



OHIO CREDIT  
UNION LEAGUE

June 21, 2019

Kevin Allard  
Superintendent  
Division of Financial Institutions  
Ohio Department of Commerce  
77 South High St., 21<sup>st</sup> Floor  
Columbus, OH 43215

Re: Administrative Rule Amendments Post State-Charter Modernization

Dear Mr. Allard,

The Ohio Credit Union League (OCUL) welcomes the opportunity to submit comments regarding a recent proposal to amend the credit union rules.

We applaud the agency's work with credit unions, the OCUL, and the Ohio General Assembly in regard to H.B. 489, which included alterations to the state credit union charter. In response to the state charter alterations, which enhanced and modernized legal authorities for Ohio chartered credit unions, the Division of Financial Institutions reviewed the Ohio Administrative Code to determine whether rule updates were necessary to conform to and implement the new law. We appreciate the Division's detail and diligence and write in support of the rule proposal.

### **Strength of the State-Charter**

The dual-charter system nourishes greater diversity and provides choice among Ohio credit unions as to which entity will serve as their institution's charter authority and prudential regulator. While the Ohio ratio of state- to federal-charter credit unions shows a slight majority established as federal credit unions, the majority of assets are held by state-chartered credit unions (totaling more than \$20 billion in assets). In fact, eight out of the ten largest Ohio credit unions choose the state charter over the federal. In our eyes, this is a reflection of a progressive state charter, the excellent leadership of the ODFI, its strength as a regulatory entity, and commitment to ensuring the regulatory framework facilitates both safety and soundness, and growth and modernization.

Acknowledging this, we respectfully request that ODFI implement the suggested changes to the OAC and consider further rule changes to ensure a course is set for credit unions to fulfill their philosophical mission of serving members.

### **Concurrence With ODFI's Proposed Changes**

The Division has identified three rules which require technical adjustments as a result of H.B. 489. We agree with the proposed changes to the following rules:

- 1301:9-2-01: Service Facilities;
- 1301:9-2-04: Charge off of uncollectable loans and other losses and reserves; and,
- 1301:9-2-25: Purchase of fixed assets or purchase of real estate and/or construction of an office building.

### **Include New Updates to the O.A.C.**



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While ODFI did not elect to update the following sections of the O.A.C., we believe the changes below should be included. It is our belief these changes will reduce burdens from businesses operating in the state and also promote safety and soundness.

- 1301:9-2-11: Independent Audit: We request ODFI clarify the language relating to independent audit. From our perspective it is unclear what notification is required and why ODFI seeks such notification.
- 1301:9-2-12: Reimbursement to Credit Unions for Assembling or Providing Financial Records: Pursuant to the code, credit unions have the ability to seek the reimbursement of reasonable search and processing costs in connection with a request to assemble a consumer's financial records. The rule states, "the rate for search and processing costs is eleven dollars per hour per person." To our knowledge, the rate of \$11/hour has not been adjusted in at least ten years, if not longer. In addition to inflation, the labor market has drastically changed within the last two decades. OCUL suggests increasing the hourly rate for reimbursement. We would suggest "up to \$20/hour" at a minimum to permit credit unions a more realistic opportunity for cost recovery regarding research and processing.
- 1301:9-2-22: Real Estate Construction Loans: For real estate construction loans, credit unions must obtain a report from a certified independent appraiser who has satisfied the statutory requirements of Chapter 4763. We urge the Division to provide flexibility to credit unions as to whether the utilization of a certified, independent appraiser is always prudent for each transaction.

Most recently in September, 2018, the National Credit Union Administration (NCUA) proposed increasing its threshold for non-residential real estate transactions which require an appraisal from an a certified, independent appraiser.<sup>1</sup> The agency, generally, is proposing to exempt those non-residential real estate transactions under \$1,000,000 from its certified, independent appraiser requirement. OCUL expressed its support of NCUA's proposal<sup>2</sup> and is actively monitoring its developments. We urge the Division to be prepared to make necessary adjustments to the O.A.C. when the finalized threshold (\$1,000,000 or another number) becomes the federal credit union standard so credit unions operating under the Ohio charter are afforded the same flexibility.

- 1301:9-2-23: Home Equity and Second Mortgage Loans: We request ODFI clarify the language "other acceptable information and documentation" in subsection (D), which permits credit unions to utilize qualified staff personal for home equity and second mortgage loan appraisals under \$250,000. Said appraisals by qualified staff personnel are to include a written report which includes comparable sales or based on "other acceptable information and documentation that accurately reflects the appraised value."

We suggest clarifying this to include tax valuations and automated valuation models (AVM) by adjusting the rule to read, "other acceptable information and documentation, including, but not required or limited to, tax valuation and automated valuation model solutions, that accurately reflects the appraised value."

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<sup>1</sup> National Credit Union Administration, Proposed Rule Real Estate Appraisals, RIN: 3133-AE79.

<sup>2</sup> Ohio Credit Union League Comment in Response to RIN 3133-AE79 (November 29, 2018), *available at* <https://sharepoint.ohiocreditunions.org/Documents/CommentLetters/OCULComments-RealEstateAppraisals1129.pdf>.



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- 1301:9-2-24: Member Business Loans: We request ODFI to upgrade the member business lending (MBL) rules to provide Ohio state-chartered credit unions of both insurance types a level of regulatory empowerment in business lending similar to and no more restrictive than the rule in place for their federally chartered counterparts. In January of 2017, the National Credit Union Administration (NCUA) implemented an adjusted rule framework for member business lending as part of a rule-making process designed to modernize credit union rules and provide credit unions with regulatory relief and improvement consistent to strong supervision and safety and soundness. As we previously supported NCUA's MBL rule reform<sup>3</sup>, we believe it is now imperative that ODFI work on similar modernization and improvement to the ODFI rules regarding member business lending.

Key changes in NCUA's final rule are summarized effectively by the agency in the attached document to this comment letter. In relation to NCUA's prior existing rules for federal credit unions, the most significant advancements include: eliminating the prescriptive LTV (loan-to-value) requirement and eliminating the prescriptive PG (personal guarantee) requirement.

We see two options for bringing the Ohio MBL rules in alignment with the productive upgrades implemented for the federal rules in January 2017. One option is to reframe ODFI's rule language to achieve uniform parity with NCUA's rule by using rule language explicitly pointing to and requiring compliance with NCUA's rule. Generally, OCUL resists such direct deference to federal rule constructs as a diminishment of the distinction and value of the state charter (having the effect of homogenization of rules across state and federal charter types). IN addition, such an approach would have the effect of subjecting Ohio's privately insured credit unions to NCUA's rule framework as it presently applies to both federal charters and state charters that are NCUSIF insured. Thus, our preference is for ODFI to preserve a set of MBL rules separate and distinct from NCUA's MBL rule that is based on present DFI rule language and modified to achieve the necessary modernization and empowerment in targeted areas. In doing so, OCUL acknowledges the Ohio resources available to assist in the technical analysis and language development as the foundation of improved ODFI MBL rules. These resources include deep expertise embedded in: ODFI, OCUL, the Credit Union Council, and proven practitioner/subject matter expert stakeholders (including executives from MBL-leading Ohio credit unions and CUSOs).

## Conclusion

The operation of a state-chartered credit union is governed by the existing O.A.C. framework. Understanding the rapidly changing credit union market, we ask the Ohio Division of Financial Institutions to consider our suggested improvements to the code. Implementing these changes brings alignment between the administrative rules and the modern nature and operations of Ohio's state-charter credit unions.

If you have further questions or would like to discuss OCUL's comments in more detail, please feel free to contact us at 800-486-2917.

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<sup>3</sup> Ohio Credit Union League Comment to NCUA in Response to RIN 3133 (August 28, 2015), *available at* <https://sharepoint.ohiocreditunions.org/Documents/CommentLetters/OCULComments-NCUAMBL.pdf>.



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Respectfully,

A handwritten signature in dark ink, appearing to read 'Paul L. Mercer'.

Paul L. Mercer  
President

A handwritten signature in dark ink, appearing to read 'Miriah Lee'.

Miriah Lee  
Regulatory Counsel



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