credit union share guaranty corporation in the unlikely event that the Division of Financial Institutions deems it necessary, in accordance with the conditions of the rule, that such corporation obtain reinsurance or a line of credit. Reinsurance or a line of credit would only be required by the Division if it was deemed actuarially or financially necessary to protect the solvency of a credit union share guaranty corporation's guarantee fund.

*1301:9-3-06, Notice of termination, nonrenewal or any other lapse of reinsurance or line of credit* – A credit union share guaranty corporation may need to expend minimal time and resources to comply with the written notification requirements of this rule in the event there is a lapse in their reinsurance or line of credit. However, this rule only clarifies the contents of the notification required by ORC 1761.06(B). Additionally, such notification is necessary for the Division of Financial Institutions, and others, to adequately monitor the safety and soundness of a credit union share guaranty corporation.

*1301:9-3-07, Communication with regulatory significance* – This rule will not increase the cost of compliance as it merely defines "written communication with regulatory significance" as that term is used in ORC 1761.06.

*1301:9-3-08, Public representation of credit union share guaranty corporation's status or legal existence* – This rule would not increase the cost of compliance, as it merely expands on the prohibitions found in ORC 1761.06(D) against a credit union share guaranty corporation holding itself out as an agency of the state or federal government.

*1301:9-3-09, Participating credit union financial information* – This rule does not impose a cost of compliance on a credit union share guaranty corporation, as it merely clarifies which regulatory and other documents remain confidential in their possession.

*1301:9-3-10, Qualified audit report of a participating credit union* – A credit union share guaranty corporation may have to expend minimal time and resources to comply with the rule's notification requirements. However, such notification of an audit to be conducted is necessary for the Division of Financial Institutions to adequately monitor the safety and soundness of these corporations.

*1301:9-3-11, Normal operating level of guarantee fund* – A credit union share guaranty corporation may have to expend minimal time and resources to comply with the regulatory notification requirements of the rule. However, such notifications are necessary for the Division of Financial Institutions and Department of Insurance to adequately monitor the safety and soundness of these corporations.

*1301:9-3-12, Credit union share guaranty corporation payout on shares* – A credit union share guaranty corporation may need to expend minimal time and resources to comply with the written notification requirements of this rule. However, such notifications are necessary for the Division of Financial Institutions and Department of Insurance to adequately monitor the safety and soundness of these corporations.

*1301:9-3-13, Approval of investments* – A credit union share guaranty corporation may need to expend minimal time and resources to comply with the rule requirement that prior written approval of the Division of Financial Institutions is necessary before investing in those investments not enumerated by ORC 1761.13. However, this requirement is already set forth in ORC 1761.13 and is merely being clarified for purposes of the rule.

*1301:9-3-14, Credit union share guaranty corporation annual report* – This rule does not increase the cost of compliance to a credit union share guaranty corporation, as it merely clarifies the contents of the annual report required by ORC 1761.16.

*1301:9-3-15, Actuarial study of capital adequacy and disclosure of examination reports* – This rule expands on the requirement of ORC 1761.16(C) that a credit union share guaranty corporation be subject to an audit examination by the Division of Financial Institutions, which must include an actuarial study. The rule is being amended to more accurately reflect the statutory language of ORC 1761.16(C)

*1301:9-3-16, Quarterly reporting* – This rule does not impose a cost of compliance other than the cost of mailing a copy of an audit examination to the Division of Financial Institutions and Department of Insurance. **and**

**c. Quantify the expected adverse impact from the regulation.**

The impact from the majority of these regulations is that a credit union share guaranty corporation simply provides its regulators with prior written notice for a variety of events and occurrences. Additionally, any such impact is necessary for the Division to carry out its delegated responsibility under Chapter 1761 of the Revised Code to supervise and regulate Ohio credit union share guaranty corporations.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** As stated in Revised Code Section 1761.04, the general assembly has delegated rule-making power and administrative discretion to the Division.

### **Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** No. There is currently only one credit union share guaranty corporation in Ohio. Additionally, these rules must be applied evenly in order to ensure the safety of soundness of Ohio credit union share guaranty corporations, and to protect the interests of participating credit unions, members (aka depositors), and creditors of these institutions.

**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?** The Division does not impose administrative fines or civil penalties on credit union share guaranty corporations for paperwork violations.

18. **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, many of the most commonly requested forms and applications are available from the Division's website.