



February 24, 2023

Kelli E. Lister, Division Counsel
Ohio Department of Commerce
Division of Unclaimed Funds
77 S. Hight Street, 20th Floor
Columbus, Ohio 43215

**Re: Comment Letter – Ohio Administrative Code 1301:10
Five-Year Rule Review**

Dear Attorney Lister,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio's 227 credit unions and their more than three million members. Of those 227 credit unions, 123 are federally chartered; 59 state-chartered, federally insured; and 45 state-chartered, privately insured, with an average asset size of \$188 million. OCUL appreciates the opportunity to comment on the Department of Commerce, Division of Unclaimed Funds' (Division) review of its unclaimed funds rules as a part of Ohio's required five-year rule review. Specifically, the Division is seeking comment on two rules Ohio Administrative Code (OAC) 1301:10-1-01, "Definitions" and OAC 1301:10-3-04, "Examination of accounts".

First, OAC 1301:10-1-01 defines terms as they are used in Ohio Revised Code (ORC) Chapter 169 and accompanying administrative rules. The Division is proposing to amend three definitions to provide greater clarity. While OCUL appreciates, and largely agrees with the changes, we believe a few additional provisions could allow for the rules to stay relevant, longer. Specifically, under OAC 1301:10-1-01(A)(6), the definition of "intangible property" has a list of properties that are considered. Moreover, subsection (6) lists, "Currency, coins, coin collections, precious metals, stamps and stamp collections, both foreign and domestic[.]" OCUL recommends the Division consider adding or recognizing digital assets and/or cryptocurrency to this list. While credit unions are not yet authorized to serve as custodians for cryptocurrency, that does not stop the emerging digital marketplace trend, with more and more consumer buyers, holders, and owners of digital assets. By adding this provision, the Division is granting itself further latitude to process additional forms of intangible property that are increasing in popularity.

Additionally, OAC 1301:10-10-1(K) proposes to define "Examination period" as, "means the last ten reporting cycles including the reporting cycle in which the involuntary examination is commenced. OCUL recommends the Division add either an exemption provision here, or as a standalone, that serves to address instances where records from the last ten reporting cycles may not be available. There are generally acceptable estimation techniques that financial institutions can use to serve in the place of unavailable records. The credit union industry has shown that it is not immune to the realities and challenges of consolidations and mergers. There are anecdotal examples of reasons why mergers are sound business decisions or necessary, and there could be a situation where lack of record retention could end up being on conflict with this definition.

Second, OAC 1301:10-3-04 identifies the process by which the books and records of a potential holder of unclaimed funds may be examined to verify compliance with ORC Chapter 169. The Division is proposing to amend statutory references in the rule to correctly identify statutory provisions relevant



to the rule. Additionally, the Division is seeking to provide greater flexibility for the scheduling of a closing review for an unclaimed funds examination by amending the rule to allow a closing examination to occur within 30-45 days following the expiration of the 120-day period a holder is afforded to eliminate preliminary findings.

Again, while OCUL appreciates and largely supports all the amendments made hereto, we would like to recommend one additional point of clarification. OAC 1301:10-3-04(E) lists factors that may be used by the Director to establish whether reasonable cause exists to believe that a holder has failed to comply with ORC Chapter 169 and, therefore, may be subject to an involuntary examination. Specifically, the list includes (5) Evidence or complaints of failure by holder to conduct due diligence pursuant to division (ED) of section 169.03 of the Revised Code, and (6) Evidence of failure by the holder to report complete owner information pursuant to division (A) of section 169.03 of the Revised Code. OCUL appreciates the nonprescriptive approach to the vast majority of this rule but believes some clarity here could provide what does and does not constitute prima facie evidence of failure by a holder. A good standard could be any regulatory action, discipline, or sanction from a state or federal agency dually authorized to act against the holder. This tangible threshold provides the industry with a clear example of what the Director will turn to make an otherwise subjective decision, without limiting the Director's authority to include other factors.

Lastly, OCUL supports the amendments to the language used in both rules that would remove unnecessary regulatory restrictions in conformity with Ohio Revised Code 121.95(B). As credit unions continue to grow and sophisticate inside a rapidly evolving and changing economic and digital marketplace, updated laws and rules will allow for the regulatory flexibility necessary not just so credit unions can compete today, but also tomorrow.

OCUL appreciates the opportunity to engage with the Department on ways to keep Ohio's laws and rules fresh, applicable, and up to date. 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.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul L. Mercer".

Paul L. Mercer
President

A handwritten signature in black ink, appearing to read "Sean M. Brown".

Sean M. Brown, Esq.
Director, Regulatory Affairs