

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Rules Relating to Credit Unions

Rule Number(s): 1301:9-1-01 (No Change); 1301:9-1-02 (No Change); 1301:9-1-03 (No Change); 1301:9-1-04 (No Change); 1301:9-2-01 (Amend); 1301:9-2-02 (No Change); 1301:9-2-03 (Amend); 1301:9-2-04 (Amend); 1301:9-2-05 (Amend); 1301:9-2-06 (Amend); 1301:9-2-07 (Amend); 1301:9-2-08 (No Change); 1301:9-2-09 (No Change); 1301:9-2-10 (No Change); 1301:9-2-11 (Amend); 1301:9-2-12 (No Change); 1301:9-2-13 (No Change); 1301:9-2-15 (Amend); 1301:9-2-16 (No Change); 1301:9-2-18 (No Change); 1301:9-2-19 (No Change); 1301:9-2-20 (No Change); 1301:9-2-21 (Amend); 1301:9-2-22 (No Change); 1301:9-2-23 (Amend); 1301:9-2-24 (No Change); 1301:9-2-25 (Amend); 1301:9-2-26 (No Change); 1301:9-2-27 (No Change); 1301:9-2-28 (No Change); 1301:9-2-30 (No Change); 1301:9-2-31 (No Change); 1301:9-2-32 (Amend); 1301:9-2-33 (No Change); 1301:9-2-34 (No Change); 1301:9-2-36 (New); 1301:9-2-37 (Amend); 1301:9-2-38 (Amend); 1301:9-2-39 (No Change); 1301:9-2-40 (Amend); 1301:9-2-41 (No Change); 1301:9-2-42 (No Change)

Date: June 15, 2018

Rule Type:

New

5-Year Review

Amended

Rescinded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.

1301:9-1-01, Definitions (*No change*) – This rule contains definitions of terms used throughout the administrative rules applicable to Ohio-chartered credit unions.

1301:9-1-02, Notice as to adoption, amendment or recession of rules (*No change*) – This rule details the public notice required to be given when the Division is proposing to adopt, amend or rescind administrative rules for credit unions.

1301:9-1-03, Supervision, examination, and annual financial report (*No change*) – This rule contains minimum policy requirements for those credit unions utilizing computers. This rule also requires credit unions to annually submit their roster of officials to the Division, notify the Division of any change to senior management, and seek Division approval for a change in senior management if a credit union is under an enforcement action. The rule also specifies the procedure for filing a credit union's required annual financial report. Finally, the rule sets forth Division requirements relating to credit union's response to an examination report.

1301:9-1-04, Supervisory fee (*No change*) – This rule provides details and guidance as it pertains to the annual credit union supervisory fee described in R.C. 1733.32.

1301:9-2-01, Service facilities (*Amend*) – This rule addresses the regulatory requirements for a credit union to establish or relocate a service facility. The Division proposes an amendment that would require a credit union to notify the Division no less than thirty days prior to closing a service facility.

1301:9-2-02, Voting by the membership (*No change*) – This rule sets forth the minimum standards that must be met for a credit union to allow its members to vote by mail ballot or proxy.

1301:9-2-03, Required bond (*Amend*) – The rule sets forth the minimum fidelity bond requirements for credit unions. An amendment to the rule's minimum bond coverage matrix is being proposed, as the minimum amount is no longer sufficient to protect a credit union and its members from loss due to employee fraud and dishonesty.

1301:9-2-04, Charge-off of uncollectible loans and other losses and reserves (*Amend*) – The rule sets forth appropriate process by which a credit union should account for delinquent loans, other losses, and reserves. An amendment is being proposed to simplify requirements related to the charge-off of uncollectible loans, as existing accounting standards sufficiently address the issue.

1301:9-2-05, Financial statements (*Amend*) – The rule sets forth the manner and frequency by which a credit union must provide its members with their account statements, as well as the manner by which a credit union must display its financial statements. An amendment is being proposed that would permit a credit union to post its financial statements online.

1301:9-2-06, Preservation/retention of records (*Amend*) – The rule sets forth the minimum record retention schedule a credit union must adhere to for its corporate records. An amendment is being proposed to streamline the record retention schedule.

1301:9-2-07, Investments (*Amend*) – The rule expands on a credit union's statutory investment authority. Amendments are being proposed to add the version date to two federal statutes incorporated by reference in the rule, as well as to permit a credit union to invest in securities and properties to an extent not exceeding the greater of five percent of shares and undivided earnings or fifty per cent of the net worth ratio.

1301:9-2-08, Liquidity (*No change*) – This rule sets forth the minimum liquidity requirements for credit unions.

1301:9-2-09, Dividends (*No change*) – This rule sets forth the conditions that must be met for a credit union to declare dividends.

1301:9-2-10, Impairment (*No change*) – The rule defines when a condition of impairment exists for credit unions and what actions must be taken if this condition is deemed to exist.

1301:9-2-11, Independent audit (*Amend*) – This rule further clarifies and explains the credit union audit requirements. An amendment is being proposed to eliminate redundancy between R.C. Chapter 1733 and the administrative rule.

1301:9-2-12, Reimbursement to credit unions for assembling and providing financial records (*No change*) – The rule sets forth the reimbursement rates credit unions may charge for assembling a customer's financial records.

1301:9-2-13, Compensation (*No change*) – The rule clarifies the specific fiduciary duties imposed on credit union board members, and specifies the topics that must be addressed in a credit union's travel and expense reimbursement policy.

1301:9-2-15, Depreciation and amortization (*Amend*) – The rule sets forth a depreciation schedule to be utilized for certain credit union assets. An amendment is being proposed that would ensure depreciation is calculated in accordance with generally accepted accounting procedures (GAAP).

1301:9-2-16, Field of membership (*No change*) – This rule clarifies the application process for a credit union seeking to expand its field of membership.

1301:9-2-18, Disaffiliation or dual membership (*No change*) – The rule sets forth the process by which members of group may seek disaffiliation from or dual membership with a credit union.

1301:9-2-19, Criteria for charter approval (*No change*) – The rule sets forth additional documentation that must be submitted to the Division by those seeking to form a credit union.

1301:9-2-20, Loan authority (*No change*) – The rule clarifies a credit union's loan and borrowing authority.

1301:9-2-21, First mortgage purchase money real estate loans and financing (*Amend*) – The rule sets forth limitations and restrictions related to first mortgage purchase money real estate loans and refinancing. An amendment is being proposed to add the version date to four federal statutes incorporated by reference in the rule.

1301:9-2-22, Real estate construction (*No change*) – The rule sets forth the appropriate safeguards and procedures that must be in place for credit union construction loans.

1301:9-2-23, Home equity and second mortgage loans (*Amend*) – The rule sets forth the minimum underwriting standards which must be in place for a credit union to make second mortgage loans. Amendments are being proposed to add the version date to a federal statute incorporated by reference in the rule, as well as to remove a requirement that the board of directors approve the personnel that make appraisals in certain circumstances.

1301:9-2-24, Member business loans (*No change*) – The rule sets forth the regulatory requirements applicable to a credit union's member business loans.

1301:9-2-25, Purchase of fixed assets or purchase of real estate and/or construction of an office building (*Amend*) – The rule sets forth the regulatory requirements applicable to a credit union's purchase of fixed assets or real estate. An amendment is being proposed that would allow credit unions greater autonomy in managing their fixed assets.

1301:9-2-26, Service fees (*No change*) – The rule authorizes credit union boards of directors to charge reasonable fees and service charges if properly disclosed to the membership.

1301:9-2-27, Interest rebate (*No change*) – The rule authorizes a credit union's board of directors to authorize, under certain conditions, an interest rebate on loans.

1301:9-2-28, Credit card programs (*No change*) – The sets forth regulatory requirements pertaining to a credit union's credit card lending program, and the minimum provisions the policy for such a program must include.

1301:9-2-30, Shares and share drafts (*No change*) – The rule clarifies regulatory requirements pertaining to share accounts.

1301:9-2-31, Credit union service contracts (*No change*) – The rule clarifies a credit union's authority to enter into shared service contracts with other credit unions or organizations.

1301:9-2-32, Credit union service organizations (*Amend*) – The rule sets forth the conditions under which a credit union may invest or make loans to a credit union service organization. An amendment is being proposed to correct a typographical error overlooked during the prior five-year review.

1301:9-2-33, Sale and leaseback (*No change*) – The rule authorizes credit unions to enter into a valid sale and leaseback arrangement upon prior approval of the Division.

1301:9-2-34, Other real estate owned (*No change*) – The rule requires credit unions to report annually to the Division a list of "other real estate owned".

1301:9-2-36, Voluntary dissolution (*New*) – The proposed rule will require a credit union board to request Division approval upon their adoption of a resolution to present a proposal of dissolution to the membership.

1301:9-2-37, Suspicious activity reports (*Amend*) – The rule details requirements pertaining to the filing of suspicious activity reports. An amendment is being proposed to eliminate the redundant paper filing requirement.

1301:9-2-38, Powers and duties of liquidating agents (*Amend*) – The rule sets forth the powers and duties of a liquidating agent appointed to oversee the liquidation of a credit union. A non-substantive amendment is being proposed to improve the readability and flow of the rule.

1301:9-2-39, Charter conversion (*No change*) – The rule details the regulatory process for a federally chartered credit union to convert to a state chartered credit union and vice versa.

1301:9-2-40, Trustee or custodian (*Amend*) – The rule sets forth the conditions under which a credit union may act a trustee or custodian. An amendment is being proposed to add the version dates to five federal statutes incorporated by reference in the rule.

1301:9-2-41, Merger (*No change*) – The rule details the regulatory process for a credit union to merge with or into another credit union.

1301:9-2-42, Conducting business out of state (*No change*) – The rule reiterates the regulatory conditions under which an Ohio-chartered credit union is permitted to do business in another state.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** Revised Code Section 1733.41 is the authorizing statute for each of the aforementioned rules.
3. **Does the regulation implement a federal requirement?** Yes. O.A.C. 1301:9-2-07, in part, mirrors the federal participation loan requirements applicable to federally insured state chartered credit unions. The Division adopted the aforementioned rule because Ohio-chartered privately insured credit unions are not subject to the federal rule. **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.
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)?** Chapter 1733 of the Revised Code requires the Division to supervise and examine Ohio-chartered credit unions, and to enforce the laws applicable to them. Administrative rules allow the Division to more efficiently administer Chapter 1733 of the Revised Code, and they benefit the industry by providing clarification on a variety of regulatory areas. The proposed amendments to these rules will provide guidance and clarification on a number of issues that have come to the Division’s attention since the previous five-year rule review.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** The Division will measure the success of the regulations by the clarity and guidance that the regulations will bring to stakeholders as they pertain 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.** The Division solicited feedback from the Ohio Credit Union League and American Share Insurance. These organizations were given copies of the proposed rule amendments 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?** American Share Insurance (ASI) suggested a new provision providing for Division notice and approval of a credit union's intent to proceed with a voluntary dissolution. ASI also suggested a formatting change to an existing rule in order to improve its readability. The Division considered and followed through with both of ASI's suggestions. The Ohio Credit Union League (OCUL) and its Government Affairs Committee requested detail as to the intent behind each proposed rule amendment, and was initially satisfied upon the Division providing this information. During the CSI e-notification process, OCUL and various credit unions suggested amendments to O.A.C. 1301:9-2-01, 1301:9-2-04, 1301:9-2-05, 1301:9-2-06, 1301:9-2-07, 1301:9-2-11, 1301:9-2-15, 1301:9-2-16, 1301:9-2-21, 1301:9-2-23, 1301:9-2-24, and 1301:9-2-25. The Division considered the OCUL and credit union suggestions, and incorporated some of the proposed amendments into the rule package.
- 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 considered as part of the process. Most credit union rules and their corresponding provisions are necessary to protect the safety and soundness of these institutions or are based on applicable federal requirements.
- 11. Did the Agency specifically consider a performance-based regulation? Please explain.** No, these regulations are necessary to provide guidance and clarification as they pertain to the regulatory provisions of Chapter 1733 of the Revised Code. The purpose of the proposed rule amendments resulting from this five-year rule review is to clarify 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 the primary regulator of state-chartered credit unions, and is not aware of any duplicative Ohio 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. 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 unions chartered by the Ohio Division of Financial Institutions.
1301:9-1-03 - The rule may require, at the most, a minimal expenditure of time and resources, as it requires a credit union to provide the Division with written notification upon the occurrence of the following: new officials, an annual update of officials, or an examination report.

1301:9-1-04 - The estimated cost of compliance is the annual supervisory fee detailed in this rule. This fee is based on a credit union's gross assets and varies each year depending on the operating needs of the Division.

1301:9-2-01 - The rule may require a minimal expenditure of time and resources, as it requires a credit union file a written request for approval from the Division before establishing or relocating a service facility, and as it requires a credit union to notify the Division of the closure of a service facility.

1301:9-2-02 - This rule may require a minimal expenditure of time and resources, as it requires a credit union to seek written approval from the Division for any proxy or mail ballot form, and it establishes the minimum standards for such forms.

1301:9-2-03 - The cost of obtaining a fidelity bond varies depending on the extent of coverage being sought, the existence of deductible, and the company issuing the bond. The proposed rule may necessitate an increase in the minimum bond coverage for certain credit unions, depending on their asset size, which may result in an increase in their cost of obtaining the appropriate fidelity bond.

1301:9-2-04 - This rule may require a minimal expenditure of time and resources, as it requires a credit union to maintain a record of all loans charged off, and of all security that is repossessed and/or charged off.

1301:9-2-05 - The rule may require a minimal expenditure of time and resources, as it requires a credit union provide its members with a copy of their account statement at least twice a year and upon request, and as it requires a credit union to display copies of its financial statements.

1301:9-2-06 - A credit union may need to expend minimal time and resources to store and maintain corporate records in compliance with the rule. However, most credit unions have similar retention policies as a matter of internal policy.

1301:9-2-07 - The only cost would be a minimal outlay of time and resources for a credit union preparing and submitting any written approvals or notice to the Division as required by the rule for certain investments.

1301:9-2-08 - The estimated cost of compliance to maintain the minimum liquidity fund will vary depending on the size and complexity of each credit union. The cost, while not quantifiable, consists of the loss of the use of investment funds necessary to meet the rule's minimum liquidity fund requirement. There is also a potential cost of time and resources necessary for a credit union employee to monitor the liquidity fund.

1301:9-2-09 - The rule may require a minimal expenditure of time and resources for those credit unions seeking approval of the Division for the payment of dividends.

1301:9-2-10 - This rule would require a minimal expenditure of time and resources if a credit union meets the rule's definition of impairment, as it requires they notify the Division and all account holders the existence of the impairment. The cost will vary depending on the number of account holders such a credit union has.

1301:9-2-11 - The estimated cost of compliance consists of the cost of obtaining the necessary audit, a cost which varies significantly depending on the size and complexity of each credit union. There may also be a minimal cost of time and resources for credit unions to notify the Division of audit-related occurrences.

1301:9-2-12 - This rule does not impose a cost of compliance on credit unions, but does, however, require those persons requesting a customer's financial records from a credit union to pay the actual and necessary costs of assembling those records.

1301:9-2-13 - The rule may require minimal expenditure of time and resources for those credit unions which have insider transactions that must be reported to the Division annually.

1301:9-2-15 - The rule does not impose a cost of compliance on credit unions; it defines the term “depreciation” in terms of generally accepted accounting procedures.

1301:9-2-16 - The application process set forth in the rule will cost credit unions an amount of time and resources which will vary depending on the scope of their field of membership expansion request.

1301:9-2-19 - An expenditure of time and resources by credit union incorporators may be necessary to obtain and submit the documentation required by the rule.

1301:9-2-20 - There is a cost of compliance in that the rule imposes a limitation on the amount of credit union assets that may be loaned to one borrower. However, this is a standard limitation amongst state and federal financial institution regulators, and is necessary to ensure the safety and soundness of state chartered credit unions. The rule may also require a minimal expenditure of time and resources for those credit unions seeking a waiver from this limitation, and for any credit union the Division, pursuant to the rule's discretion, is requiring to report the amount borrowed.

1301:9-2-21 - The only cost would be a minimal outlay of time and resources for those credit unions seeking Division approval of a less restrictive lending policy or a specific waiver from these requirements.

1301:9-2-23 - The only cost would be a minimal outlay of time and resources for those credit unions seeking Division approval of a less restrictive lending policy or a specific waiver from these requirements.

1301:9-2-24 - There is minimal cost of time and resources for those credit unions seeking Division approval of a less restrictive member business loan policy.

1301:9-2-25 – There is a minimal cost of compliance, as the documentation that must be submitted to the Division before a credit union may purchase real estate is that which would otherwise be obtained as part of a standard business practice.

1301:9-2-28 - The implementation of a credit card lending program policy for those credit unions that do not already have an existing program will require an amount of time and resources which will vary depending on the asset size of the credit union and the level of program they wish to undertake.

1301:9-2-32 - The rule requires an expenditure of time and resources for a credit union to conduct the appropriate due diligence and ensure the proper agreements are in place prior to making a loan or investment in a credit union service organization. The cost will vary based on the sophistication of the credit union and the scope of the proposed investment or loan.

1301:9-2-33 - The rule may require a minimal expenditure of time and resources for credit unions to obtain written Division approval before entering into a valid sale and leaseback arrangement.

1301:9-2-34 - Creating and submitting the required report will require an expenditure of time and resource which will vary for credit unions depending on the quantity of other real estate owned.

1301:9-2-36 - The proposed rule may necessitate a minimal expenditure of time and resources for a credit union to provide the Division with the written notice required by the rule.

1301:9-2-37 - The proposed rule amendment decreases the cost of compliance for credit unions, as it eliminates a redundant paper filing requirement. The remaining rule provisions do not impact the cost of compliance as they are duplicative of federal requirements.

1301:9-2-38 - The rule may require an expenditure of time and resources for a credit union under liquidation to cooperate with the liquidating agent that takes possession of the liquidating credit union.

1301:9-2-39 - The rule requires an expenditure of time and resources for a converting credit union to prepare and file the documentation necessary for Division approval. The cost will vary depending on the size and sophistication of the converting credit union.

1301:9-2-41 - The rule requires an expenditure of time and resources for a merging credit union to prepare and file the documentation necessary for Division approval. The cost will vary depending on the size and sophistication of the merging credit union.

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.** The majority of those rules identified as potentially having an adverse impact, at most, result in a minimal expenditure of time and resources for those credit unions needing Division approval or notification. The remaining rules identified as having a potentially adverse impact, have an impact that is dependent on the size and complexity of the affected credit union, as well as the scope of their request or submission to the Division.

- 2. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** These rules are necessary to ensure the safety and

soundness of Ohio-chartered credit unions, and for the Division to meet its statutory mandate to ensure the laws relating to credit unions are executed and enforced. Certain rules are also necessary to mirror federal regulations and to provide parity for Ohio's privately insured credit unions.

Regulatory Flexibility

- 3. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** No. These rules must be applied evenly in order to ensure the safety of soundness of Ohio-chartered credit unions, and to protect the interests of the members of these non-profit cooperative institutions.
- 4. 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?** For those credit union rules that may be deemed to impose a "paperwork violation," such rules are necessary in the public interest to ensure the safety and soundness of Ohio-chartered credit unions.
- 5. What resources are available to assist small businesses with compliance of the regulation?** The Division intends to directly inform its chartered credit unions and other stakeholders of any rule amendments via email. Additionally, the Division widely publicizes to stakeholders the fact that its staff is available for assistance directly via phone or email. Finally, many of the most commonly requested forms and applications referenced in the rules are available from the Division's website.