CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Credit Union Participation Rule

Rule Number(s): 1301:9-2-07

Date: 8/5/14

Rule Type:

- ☐ **New**
- **X 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- ☐ **Rescinded**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.**
   The Ohio Department of Commerce, Division of Financial Institutions regulates two types of state chartered credit unions; those that are federally insured by the National Credit Union Administration (NCUA) and those that are privately insured. Ohio credit unions that are federally insured must comply with the NCUA regulations. Ohio credit unions that are privately insured are regulated by the Division and do not have to comply with the NCUA.

This rule details certain types of permissible investments for Ohio chartered credit unions; however, only those portions of the rule pertaining to participation loans are being amended. All of the following changes mirror the recent changes made to the parallel NCUA rule, and are needed to provide parity and place both types of Ohio chartered credit unions on equal footing. The changes to the rule include the following: adding language to permit credit unions to participate in loans with any state or federal government agency; adding language concerning single originator, loan type, and single borrower concentration limits; strengthening requirements relating to loan participation agreements; and updating and replacing requirements pertaining to the credit union parties involved in a participation loan.

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

   Ohio Rev. Code Section 1733.41

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)?** All of the proposed changes mirror the recent changes made to the parallel NCUA rule, and are needed to provide parity and place both types of Ohio chartered credit unions on equal footing. For example, the NCUA rule permits Ohio's federally insured credit unions to participate in loans with any state or federal government agency or its subdivisions. The proposed rule changes will similarly allow Ohio's privately insured credit unions to participate in these same types of loans.

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 the amended regulation will provide Ohio chartered credit unions, the resulting equal playing field, and the achievement of parity with the parallel federal regulations.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
Discussions with the Ohio Credit Union League began shortly after NCUA's rule was published, in June 2013. Multiple discussions with the League occurred in the months that followed.

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** Stakeholder input was that the Division should bring its participation rule in line with that of NCUA.

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?**
Alternatives were considered, such as adopting only portions of the federal rule. However, in order to dispel any confusion, and to provide an equal playing field among state chartered credit unions, the determination was made to adopt the federal rule in its entirety.

11. **Did the Agency specifically consider a performance-based regulation? Please explain.**
No, as federally insured state chartered credit unions already must adhere to identical participation loan requirements under federal law. However, these requirements, in many instances, set only minimum standards for such things as a credit union's loan participation agreement or loan participation policy.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** The Division is the only state agency that regulates Ohio-chartered credit unions under Chapter 1733 of the Revised Code.

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.** 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;** This rule applies to "credit unions", as that term is defined by Revised Code section 1733.01.

   Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

   b. The rule does not impose any new fines, fees, or penalties. The portion of the amended rule permitting credit unions to engage in participation loans with any state or federal government agency or its subdivisions will not impact the cost of compliance, as it is expanding the privately insured credit unions loan participation authority so it is in parity with the federally insured credit unions. Additionally, the remaining portions of the amended rule will not impact the cost of compliance for federally insured credit unions, as they are already required to comply with the same requirements under NCUA. Lastly, the amended rule, at most, will have a negligible impact on privately insured credit unions, as the overwhelming majority of these institutions already have loan participation policies that comply with the requirements in the amended rule.

   c. **Quantify the expected adverse impact from the regulation.**
   It would not be possible to generalize any potential adverse impact, as the Division regulates credit unions of all asset sizes and resources. As stated above, the cost of compliance, in the unlikely event that any state-chartered credit does not yet meet these requirements, should be minimal. That being said, any such impact is necessary for the Division to carry out its delegated responsibility under Chapter 1733 of the Revised Code to supervise and regulate credit unions chartered under the laws of this state.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community? Based on stakeholder input, amendments to the participation portion of the rule are necessary to provide for parity with parallel federal regulations and to place federally insured state chartered credit unions and privately insured state chartered credit unions on equal footing.

Regulatory Flexibility

16. **Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** This regulation does not provide any exemptions based on a credit union's asset size, as it must be consistently applied in order to ensure the safety of soundness of Ohio-chartered credit unions. However, it does allow credit unions to seek a waiver from certain provisions of the rule.

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 for paperwork violations related to this regulation.

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 directly available to offer assistance with this, or any other regulation, via phone or email, or in person during an examination.