



# Common Sense Initiative

Mike DeWine, Governor  
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## Business Impact Analysis

Agency Name: Department of Commerce

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Regulation/Package Title: Rules for Credit Unions

Rule Number(s): 1301:9-2-01 (Amend); 1301:9-2-04 (Amend); 1301:9-2-12 (Amend) 1301:9-2-25  
(Amend)

Date: \_\_\_\_\_

**Rule Type:**

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. 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.*

**1301:9-2-01 Service Facilities (Amend)** This rule establishes the regulatory requirements for a credit union to establish or relocate a service facility. The proposed changes reflect H.B. 489’s amendment of R.C. 1733.04, which eliminated the requirement of Superintendent approval for new service facilities.

**1301:9-2-04 Charge-off of uncollectable loans and other losses and reserves (Amend)** This rule sets forth the appropriate process by which a credit union should account for delinquent loans, other

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losses, and reserves. The proposed amendments would require a credit union to establish and maintain other reserves as required by generally accepted accounting principles and remove a reference to permanent record retention related to repossessed or foreclosed security to ensure consistency with Ohio Adm.Code 1301:9-2-06 (Preservation/retention of records).

**1301:9-2-12 Reimbursement to credit unions for assembling or providing financial records**

*(Amend)* This rule sets forth the reimbursement rate available to a credit union that assembles or provides a customer's financial records under certain circumstances. The rule amplifies R.C. 9.02, which requires the Division to establish by rule the rates and conditions for making such payments. R.C. 9.02 requires the rates to be substantially similar to those established by the Federal Reserve Board of Governors to regulate similar fees required by the Right to Financial Privacy Act of 1978. The federal regulation calls for a calculation that could result in a change from one quarter to the next in the amount of reimbursement available to a credit union. Accordingly, the Division proposes to amend the rule to incorporate by reference the schedule set forth at 12 C.F.R. 219.3 for the purpose of determining the reimbursement available to a credit union.

**1301:9-2-25 Purchase of fixed assets or purchase of real estate and/or construction of an office building**

*(Amend)* This rule sets forth the regulatory requirements applicable to a credit union's purchase of fixed assets or real estate. The proposed amendments reflect a HB 489's amendment of R.C. 1733.04, which eliminated the requirement of Superintendent approval for the purchase of real estate. Credit unions are still required to notify the Superintendent before purchasing real estate.

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

R.C. 1733.41 is the statute that authorizes the Division to adopt each of the administrative 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?**

*If yes, please briefly explain the source and substance of the federal requirement.*

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)?**

R.C. Chapter 1733 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 R.C. Chapter 1733, and they benefit the industry by providing clarification on a variety of regulatory areas.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

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The Division will measure the success of the administrative rules by the clarity and guidance that the rules will provide stakeholders in their forthcoming interactions with the Division.

### **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.*

On May 24, 2019 the Division contacted all Ohio-chartered credit unions and the Ohio Credit Union League by email. The Division provided the text of the draft rules together with a summary of the proposed changes and asked stakeholders to reach out to the Division with any comments or questions.

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

The Division received no input from Ohio-chartered credit unions. On June 21, 2019 the Division received comments from the Ohio Credit Union League (“OCUL”). OCUL’s comments, and their effect on the draft rules, are summarized below.

**1301:9-2-01 Service Facilities.** OCUL agreed with the proposed changes. The Division made no further revisions to the rule.

**1301:9-2-04 Charge-off of uncollectable loans and other losses and reserves.** OCUL agreed with the proposed changes. The Division made no further revisions to the rule.

**1301:9-2-11 Independent audit.** As the original purposes of this rule package were to make technical adjustments reflective of H.B. 489 and to ensure consistency throughout Ohio Administrative Code Chapter 1301:9, the Division proposed no change to this rule. OCUL requested clarifying language relating to the independent audit rule. During the Division’s most recent 5-year rule review, OCUL made an identical comment, which led the Division to amend the rule. The Division has made no further revision to this rule.

**1301:9-2-12 Reimbursement to credit unions for assembling or providing financial records.** As the original purposes of this rule package were to make technical adjustments reflective of H.B. 489 and to ensure consistency throughout Ohio Administrative Code Chapter 1301:9, the Division proposed no change to this rule. OCUL suggested increasing the hourly rate of reimbursement for a credit union’s reasonable search and processing costs from \$11/hour to \$20/hour, based on inflation and changes in the labor market. The Division reviewed this rule together with its amplifying statute, R.C. 9.02, and proposed amendments to the rule to ensure the agency’s compliance with R.C. 9.02.

**1301:9-2-22 Real estate construction loans.** As the original purposes of this rule package were to make technical adjustments reflective of H.B. 489 and to ensure consistency throughout Ohio Administrative Code Chapter 1301:9, the Division proposed no change to this rule. OCUL suggested revising the rule’s requirement that a credit union obtain a report from a certified independent appraiser prior to making a real estate construction loan, to promote parity with a proposed NCUA

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regulation. The Division does not plan to amend this rule. The independent appraiser requirement promotes the safety and soundness of Ohio-chartered credit unions. The Division will monitor the progress of NCUA's proposed regulation.

**1301:9-2-23 Home equity and second mortgage loans.** As the original purposes of this rule package were to make technical adjustments reflective of H.B. 489 and to ensure consistency throughout Ohio Administrative Code Chapter 1301:9, the Division proposed no change to this rule. OCUL requested clarification regarding the meaning of "other acceptable information and documentation," related to documentation required in the event of an appraisal or a determination of the property value for certain loans, as set forth in paragraph (D) of the rule. The Division does not plan to amend this rule to impose additional requirements on the industry.

**1301:9-2-24 Member business loans.** As the original purposes of this rule package were to make technical adjustments reflective of H.B. 489 and to ensure consistency throughout Ohio Administrative Code Chapter 1301:9, the Division proposed no change to this rule. OCUL asked that the Division amend the member business loan rule to align it in part with NCUA's member business loan regulation. The Division does not plan to amend this rule. Pursuant to Ohio Adm.Code 1301:9-2-24(M), a credit union may request Division approval of a member business loan policy that is less restrictive than provided by the rule.

**1301:9-2-25 Purchase of fixed assets or purchase of real estate and/or construction of an office building.** OCUL agreed with the proposed changes. The Division made no further revisions to the rule.

- 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?**

When drafting the rule amendments, the Division considered how to reconcile the existing administrative rules with recent changes to Ohio's credit union statute.

- 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.*

No, the Division did not specifically consider a performance-based regulation. These administrative rules are necessary for the Division to administer and enforce Ohio's credit union statute. Proposed amendments reconcile recent changes to the credit union statute with existing administrative rules.

- 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 unaware of duplicative Ohio administrative rules.

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**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 administrative rules have been available to stakeholders throughout the rule review process and will continue to be available to them via the Division’s website during the CSI process. Once finalized, the rules will be brought to the attention of stakeholders at every available opportunity. Division staff will be trained on the rules 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;**

The rules apply to Ohio credit unions.

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

*1301:9-2-01 Service Facilities.* A credit union may expend minimal time and resources to comply with this rule.

*1301:9-2-04 Charge-off of uncollectable loans and other losses and reserves.* 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.

*1301:9-2-12 Reimbursement to credit unions for assembling or providing financial records.* A credit union may expend minimal time and resources in calculating the reimbursement available to it.

*1301:9-2-25 Purchase of fixed assets or purchase of real estate and/or construction of an office building.* A credit union may expend minimal time and resources to comply with this rule.

**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.*

Because the Division regulates credit unions of diverse asset sizes, to quantify the adverse impact the rules may impose on stakeholders is not possible. The costs of compliance may vary depending on factors such as a credit union’s financial condition and the effectiveness of its leadership. Any adverse impact is a necessary inconvenience for stakeholders as the General Assembly has delegated to the Division rule-making power and administrative discretion to ensure that the supervision and regulation of credit unions in Ohio is flexible and responsive to changing economic conditions and practices within the credit union movement.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

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The regulatory intent justifies any adverse impact to the Ohio credit union industry because pursuant to R.C. 1733.02 the General Assembly has delegated to the Division rule-making power and administrative discretion to ensure that the supervision and regulation of credit unions in Ohio is flexible and responsive to changing economic conditions and practices within the credit union movement.

### **Regulatory Flexibility**

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

No, the rules do not exempt small businesses from compliance. The Division must apply the rules evenly across the Ohio credit union industry to ensure the safety and soundness all Ohio-chartered credit unions, and to provide for the protection of the interests of members, creditors, and the general public in credit unions doing business in Ohio.

**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?**

Because the Division does not impose administrative fines or civil penalties for paperwork violations of the administrative rules considered herein, the agency will have no reason to apply R.C. 119.14.

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

The Division widely publicizes to stakeholders that Division staff are available via phone and email. Many of stakeholders' most frequently-requested applications and forms are available via the Division's website.