Regulations

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Alabama Credit Union Administration
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Alabama Credit Union Administration

Regulations Index

Section 1. Organization of a State Chartered Credit Union
Section 2. Loans
Section 3. Investments
Section 4. Limits on Loans and Investments in Credit Union Service Organizations
Section 5. Fiduciary Powers
Section 6. Reserves; Surplus
Section 7. Minimum Fidelity Bond Requirements
Section 8. Supervisory Committee
Section 9. Branches
Section 10. Maximum Borrowing Authority for a State-Chartered Credit Union
Section 11. Credit Union Ownership of Fixed Assets
Section 12. Other Requirements
Section 13. Share Insurance
- I. Pre-qualifications
- II. Application
- III. Powers and Duties
- IV. Operation of a Credit Union Share Guaranty Corporation
- V. Reporting
- VI. Special Provision
- VII. Non-Federal Share Insurance Qualification Requirements for Credit Unions

Section 14. Confidentiality of Records and Applicability of Code of Alabama, Title 36-12-40
Section 15. Procedural Requirements for Confidential Regulatory Reports and Communications
Section 16. Vendor Risk Management and Commercial Arrangements With Third Parties
Section 17. Mergers and Acquisitions and Charter Conversions
Section 18. Records Preservation Program and Record Retention Guidelines; Catastrophic Act Preparedness Guidelines
Section 19. Liquidity and Contingency Funding Plans
Section 20. State Chartered Corporate Credit Union

Regulation 1705 Field of Membership Expansion

1705.1 Credit Union Membership
1705.2 Definitions
1705.3 Requirements for Field of Membership Expansion
1705.31 Credit Unions Allowed FOM Flexibility at Least Equivalent to Federal Credit Unions in Alabama
1705.32 Application Requirements

1705.33 Universal Requirements

1705.34 Other Application Requirements for Geographic Area Based Field of Membership

1705.35 Geographic Area Based Fields of Membership approval to be probationary, and require subsequent review

1705.4 No Overlap Protection for Geographic Area Based Field(s) of Membership

1705.41 Temporary Overlap Protection among Single Select Groups

1705.5 Approval

1705.51 Field of Membership Expansion Approval May be Appealed

1705.6 Penalty for Violation

Section 1. Organization of a State Chartered Credit Union

Organization

Section 5-17-2 of the Alabama Code states, "Any seven residents of the State of Alabama may apply to the Administrator of the Alabama Credit Union Administration for permission to organize a credit union."

In order to demonstrate a viable future for a proposed credit union, there should be a field of membership of not less than 500 potential members. These persons must show an interest and ability to support the proposed credit union including sponsor furnished quarters, data processing, volunteer management, etc. Sponsor subsidizes and voluntary management must continue until the credit union is able to sustain its own operations.

Section 2. Loans

Part I. Loan and Appraisal Policies

Both federally insured and privately insured state-chartered credit unions in Alabama, other than the corporate credit union that is subject to Part 704 of the National Credit Union Administration's (NCUA's) regulations, are required to have credit union Board approved written loan and appraisal policies. Policies should be reviewed and modified as required, but not less frequently than annually. The loan policy should address, at a minimum, the following for each type loan offered:

1. Collateral requirements including protection of security interests, filing of UCC's; titles; insurance for collateral with credit union named as loss payee or mortgagee;
2. Loan to value parameters; credit reports; adequate determination of the financial capacity of the borrower(s) and co-borrower(s) for repayment of the loan; adequate determination of the value of the collateral offered as security in relation to the amount borrowed;
3. Maximum loan amount; purpose; complete credit application;
4. Maximum maturity limits for each type of loan, whether secured or unsecured;
5. Interest rate or basis; terms by type; indices for variable rate products; controls to monitor rate changes (including variable rates in accordance with loan contracts); review of file maintenance reports; due date changes; extension agreements;
6. Risk-based pricing measures, if applicable; risk-based lending measures, if applicable;
7. Indirect lending underwriting standards, parameters, limits by dealer, limits by risk grade, monitoring measures for delinquency including delinquency and losses/charge-offs by dealer, reporting to Board of Directors regarding the indirect lending portfolio, compliance with NCUA Regulation 701.21(h) for third-party servicing of indirect lending loans;
8. Subprime lending underwriting standards, parameters limits by risk grade, and monitoring measures;
9. Employee and official loan underwriting standards and parameters, and monitoring measures;
10. Credit card underwriting standards and parameters, and monitoring measures;

11. Overdrafts and Overdraft Privilege Program underwriting standards, monitoring measures, and adherence with applicable laws and regulations regarding overdrafts and courtesy pay programs;
12. Home Equity Lines of Credit; requirements for use of current tax assessments in lieu of appraisal;
13. Appraisal policy in accordance with NCUA Regulation Part 722 and applicable FIRREA standards. The Appraisal Policy and practices shall include the following:

    (a) All non-commercial loans collateralized by real estate greater than $250,000 defined as Complex (a transaction in which the property to be appraised, the form of ownership, or market conditions are atypical) must have an appraisal by a Certified Appraiser or in Non-Complex (may presume that appraisals of 1-4 family residential properties are not complex unless the credit union has readily available information that a given appraisal will be complex), either by a Licensed or Certified Appraiser is considered sufficient; from either a State certified or licensed appraiser;

    (b) All non-commercial loans collateralized by real estate less than $250,000, the valuation must be supported by a written estimate of market value performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimate of value for the type and amount of credit being considered

    (c) Appraisals shall be written and contain sufficient information and analysis to support the credit union's decision to engage in the transaction; and,

    (d) Appraisals should be based upon market value meaning the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgably and assuming the price is not affected by undue stimulus;

    (e) ACUA reserves the authority to require an appraisal whenever the agency believes it is necessary to address safety and soundness concerns. Included in this authority is the requirement to order an appraisal (at credit union expense) on any foreclosure to determine market value of the property and the proper accounting based on the appraised value.

14. Adherence to requirements stated in NCUA Regulation 723 concerning commercial lending and member business loans;
15. Loan workout arrangements and nonaccrual placement standards, including requirements for returning such loans to accrual status;
16. Collection policies, practices, procedures and delinquency control measures which also includes reviews of file maintenance reports, due date changes, extension agreements, and skip-a-pay programs.

Furthermore, every credit union's loan policy or other Board approved policy must address self-dealing, non-preferential treatment and conflicts of interests to include a statement that no official or employee of a state-chartered credit union, or immediate family member of an official or employee, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union. Compensation includes non-monetary items, except those of nominal value. Immediate family member means a spouse or other family member

living in the same household. Official means any member of the Board of Directors, Supervisory Committee or Credit Committee.

Part II. Allowance for Loan and Lease Losses; methodology; full and fair disclosure

Each credit union must have a written policy for the allowance for loan and leases losses that has been approved by the credit union's board of directors. For credit unions with assets greater than $10 million, the allowance for loan and lease loss methodology must comply with Generally Accepted Accounting Principles (GAAP). For credit unions with assets less than $10 million, the credit union's policy should result in an allowance for loan and lease losses that reserves for expected losses in the loan and lease portfolio. A third-party validation of the allowance for loan and lease loss methodology and calculations is encouraged and may be required by examiners on a case by case basis for any credit union regardless of size.

Part III. Limits of Indebtedness and Concentration of Credit

Secured and unsecured limits must be established in policy for the total indebtedness to be allowed one member or a group of members with closely related interests. A member is considered related to another member either by dependent or same household familial relationships, common ownership of businesses, co-borrowers, guarantors, and such relationships that may cause dependency of repayment ability to the credit union (subject to the maximums stated below). These limits may be expressed as a dollar amount, percentage of assets or percentage of net worth.

Limits by loan type must be addressed in the credit union policies as stated in regulation Section 2, Part 1, include maximum amounts (as a percentage of assets) to be allowed in long-term fixed rate real estate loans or construction loans; maximum unsecured loans to a member; maximum amounts for both unsecured and secured member business loans; and any other limits desired by the board of directors.

(a) No credit union shall make a loan to any one member which, when combined with his/her other closely related interests, would cause total loans to that member to exceed:

1. Ten percent of net worth of the credit union, if such loans are not secured, or
2. Twenty percent of net worth of the credit union, if such loans in excess of 10 percent of net worth are fully secured.
3. Participation loan limits will be judged by NCUA standards currently defined in NCUA R&R 701.22 (b) (4) (ii) & (iv).
4. In addition to the above, the aggregate member business loan limit of a credit union's net business loan balances is the lesser of 1.75 times the actual net worth of the credit union or 1.75 times the minimum net worth required under section 1790(c)(1)(A) of the Federal Credit Union Act.

No loans which would exceed the limitation set forth in (a) (1) shall be made unless duly authorized and approved in accordance with the credit union's bylaws by either the elected Credit Committee, appointed loan committee or board of directors, with such authorization and approval being recorded in minutes of the meeting at which the authority was given.

(b) As used in this section, the term "net worth" shall include regular reserves, other reserves, undivided earnings; net income/loss for the period and such reserves as may from time to time be permitted to be included by the Administrator.

Part IV. Reserved for Future Use

Part V. Participation Loans

Part 701.22 of NCUA Regulations establishes the requirements ACUA will apply equally to both privately insured or federally insured credit unions in regard to the purchase of a participation in a loan. This section applies only to either a privately insured or federally insured credit union's purchase of a loan participation where the borrower is not a member of that credit union and where a continuing contractual obligation between the seller and purchaser is contemplated. This section does not apply to a corporate credit union, as that term is defined in NCUA Regulation 704.2.

A state-chartered credit union must provide prior notification to the Administrator of the Alabama Credit Union Administration when any credit union's Board of Directors approves a new (initial) participation lending program between credit unions and other financial organizations.

Part VI. Business Loans

All federally insured state-chartered credit unions are regulated in accordance with NCUA's Member Business Lending Regulations but are no more restrictive. Each credit union must adopt a very specific and detailed policy which conforms to the regulation and a copy of this Board approved policy must be forwarded to the Administrator prior to a credit union initially engaging in member business lending. For conformity, ACUA will examine privately-insured state chartered credit unions under the same standards but no more restrictive.

Section 3. Investments

Note: The state chartered corporate credit union will comply with NCUA's Rules & Regulations, Part 704, where specified, as it pertains to investments and applicable state law.

The Board of Directors of each Alabama state-chartered credit union shall establish written investment policies consistent with the applicable provisions of the Code of Alabama, and other applicable laws and regulations, including sound business practices. Policies should be reviewed and modified as required, but not less frequently than annually. Board minutes should document a review of the policy and any amendments thereto.

At a minimum, the written policy shall address the following:

(a) Purposes and objectives of the credit union's investment activities, including a statement whether securities purchased are categorized as (1) hold to maturity, (2) available for sale, or (3) trading securities;

(b) Persons or committees to whom investment authority has been delegated and the extent of their authority;

(c) Limits on the amount of funds that may be committed to any particular investments or securities transaction, including the investments characteristics such as issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life and interest rate risk;

(d) Maturity limits; and, how management will manage interest rate risks through its asset-liability management policy, practices and procedures;

(e) Liquidity risk (as applicable); how management will manage liquidity risks; borrowings and lines of credit available;

(f) How management will manage concentration risk that can be a result of dealing with one issuer or holding similar securities with similar maturities or indices; and how management will manage credit risk, specifically setting limits by institutions or issuers;

(g) Listing of securities dealers/brokerage firms approved for use by the Board of Directors together with any limitations that the board has established with respect to the amount of funds that may be placed or invested with any of the approved dealers/brokers (as applicable);

(h) Safekeeping of securities, including a list of safekeeping facilities approved by the credit union's Board of Directors. A credit union must maintain a record or documentation to support investment transactions. For example, a broker confirmation for each investment purchased and sold;

(i) The policy should address internal controls; maintenance of investment transaction documentation (dealer broker confirmations; bid, ask, sell price quotes, etc.); segregation of duties, the risk taking or purchasing and selling function should be separate from risk monitoring of the portfolio;

(j) Credit unions with assets in excess of $10,000,000 must comply with generally accepted accounting principles for reporting requirements.

State chartered federally-insured credit unions (excluding a state chartered corporate credit union) are required to establish an additional special reserve for investments for non-conforming investments in an amount equal to the net excess of book value over current market value of the investment(s). Such a reserve is only required for impermissible investments such as variable rate instruments with indices tied to foreign currencies or foreign interest rates; or municipal securities whose credit rating falls below one of the top four rating criteria established by a nationally-recognized statistical rating organization; or purchasing or selling financial derivatives such as futures, options, interest rate swaps or forward rate swaps; or zero coupon investments with a maturity date in excess of 10 years; or a commercial mortgage related security or stripped mortgage backed securities; or purchase residual interests in collateralized mortgage obligations, real estate mortgage investment conduits or small business related securities.

Section 4. Limits on Loans and Investments in Credit Union Service Organizations

This section shall establish when a state-chartered credit union in Alabama can invest in and make loans to Credit Union Service Organization (CUSO's). CUSO's are subject to review by the ACUA, normally as part of the examination of the credit union. Access to the CUSO's financial statements, books and records of the CUSO and the ability to review the CUSO's internal controls, as deemed necessary by ACUA in carrying out is responsibilities under the Code of Alabama must be provided at the request of the Administrator and/or state examiners.

General Requirements

State chartered credit unions must obtain written agreements from a CUSO, prior to investing in or loaning to the CUSO, that the CUSO will:

I. Account for all its transactions in accordance with Generally Accepted Accounting Principles (GAAP); total shares and undivided earnings are to be measured consistent with GAAP;

II. Prepare quarterly financial statements and obtain an annual opinion audit by a licensed Certified Public Accountant on its financial statements in accordance with "Generally Accepted Auditing Standards" (GAAS) if the CUSO is not included in the audited consolidated financial statements of a credit union and the investment plus loans to the CUSO combined are greater than 2% of the credit union's shares, deposits and undivided earnings;

III. A less than adequately capitalized Privately Insured State-chartered Credit Union (PISCU) or Federally Insured State-chartered Credit Union (FISCU), or a PISCU or FISCU that would be rendered less than adequately capitalized by the recapitalization of a CUSO, must obtain prior written approval from the appropriate state supervisory authority if the making of the investment would result in an aggregate cash outlay, measure on a cumulative basis (regardless of how the investment is valued for accounting purposes, but limited to the immediately preceding seven (7) years) in an amount that is in excess of the investment limit in the state in which it is chartered. A FISCU must also submit a copy of this request to the ACUA and the appropriate NCUA regional office. A PISCU must submit a copy of this request to ACUA.

IV. State chartered credit unions must obtain a legal opinion prior to investing in or loaning to a CUSO, as to whether the CUSO is established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in or lent to, the CUSO; and,

V. A state-chartered credit union may only invest in or loan to a CUSO whose activities and services are routine daily operations of credit unions.

A state-chartered credit union proposing to invest or lend more than 2% of shares, deposits and undivided earnings must also be Well Capitalized (a minimum Net Worth ratio of 7% of assets). Net Worth is defined as regular reserves, other reserves, undivided earnings and net income/loss.

The total amount of funds either invested in or loaned to a credit union service organization shall not exceed 4% of unimpaired capital defined as shares, deposits, and undivided earnings as

of its most recent calendar year-end financial report. A credit union must first receive written approval from the Administrator when either the investment in, loan to or combination of both exceeds 2% of unimpaired capital (shares, deposits and undivided earnings) as of the most recent calendar year-end financial report.

The Administrator of the Alabama Credit Union Administration may limit a state-chartered credit union's CUSO activities or services or refuse to permit any CUSO activities or services when either supervisory, legal or safety and soundness issues exist.

At no time can the maximum 4% limit be exceeded and when a credit union falls below "Well Capitalized" (a 7% Net Worth ratio), the Administrator reserves the right to establish reserving requirements in conformance with Generally Accepted Accounting Principles (GAAP).

A state-chartered credit union can invest in or lend to a CUSO only if the CUSO is structured as a corporation, limited liability company, limited partnership or other limited liability entity.

A state-chartered credit union can invest in, loan to or contract with only those CUSO's that are sufficiently bonded or insured for their specific operations and engaged in the preapproved activities and services related to the routine daily operations of credit unions. The specific activities listed within each preapproved category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list. The preapproved activities are as follows:

A. Checking and currency services:

1. Check cashing;
2. Coin and currency services; and
3. Money order, savings bonds, traveler's checks, and purchase and sale of U.S. Mint commemorative coins and services.

B. Clerical, professional and management services:

1. Accounting services;
2. Courier services;
3. Credit analysis;
4. Facsimile transmissions and copying services;
5. Internal audits for credit unions;
6. Locator services;
7. Management and personnel training and support;
8. Marketing services;
9. Research services; and
10. Supervisory committee audits.

C. Business loan origination:

D. Consumer mortgage loan origination:

E. Electronic transaction services:

1. Automated teller machine (ATM) services;
2. Credit card and debit card services;
3. Data processing;
4. Electronic fund transfer (EFT) services;
5. Electronic income tax filing;
6. Payment item processing;
7. Wire transfer services; and
8. Cyber financial services;

F. Financial counseling services:

1. Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation, and other personnel benefit plans;
2. Estate planning;
3. Financial planning and counseling;
4. Income tax preparation;
5. Investment counseling; and
6. Retirement counseling.

G. Fixed asset services:

1. Management, development, sale or lease of fixed assets, foreclosures and repossessions; and
2. Sale, lease or servicing of computer hardware or software.

H. Insurance brokerage or agency:

1. Agency for sale of insurance;
2. Provision of vehicle warranty programs; and
3. Provision of group purchasing programs.

I. Leasing:

1. Personal property; and
2. Real estate leasing of excess CUSO property.

J. Loan support services:

1. Debt collection services;
2. Loan processing, servicing and sales; and
3. Sale of repossessed collateral.

K. Record retention, security and disaster recovery services:

1. Alarm-monitoring and other security services;
2. Disaster recovery services;

3. Microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services;
4. Provision of forms and supplies; and
5. Record retention and storage.

L. Securities brokerage services:

M. Shared credit union branch (service center) operations:

N. Student loan originations:

O. Travel agency services:

P. Trust and trust-related services:

1. Acting as administrator for prepaid legal service plans;
2. Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and
3. Trust services.

Q. Real estate brokerage services:

R. CUSO investments in non-CUSO service providers: In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods and services.

In general, CUSO's must not acquire control of, either directly or indirectly, another depository financial institution, nor invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility or similar organization, corporation or association.

In order for a state-chartered credit union to invest in and/or loan to a CUSO that offers an unpreapproved activity or service, the credit union must first receive approval of the Administrator of the ACUA. The request must include a full explanation of and complete documentation of the activity or service and how that activity or service is associated with routine credit union operations. The Administrator will act on the request within thirty (30) days after receipt.

A state-chartered credit union must account for its investments in or loans to a CUSO in conformity with "Generally Accepted Accounting Principles" (GAAP).

Where a credit union is denied approval to invest or loan to a CUSO, an amount in excess of 2% of unimpaired capital and surplus, the credit union may within thirty (30) days after receipt of the Administrator's written letter disapproving such request, appeal to the Board of the Alabama Credit Union Administration. The Board will in turn review the appeal and respond within thirty (30) days.

Note: An investment in or loan to a CUSO by a corporate credit union is subject to NCUA's Part 704 regulation concerning CUSO's.

Section 5. Fiduciary Powers

A member of a state-chartered credit union in Alabama who is a beneficiary, trustee or personal representative of another may deposit such fiduciary funds into the credit union in which he or she is a member. The beneficiary, trustee or personal representative of the estate of a deceased credit union member may deposit the funds of such estate into the credit union at which the decedent was a member.

Sections 5-17-4 (2) of the Code of Alabama gives credit unions the authority to accept deposits of fiduciary funds if a member is the beneficiary, trustee or personal representative. The credit union may also accept such funds if it is part of the estate of a deceased member.

Section 6. Reserves; surplus

Section 5-17-19 of the Code of Alabama, 1975, provides that Alabama credit unions maintain such regular reserves as are required to maintain insurance of member accounts under the provisions of Title II of the Federal Credit Union Act.

In addition, §5-17-19 (a) of the Code authorizes the Administrator of the Alabama Credit Union Administration to require additional reserves which the Administrator finds are necessary under the particular circumstances to protect the ongoing interest of the credit union, its members and the community. Examples requiring additional reserves may include, but are not limited to, increasing loan losses and investment losses, deteriorating economic conditions in general as well as specific to the credit union's sponsor organization(s) that ultimately could cause the credit union to suffer financially and erode member confidence in the credit union's ability to offer competitive products and services in the financial sector.

To ensure that the overall financial condition of the credit union system in Alabama will remain sound, every state chartered credit union must create an annual Capital Preservation Plan for each year, similar in intent to the Surplus Funds requirement for state chartered banks as specified in Section 5-5A-21, Code of Alabama, 1975. Such Capital Preservation Plan shall be reviewed and approved by the Board of Directors of the credit union annually and subsequently submitted in writing to the ACUA Administrator. Credit unions must submit Capital Preservation Plans for the year 2020 no later than May 1, 2020. For subsequent years, Capital Preservation Plans must be submitted no later than November 1 of the current year for the following year (i.e. submit plan for 2021 no later than November 1, 2020).

Each state-chartered credit union shall make a transfer, if warranted, to regular reserves in accordance with such Capital Preservation Plan no later than December 31 of the year to which the Plan applies. The ACUA Administrator may reduce the amount of such transfer upon good cause.

Furthermore, any natural person federally-insured state chartered credit union with a Net Worth ratio less than 7% for any quarter end will be required to submit quarterly reports to the Administrator that detail the corrective action(s) being taken that will provide for adequate protection of member deposits and result in the best interests of credit union members. The credit

union must increase the dollar amount of its net worth by an amount equivalent to 1/10th percent (0.10%) of its total assets and must quarterly transfer that amount from undivided earnings to its regular reserve account until it is well capitalized.

A federally insured state-chartered credit union may request a decrease in the retention percentage, if it is necessary to avoid a significant redemption in shares. The request must be written and submitted to the ACUA Administrator and the NCUA Board no later than fourteen (14) days before the quarter end. The request for a credit union to decrease its earnings retention is subject to quarterly review by ACUA.

Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of regular reserves, undivided earnings, and net income/loss for the period and any other appropriations designated by management or regulatory authorities. The net worth ratio is expressed as a percentage of assets for the quarter end, average quarterly balance, average monthly balance or average daily balance.

These requirements do not replace any previously established reserving requirements, which may have been imposed upon any credit union under the Federal Credit Union Act's Prompt Corrective Action statute or which may additionally be imposed in regard to safety and soundness concerns by the Alabama Credit Union Administration.

For conformity, ACUA will hold privately insured state-chartered credit unions under the same standards but no more restrictive.

Section 7. Minimum Fidelity Bond Requirements

Any state-chartered credit union which makes application for federal insurance of its accounts pursuant to Title II of the Federal Credit Union Act or such private insurance carrier must comply with the requirements of NCUA Regulation 713 and possess the minimum fidelity bond coverage outlined in the regulation. A federally insured state-chartered credit union whose fidelity bond coverage is terminated shall provide formal, written notification to the Administrator and the NCUA Regional Director immediately upon receipt of notice of such termination. A privately insured state-chartered credit must provide formal, written notification to the Administrator and the private insurer immediately upon receipt of the notice of termination.

The ACUA Administrator, in his or her discretion, may require additional coverage when it is determined that a federally or privately insured credit union's current coverage is inadequate. The federally or privately insured credit union must purchase this additional coverage within 30 days of receiving notification from the Administrator.

Section 8. Supervisory Committee

Section 5-17-13 of the Code of Alabama, 1975 provides the powers and duties of the Supervisory Committee. In addition to these provisions of law, the following is added to supplement and clarify Section 5-17-13:

(A) Any outside auditor hired to perform the annual audit must provide evidence of liability insurance in an amount comparable to the industry standard or as defined by the Financial Accounting Standards Board (FASB), the American Institute of Certified Public Accountants (AICPA) or state law.

(B) An audit by a CPA may be required when any of the following conditions exist

1. Persistent recordkeeping problems.

2. The supervisory committee did not perform an audit for the calendar year.

3. Fraud, embezzlement, conflicts of interest(s), self-dealing, or insider dealing.

(C) All state-chartered credit unions (both federally insured and privately insured) with assets exceeding $500,000,000 are required to have an opinion audit conducted by a state licensed certified public accountant.

Section 9. Branches

Alabama state-chartered credit unions may establish a branch or office for the transaction of the credit union business within the State of Alabama upon prior written notification to the Administrator. Alabama state-chartered credit unions may establish a branch or office for the transaction of credit union business in any state other than Alabama, in accordance with the laws of the other state and upon written notification to the Administrator.

Annually, every state-chartered credit union will disclose their branch locations using their own form or NCUA's Report of Officials software and submit this report to the ACUA as often as branch locations are added but at least annually.

Section 10. Maximum Borrowing Authority for a State-Chartered Credit Unions

(a) Any credit union which makes application for a state charter with either private or federal insurance of its accounts pursuant to Code of Alabama, Title 5, Chapter 17, may borrow from any source not prohibited by applicable law, in the aggregate amount that shall not exceed 50 percent of assets or the combination of undivided earnings, regular reserves, equity acquired in a merger, net income or net loss not already included in undivided earnings, and shares and deposits. This authority is also granted by NCUA Regulation 741.2.

(b) A federally insured state-chartered credit union may apply to the ACUA Administrator and the NCUA Regional Director for a waiver of paragraph (a) of this section up to the amount permitted under the applicable state law or by the state regulator. The waiver request must include:

(1) Written approval from ACUA;
(2) A detailed analysis of the safety and soundness implications of the proposed waiver;
(3) A proposed aggregate dollar amount and percentage of paid-in and unimpaired capital and surplus limitation; and,

(4) An explanation demonstrating the need to raise the limit.

(c) The ACUA Administrator and NCUA Regional Director will approve the waiver request if the proposed borrowing limit will not adversely affect the safety and soundness of the federally insured state-chartered credit union.

(d) Privately insured state-chartered credit unions will be subject to the same requirement above, but no more restrictive, subject to waiver approval by the ACUA Administrator and private insurance carrier.

Section 11. Credit Union Ownership of Fixed Assets

Any credit union with an investment in real property that has been acquired for future expansion and held for over one year and is not being utilized by the credit union must have a Board resolution and business plans that specify the Board's intent and future utilization/plans, etc. of the property being retained.

Section 12. Other Requirements

Every state-chartered credit union is responsible for identifying and complying with all other laws and regulations not under the jurisdiction of the ACUA as applicable to such credit union.

Section 13. Share Insurance

I. Prequalification's

A. No corporation shall guarantee to a credit union payment of an individual members' account or otherwise issue or effect credit union share guaranty insurance until the Administrator approves that corporation. Before submitting an application to the Administrator for approval, the applicant credit union share guaranty corporation must first satisfy the following prerequisites:

1. The applicant must be licensed and authorized to provide credit union share guaranty in its state of domicile or in the State of Alabama. In the case of a foreign corporation, the articles of incorporation, and any amendments thereto, must be filed with and approved by the State of Alabama;

2. the applicant must provide evidence that it is in compliance with the laws of its state of domicile;

3. the applicant has capital deposits in a principal sum of no less than $5,000,000;

4. the applicant submits an opinion audit by a certified public accountant verified by the oath of the president and secretary of the corporation, which demonstrates the corporation's compliance with generally accepted

accounting principles and provides independent evidence as to the adequacy of reserves.

II. Application

A. No corporation shall guarantee to a credit union payment of a credit union share account of an individual member of a credit union or otherwise issue or effect credit union share guaranty insurance until the Administrator approves that corporation;

B. All applications sent to the Administrator's office must be accompanied by a filing fee in the amount of $5,000;

C. Only completed applications will be given the full consideration of the Administrator. A "completed" application manifests a strict compliance with all of the aforementioned prequalification's and is accompanied by the $5,000 filing fee.

D. In addition to the prequalification criteria set forth above, the Administrator may scrutinize such other applicant information, as he deems appropriate; including, but not limited to, shown expertise in insuring financial institutions;

E. The Administrator shall approve or disapprove the application under this section by written order issued within one hundred and eighty (180) days of receipt of the application.

1. The Administrator shall have the right to examine the books and records of the credit union share guaranty corporation as part of the approval process. The corporation shall be assessed the reasonable costs of such an examination. Such examination fee may include the costs of engaging professionals to satisfactorily perform and complete the examination.

2. In disapproving an application, the Administrator may not act in an arbitrary or capricious manner or fail to comply with applicable laws.

3. If the Administrator disapproves an application, good cause must be shown for such disapproval.

III. Powers and Duties

In carrying out is general purposes, a credit union share guaranty corporation may:

A. guarantee to participating credit unions the payment of any deficiency in an individual member's credit union share account(s) caused by insolvency or any other reason;

B. issue credit share guaranty insurance policies or otherwise effect credit union share guaranty, and enter into other contracts necessary or advisable in the conduct of its business;

C. advance funds in accordance with agreed upon lending terms and conditions to aid participating credit unions to operate and to meet liquidity needs;

D. upon the written order of the Administrator of credit unions, and at such compensation as shall be agreed upon, the corporation may assume control of the property and business of any participating credit union and operate it at the direction of the Administrator until its financial stability has been reestablished to the satisfaction of the Administrator, or the credit union has been liquidated or merged into another credit union;

E. assist in the merger, consolidation, or liquidation of participating credit unions;

F. purchase or otherwise acquire, lease as lessee, invest in, hold, use, lease as lessor, encumber, sell, exchange, assign, mortgage, transfer, and disposes of property of any description or any interest therein;

G. borrow money, and issue, sell, and pledge its notes, bonds, and other evidence or indebtedness, and secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property, and guarantee or secure obligations of participating credit unions;

H. receive money or other property from its participating credit union, or any person(s);

I. conduct investigations, examinations, and audits of any applicant or participating credit union in order to determine the financial and operations condition of the applicant or participating credit union;

J. establish conditions for participation by credit unions, including the establishment or risk eligibility standards.

IV. Operation of a Credit Union Share Guaranty Corporation

A. In order to permit the credit union share guaranty corporation to assess the financial condition and performance of a credit union, the Administrator shall provide to the corporation any and all reports of examination conducted by, and orders and notices issued by, the Administrator regarding any participating credit union under the supervision of the Administrator.

B. Each credit union share account of an individual member of a participating credit union shall be guaranteed in amounts established from time to time by the credit union share guaranty corporation. Such primary guaranteed amount shall not be less than the amount of the credit union share account and in no event less than that provided by the NCUA.

C. In addition to the primary guaranteed amount, the corporation may establish an excess coverage guarantee for the benefit of those participating credit unions that voluntarily elect to obtain such additional guarantee.

D. The amount of the deposit account of each participating credit union, as required under the credit union share guaranty corporation's insurance policy, shall be carried on the books of the participating credit union as an asset.

E. The credit union share guaranty corporation shall have a written contract with all participating credit unions further establishing the right and obligations of the parties.

F. The credit union share guaranty corporation shall provide written notice to the Administrator of receipt of any application for participation by an Alabama state chartered credit union, and the corporation's underwriting decision, and in addition, the corporation shall also provide notice of any termination, voluntary or involuntary, as well as participation by any Alabama state chartered credit union.

V. Reporting

A. A credit union share guaranty corporation shall file with the Administrator an annual report containing audited financial statements, prepared in accordance with generally accepted accounting principles by a certified public accountant, covering the fiscal year within one hundred days after the close of such fiscal year. The audited financial statements shall include at least a balance sheet and a statement of income and expenses for the year ended on the balance sheet date. The report and audited financial statements shall be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant. Every such report shall be certified by the oath of the president and secretary of the corporation, and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying.

B. The Administrator shall have the right to examine the books and records of the credit union share guaranty corporation at his discretion. The corporation shall be assessed the reasonable costs of such an examination.

1. Such examination fee may include the costs of engaging professionals to satisfactorily perform and complete the examination.

2. In addition to any examination fees assessed by the Administrator, each approved credit union share guaranty corporation must proffer an annual processing fee to the Administrator in the amount of $5,000.

C. The credit union share guaranty corporation shall notify the Administrator of any modifications or amendments to its contract with participating credit unions, including the risk eligibility standards, with its Alabama state chartered, participating credit unions prior to the effective date of such modification or amendment.

D. The credit union share guaranty corporation shall provide copies to the Administrator of any report of examinations conducted by the corporation of Alabama state chartered, participating credit unions.

VI. Special Provision

A. Nothing herein contained in the regulation inhibits the Administrator from promulgating special requirements for credit unions whose shares are insured by a private credit union share guaranty insurer.

VII. Non-Federal Share insurance Qualification Requirements for Credit Unions

Under the provisions of Section 5-17-19(b) of the Code of Alabama, 1975, as amended, the administrator of the Alabama Credit Union Administration is vested with the authority to permit insurance coverage of member accounts other than the National Credit Union Share Insurance Fund, the federal insurance program. The authority to permit alternative insurance rests solely with the administrator and will be granted only when certain minimum standards of financial safety and soundness are maintained by the credit union. These minimum standards for each area of the CAMEL evaluation are as follows:

Capital Adequacy	
Total Capital/Assets	6.25%
Net Capital/Assets	6.00%
Asset Quality (1)	
Delinquent Loans/Total Loan	1.75%
Net loan losses/Average Assets	0.75%
Management	
Adequate written policies must be in effect covering loans, investments, Bank Secrecy Act, collections, and ALM.	
Earnings (2)	
New Income/Average Assets	1.00%
Liquidity or Asset Liability Management (3)	
Cash + short term investments/Total member savings	10.00%

ALM – refer to management section

(1) Variances may be allowed up to 0.2% for each 1.0% capital exceeds minimum standards.
(2) Variances may be allowed up to 0.1% for each 1.0% capital exceeds minimum standards.
(3) Variances may be allowed when an adequate cash management policy which addresses action to be followed in periods of very low liquidity and an approved line of credit sufficient to ensure continued operations are on hand.

Nothing in this regulation or the Code of Alabama should be construed as limiting the discretionary authority of the administrator in permitting or not permitting any credit union to elect alternative insurance.

Section 14. Confidentiality of Records & Applicability of Code of Alabama, Section 36-12-40.

Section 36-12-40 of the Code of Alabama, 1975 states in part: "Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute or regulation."

Therefore, pursuant to requests for information invoked by 36-12-40:

Under the authority vested in the Administrator of the Alabama Credit Union Administration by 5-17-40 of the Code of Alabama, 1975, which states in part: "[The] Alabama Credit Union Administration…shall administer the laws of this state which regulate or otherwise relate to credit unions in this state; The authority of the Alabama Credit Union Administration to perform such functions shall be exclusive and all authority regarding credit unions is hereby vested in the Alabama Credit Union Administration."

Therefore, neither the Administrator, any member of the Credit Union Board of the ACUA, nor any credit union examiner or other agency employee shall disclose the condition and affairs of any credit union ascertained by an examination of such credit union.

The Administrator is charged with furnishing copies of the Report of Examination or any other information to the board of directors of the credit union which was subject to examination.

Any reports or information furnished or disclosed under this section shall remain the property of the Alabama Credit Union Administration and may not be disclosed to any person other than the officers, directors, attorneys and auditors of such credit union.

It shall also be the authority of the Administrator of the Alabama Credit Union Administration under Title 5-17-40 of the Code of Alabama, 1975 pursuant to 5-3A-11, of the Code of Alabama, 1975, which states, in part: "All reports of examination, records reflecting action of the credit union taken pursuant thereto, and records and minutes of the Credit Union Board of the ACUA relating to a credit union shall be confidential and shall not be subject to subpoena or inspection except by subpoena from a grand jury served on the Administrator."

The essential function of this section of the regulation is to declare that any and all information pertaining to credit unions, including but not limited to, reports of examination, correspondence or documents concerning the examination that are prepared by the board or credit union and any responses or comments by the credit union to the Administrator shall be confidential and shall not be subject to subpoena or inspection except by subpoena from a grand jury served on the Administrator.

And, although minutes of the Credit Union Board of the ACUA are public records, it is only those records or minutes of meetings that contain financial matters of individuals as well as information that might be incorrectly construed or improperly used to harm the credit union and thereby

prejudice its members and the community it serves that are entitled to the same assumption and privilege of confidentiality afforded to banks and the State Banking Board, under sections 5-3A-3 and 5-3A-11 of the Code of Alabama, 1975.

Section 15. Procedural Requirements for Confidential Regulatory Reports and Communications.

Introduction:

This regulation is to provide direction to state-chartered credit unions on the requirements of the Alabama Credit Union Administration ("ACUA" or the "Administration") for how state-chartered credit unions should treat confidential regulatory reports or communications that are covered by state or federal law or regulation (Ala. Code § 5-17-60, Section 14 ACUA Regulations, and/or the *Touhy* regulations under 12 C.F.R. § 792.01 *et seq.*).

Confidential Regulatory Reports or Communications include the following:

1. Reports of Examination;
2. Any non-public regulatory actions, Letters of Understanding and Agreement; Cease and Desist Orders or other documentation of regulatory action;
3. Communications, including email or letters, between the Administration and/or NCUA and the Credit Union in response to any Report of Examination or other regulatory action (whether or not public);
4. Reports created by the Credit Union in response to supervision or regulation by the Administration;
5. Meeting minutes of the Credit Union discussing supervision by the Administration;
6. Any other records documenting examination or supervision; and,
7. Any other communications, oral or written, regarding Credit Union supervision or examination by the Administration between the Administration (including any employee, officer or director of the Administration) and the Credit Union (including any employee, officer or director of the Credit Union).

Rights to Confidential Regulatory Reports and Communications:

1. Confidential regulatory reports or communications that are prepared solely by the Administration are covered by state law and are the property of the Administration.

2. Confidential regulatory reports or communications that are prepared solely by the National Credit Union Administration ("NCUA") are covered by federal law and are the property of NCUA.

3. Confidential regulatory reports or communications that are prepared jointly by the Administration and NCUA are covered by both state and federal law and are jointly the property of the Administration and NCUA.

4. An individual has no right to confidential regulatory reports or communications when such individual is no longer serving the credit union in a position through which he or she is entitled to receive the information under Ala. Code §5-17-60.

5. Confidential regulatory documents, information and communications may not be furnished or disclosed to any person not authorized under the law to receive this information.

Restrictions on Use of Confidential Regulatory Reports and Communications:

1. A Credit Union may not use or disclose to any third party any confidential regulatory reports or communications in support of its actions or business decisions.

2. It is the responsibility of the Credit Union to create and maintain its own records in support of business decisions made, such as through committee minutes, board packets, and other materials to support its business decisions and shall not rely on the Administration as an outsourced record keeper for the Credit Union.

What is Required:

A Credit Union may not disclose confidential regulatory reports and communications in violation of state or federal law, whether in response to legal process or in order for the Credit Union to support its business decisions.

In the event a Credit Union receives legal process (such as a court order, discovery request or subpoena), seeking to require a Credit Union to disclose Confidential regulatory reports or communications, the Credit Union must take the appropriate action to comply with Ala. Code § 5-17-60, Section 14 ACUA Regulations and/or the *Touhy* regulations in 12 C.F.R. § 792.01. To comply with its duties to ACUA, a Credit Union must do the following:

1. Immediately notify the Administration of the legal process.

2. Evaluate the Credit Union's responsibilities under federal law and take any action required by federal law, such as notice to NCUA.

3. Evaluate the legal duty and responsibility of the Credit Union to respond to the request. The Administration expects all of its regulated Credit Unions receiving legal process for confidential regulatory reports or communications to respond appropriately, *in consultation with legal counsel and ACUA and NCUA,* in a way that reflects the laws (state and federal) that apply to confidential regulatory reports and communications, including the laws which prohibit disclosure.

The Credit Union must keep the Administration informed on an ongoing basis of any efforts to compel the Credit Union to disclose the confidential regulatory reports or information, following the Credit Union's initial response to the discovery request, subpoena or other information request."

Section 16. Vendor Risk Management and Commercial Arrangements with Third Parties

ACUA expects credit unions to practice effective risk management regardless of whether the credit union performs the activity internally or through a third party. As such, the credit union should have vendor risk management policies and procedures in place prior to engaging third parties for performance of mission critical functions of the credit union and / or those functions involving members' personally identifiable information. For clarification, services involving access to members' personally identifiable information are defined as mission critical functions for purposes of this regulation. Policies and procedures should address what due diligence is necessary to be performed prior to entering into a mission critical contract or relationship and monitoring and assessment of the vendor's performance to ensure that the activities performed are performed in a safe and sound manner and in compliance with applicable laws, regulations and the contracts.

This regulation applies to all state-chartered credit unions. The credit union's board and management should identify those third-party relationships that involve mission critical activities and/or involve access to members' personally identifiable information and must ensure that the credit union has risk management practices in place to assess, monitor and manage risks.

A vendor risk management program should be tailored to each credit union's size and complexity of its vendor relationships and should include:

Risk Assessment and Planning

Risk assessments should be an on-going function to evaluate how the third-party function will impact the seven risk areas of a credit union specifically, credit, interest rate, liquidity, transaction, compliance, strategic, and reputation risk of the credit union.
The risk assessment should document the following:

1. Expectations for outsourced functions;
2. Staff expertise of internal resources to monitor and manage the relationship;
3. Expertise of the third party to perform the function;
4. Assessment of the criticality of the functions being outsourced, as this will determine the level of due diligence, contract details and monitoring required.

Due Diligence

Mission critical functions outsourced to third parties will require enhanced due diligence procedures. Documentation of enhanced due diligence should include demonstrated understanding and assessment of the third party's organization, business model, financial condition and expertise to perform the activity for which it is engaged. Enhanced due diligence should also include obtaining references from the third party's clients to determine their level of satisfaction with the services provided by the third party.

Additionally, before entering into an agreement for the performance of mission critical services, the credit union should:

1. Assess the third party's information security program when technology is necessary to support service delivery;
2. Ensure that written contracts or engagement letters address the scope of the

arrangement, services offered, and activities authorized; responsibilities of all parties; service level agreements for evaluation of vendor performance; performance reports and frequency of reporting; penalties for lack of performance; ownership, control, maintenance and access to financial and operating records; business resumption or contingency planning; compliance with regulatory requirements; dispute resolution and default, termination and escape clauses; and,

3. Have its legal counsel review contracts and engagement letters prior to entering into the contract or agreement for services.

Insurance

Mission critical professional service providers such as accountants, appraisers, attorneys, technology companies must have a minimum of $250,000 in professional liability insurance coverage to insure against losses attributable to dishonest acts, negligent acts and other acts, and hazard insurance covering fire, loss of data, and protection of documents. Additionally, for information technology providers, ensure that the provider has insurance coverage for intellectual property rights and/or the contract indemnifies the credit union from intellectual property infringement claims relating to the use of the technology service. The insurance coverage must be maintained while the professional service provider is providing services to the credit union.

Risk Measurement, Monitoring and Control

The credit union should have the staff in place with expertise to monitor the vendor relationship against agreed upon service levels. On-going monitoring is required of mission critical service providers and should include a risk assessment of the relationship, financial health of the third party and the performance against expectations.

Commercial Arrangements with Third Parties

Credit unions may enter into arrangements with third parties in order for the third party or credit union to offer the third party's products and services to the credit union's members. These arrangements are referred to in this rule as, "commercial arrangements". In connection with commercial arrangements, credit unions may:

1. Allow third parties to offer products and services to members through the credit union;
2. Endorse, directly or indirectly, products and services of a third party;
3. Enter into group purchasing arrangements with third parties;
4. Receive payment from third parties for participation in commercial arrangements; and
5. Rent, lease or sublease portions of their land and buildings to third parties to offer products and services to members. This list is not intended to be exhaustive.

As used in this rule, the term "third party" includes, but is not limited to, credit union service organizations.

Before entering into any commercial arrangements, a credit union's board must adopt a written policy regarding governing such arrangements. At a minimum, the policy should provide for:

1. An evaluation of potential risk of liability to the credit union including:
   (a) Ensuring the arrangement is prudent and that it does not present safety and soundness risks to the credit union;

(b) Evaluation of the potential risk of liability and ensure that the credit union takes appropriate precautions to reduce or offset such risk, including, but not limited to, the use of such devices as disclaimers/disclosures to members and bond or insurance coverage of the third party and the credit union; and,

(c) Ensuring the contract evidencing the arrangement includes provision for indemnification of the credit union by the third party.

2. Guidelines for approval of each arrangement, whether by the board or management including term and dollar limits of approval authority;
3. Due diligence to be conducted before entering into or renewing each commercial arrangement; and,
4. Credit unions must comply with applicable laws in entering into and carrying out commercial arrangements, including, but not limited to, any applicable federal or state law on privacy of member information.
5. Credit Unions must be able to measure the risks of the commercial arrangements and assess the performance of third parties in terms of profitability, benefit, and service delivery.

Section 17. Mergers and Acquisitions and Charter Conversions

This section applies to mergers of credit unions when an Alabama state chartered credit union is the successor credit union, acquisitions of assets and assumption of liabilities of another financial institution by a state-chartered credit union and conversions of federally chartered or out of state credit unions to an Alabama state chartered credit union.

Fiduciary Duties of Boards in a Merger or Acquisition

The board of directors of an Alabama state-chartered credit union contemplating a merger or acquisition should carefully consider all material aspects of the proposed transaction, including both the positive and negative effects that the transaction could have on the members of the credit union. Before the transaction is completed, the board should assure themselves that its credit union has done adequate due diligence on the business, assets and liabilities to be assumed in a transaction. The Alabama Credit Union Administration expects management of a state chartered credit union to contact the Administration at least five business days prior to the Board of Directors' vote on a merger or purchase and assumption agreement as an Administration representative may attend the board meeting in which the vote will be held. Documentation of the credit union's due diligence reviews of the business, assets and liabilities to be assumed must be maintained for examination by the Administration. Documentation of due diligence should include the impact of the transaction on the surviving credit union's financial statements demonstrated in pro-forma financial statements including purchase accounting adjustments in accordance with GAAP, forecasted financial statements post transaction, pro-forma regulatory capital ratios, forecasted regulatory capital ratios, proforma interest rate risk analysis, liquidity ratios, loan portfolio composition, and credit risk analysis of loans and investments. The Board should update the credit union's strategic plan for the integration plan for the proposed transaction.

Merger and Purchase and Assumption Agreements

Credit unions should consult legal counsel before entering into a merger or purchase and

assumption agreement. The written agreement should specifically detail the important agreed upon terms of the merger or purchase and assumption. The merger or purchase and assumption agreement should be signed by both the managing officer and board chair for each credit union or other financial institution, as applicable.

Credit Union Charter Conversions – Federal or Out of State Charter to Alabama State Charter

When a federally chartered or out of state credit union converts to an Alabama state-chartered credit union, it becomes a new credit union. Before the new Alabama charter is issued, the credit union must obtain a commitment for member deposit insurance with either the NCUSIF or a private deposit insurance carrier.

Pre- Conversion Exam

An on-site examination may be required by the Administration particularly for credit unions with a CAMEL rating of "3" or higher. Therefore, it is recommended that the credit union allow at least 60 days after filing the conversion applications to obtain Administration approval. More time may be needed if an examination requires corrective action prior to conversion.

Notice to Members

The converting federal or out of state credit union must prepare a notice of meeting of its members, that must disclose the anticipated costs of the conversion, as well as reasons for and against the conversion. Converting credit unions must arrange for the issuance of new credit cards and check stock to members with the new name (for federals only) within a reasonable period of time after the conversion is complete. Information accompanying the merger ballot must contain a detailed description of all merger financial incentives and arrangements with merging credit union officers, officials and employees.

Conversion Application Documents Filed with the Administration

The conversion application filed with the Administration should contain the following:

1. Cover letter, including the name of the contact person at the credit union, and a brief description of the credit union's business, including any out-of-state operations;
2. Resolution of the Board of Directors authorizing the pursuit of an Alabama state charter;
3. Copy of materials filed with NCUA, if federally insured;
4. Copy of credit union's current charter and bylaws; and,
5. Proposed bylaws for the state credit union.

The Administration will request reports of examination directly from NCUA or the out of state regulator.

Membership Vote

Once the Administration, NCUA and any other regulators have approved the conversion, the conversion plan must be approved by a majority of the credit union's members voting on the proposed conversion. Voting may be at an annual or special membership meeting, by mail ballot or other election procedure permitted by the credit union's bylaws or applicable law.

Completion of the Conversion

After approval of the conversion by the Administration, NCUA, other regulators, if applicable, and the credit union's members, the credit union may take the steps necessary to complete the conversion. The conversion must be completed within 90 days after the membership vote. To complete the conversion, the following must be submitted to the Administration:

1. For federal charters, certification from the NCUA that they are satisfied with the procedures and presentation of the issues leading to the vote and its results;
2. For federal charters, NCUA Form 4505; and,
3. Three copies of the state credit union's bylaws, with a cover letter certifying that they have been duly approved by the credit union's Board of Directors
4. Certificate of insurance.

Transfer of Assets and Liabilities

Upon the conversion date, the Alabama state-chartered credit union succeeds to all the assets and liabilities of the federal or out of state credit union.

Name Change

A state-chartered credit union may not use the word "federal" immediately preceding the words "credit union" in its legal name as defined in the Bylaws.

Section 18. Records Preservation Program and Record Retention Guidelines: Catastrophic Act Preparedness Guidelines

This part describes the obligations of all state-chartered credit unions to maintain a records preservation program to identify, store and reconstruct vital records in the event that the credit union's records are destroyed and provides recommendations for restoring vital member services. All credit unions must have a written program that includes plans for safeguarding records and reconstructing vital records. To complement these plans, it is recommended that a credit union develop a method for restoring vital member services in the event of a catastrophic act. For purposes of this part, *Vital records* refer to share, deposit, and loan balances for each member's account; a financial report; bank reconcilements; the credit union's accounts at financial institutions, insurance policies, and investments along with related contact information; and, emergency contact information for employees, officials, regulatory offices, and vendors used to support vital records.

Vital Records Preservation Program.

The board of directors of a credit union is responsible for establishing, reviewing and monitoring a vital records preservation program. The program must contain procedures for maintaining duplicate vital records; designated staff responsible for vital records preservation, a schedule for the storage and destruction of records, and a records preservation log detailing each record stored. It is recommended credit unions include in these procedures a method for using duplicate records

to restore vital member services in the event of catastrophic act. Credit unions which have some or all of their member account records maintained by an off-site data processor are considered to be in compliance for the storage of those records if the service agreement specifies the data processor safeguards against the simultaneous destruction of production and back-up information.

Catastrophic Act Preparedness Guidelines

The program should be developed with oversight and approval of the board of directors. It is recommended the program address the following five elements:

1. A business impact analysis to evaluate potential threats;
2. A risk assessment to determine critical systems and necessary resources;
3. A written plan addressing:
   - (a) Persons with authority to enact the plan;
   - (b) Preservation and ability to restore vital records;
   - (c) A method for restoring vital member services through identification of alternate operating location(s) or mediums to provide services, such as telephone centers, shared service centers, agreements with other credit unions, or other appropriate methods;
   - (d) Communication methods for employees and members;
   - (e) Notification to ACUA and the insurer;
   - (f) Training and documentation of training to ensure all employees and volunteer officials are aware of procedures to follow in the event of destruction of vital records or loss of vital member services; and
   - (g) Testing procedures, including a means for documenting the testing results.
4. Internal controls for reviewing the plan at least annually and for revising the plan as circumstances warrant, for example, to address changes in the credit union's operations; and,
5. Annual testing.

Section 19. Liquidity and Contingency Funding Plans

State chartered credit unions with assets of less than $50 million must maintain a basic written policy that provides a credit union board-approved framework for managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances.

State chartered credit union with assets of $50 million or more as reported on two consecutive Call Reports must establish and document a contingency funding plan (CFP) commensurate with its complexity, risk profile, and scope of operations that sets out strategies for addressing liquidity shortfalls in emergency situations. The CFP may be a separate policy or may be incorporated into an existing policy such as an asset/liability policy, a funds management policy, or a business continuity policy. The CFP must address, at a minimum, the following:

1. The sufficiency of the institution's liquidity sources to meet normal operating requirements as well as contingent events;
2. The identification of contingent liquidity sources;
3. Policies to manage a range of stress environments, identification of some possible stress events, and identification of likely liquidity responses to such events;

4. Lines of responsibility within the institution to respond to liquidity events;
5. Management processes that include clear implementation and escalation procedures for liquidity events; and
6. The frequency that the institution will test and update the plan.

In addition to the above requirements, credit unions with assets of $250 million or more for two consecutive Call Reports must establish and document access to at least one contingent federal liquidity source for use in times of financial emergency and distressed economic circumstances. These credit unions must conduct advance planning and periodic testing to ensure that contingent funding sources are readily available when needed. A credit union subject to this paragraph may demonstrate access to a contingent federal liquidity source by:

1. Maintaining regular membership in the Central Liquidity Facility (Facility), as described in NCUA Regulation Part 725;
2. Maintaining membership in the Facility through an Agent, as described in NCUA Regulation Part 725; or,
3. Establishing borrowing access at the Federal Reserve Discount Window by filing the necessary lending agreements and corporate resolutions to obtain credit from a Federal Reserve Bank.

A state-chartered credit union has 120 days from the effective date of the second Call Report to meet the requirements of this section based on the size of the credit union.

Section 20. State Chartered Corporate Credit Union

Part 704 of NCUA's Rules and Regulations, and such other rules, regulations or statutory requirements as amended from time to time, where applicable and set forth by the Administrator as regulator and / or the insurer are hereby adopted and incorporated by reference for an Alabama state chartered corporate credit union.

ACUA Regulation 1705 Field of Membership Expansion

1705.1 Credit Union Membership

§5-17-5 of the Code of Alabama, 1975 states, "Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and who subscribe to at least one share and pay the initial installment thereon and the entrance fee. Organizations, incorporated or otherwise, composed for the most part of the same general group as the credit union membership may be members."

The statute differentiates between membership, generally and membership requirements at organization, when it states, "Credit union organization shall be limited to groups…" This regulation defines what characteristics are permissible for groups to be added to a credit union's Field of Membership subsequent to organization of the credit union.

1705.2 Definitions

Unless the context indicates otherwise, the following definitions are used in this regulation.

Minimum Size Group:
If Employee Group, 2 individuals
If Association Group, 2 individuals
If Employee Group is closely related to the credit union's primary field of membership, as stated in the credit union's bylaws, no minimum.

Eligible Association Group

Associations whose activities reflect common loyalties, mutual benefits, and mutual interests and employees of such association members. To be eligible, the association should hold regular membership meetings, or it should sponsor other activities that provide for contact among members.

Membership is not limited to only real persons, but business entities are eligible for membership, as are the employees of such business entities.

Well-Defined Area

The same county and counties contiguous to the county in which the main office, a branch office or existing field of membership of the credit union is located.

Association – A group of persons with substantially common activities, loyalties, purposes, and mutual benefits or interests. The group must be a bona fide association, having a Board of Directors or other executive body, bylaws or a constitution, and should hold regular meetings, of its natural person membership. Organizations of association members, who qualify individually for membership, may qualify separately for membership.

Employee Group – A group sharing an employer/employee relationship with a common entity, including subsidiaries, parent, affiliates, and entities operating under the same general control or ownership group. Individuals under contract to an enterprise may be considered to be with the employee group of that entity. Organizations of employees, who individually qualify for membership, may qualify for membership as separate entities.

Field of Membership (FOM) – The group or groups of individuals and/or organizations defined by each credit union, for whom that credit union is designated to provide service according to the credit union's by-laws.

Low Income Designation – Those members who make less than 80% of the average for all wage earners as established by the Bureau of Labor Statistics or those members whose annual household income falls at or below 80% of the median household income for the nation as established by the Census Bureau or those members otherwise defined as low-income by the ACUA and NCUA.

A state-chartered credit union may apply for a low-income designation with ACUA and NCUA

subject to the conditions outlined in NCUA's Rules & Regulations Parts 741.204 and 701.34.

Geographic Area – A discernable, clearly defined, geographic area, which is subject to specific identification or survey.

Geographic Based Group – A credit union Field of Membership group defined according to a geographic area.

Multiple Group (MG) – A credit union Field of Membership comprised of more than one group, which may include one or more geographic area-based group(s).

Multiple Select Group (MSG) – A credit union Field of Membership comprised of more than one select group.

Occupational Group – A group of individuals who pursue the same specific defined occupation but are not necessarily employed by the same employer or related employer.

Overlap – The condition where a group proposed to be added to the Field of Membership of a credit union includes persons who are also eligible for some other credit union due to membership in the group. The term overlap includes any credit union, which has an office in the area of a proposed geographic area and any employee group with a significant business operation in such geographic area.

Overlap Protection – The giving of a credit union specific right to service members and deny the right to another credit union or credit unions seeking to include those same members within its Field of Membership.

Select Group (SG) – Any group, other than geographic based, designated for inclusion within a credit union's Field of Membership.

Single Select Group (SSG) – A credit union Field of Membership comprised of only one select group.

1705.3 Requirements for Field of Membership Expansion

Requests for Field of Membership Expansion will be considered only where the applicant credit union is adequately capitalized and demonstrates, through its financial condition, business plans and objectives and marketing plans an ongoing intent and ability to continuously serve the proposed Field of Membership.

1705.31 Credit Unions Allowed FOM Flexibility at Least Equivalent to Federal Credit Unions in Alabama

Alabama state credit unions will be allowed to have at least as much flexibility as federal credit unions in the regulation of field of membership.

1705.32 Application Requirements

A separate application must be submitted for each single prospective group for which a credit union desires to be added to its Field of Membership. Blank application forms will be provided by the ACUA. Expansion into any Field of Membership requires the specific prior approval by the Administrator.

1705.33 Universal Requirements

Every application for Field of Membership expansion shall include the following information:

(A) A description of the proposed group, including the type (occupational, associational, employee, or geographic area.) Specific descriptive details required depend on the type of Field of Membership requested.

(1) If the proposed group is an association, it must be described using the full, correct, and legal name of the association (e.g. "The Indian Highlands Neighborhood Association", NOT "property owners living in the Indian Highlands Subdivision.")

(2) If the proposed group is an employee group, the description must include the name of the employer, including any limiting or inclusive language as may be necessary to differentiate the group (e.g. "Employees of Shelby Cleaners, Inc." OR "Employees of Shelby Cleaners, Inc. and their family members", OR "Employees of Shelby Cleaners, Inc. who work at or are paid out of its Montevallo, Alabama office", NOT "Employees, stockholders, customers, and neighbors of Shelby Cleaners, Inc.").

(3) If the proposed group is an occupational group, the description must include a detailed description of the occupation, as defined by the U.S. Department of Labor as an occupation common to the group, including any limiting or inclusive language as may be necessary to differentiate the group. Approval for an occupational Field of Membership will require that the group be limited by some means in order to show that the credit union will be able to provide service to all members of the group. (E.g. "Individuals, who work as plumbers, whether licensed or not, in Birmingham, Alabama" OR "Licensed plumbers, who are either self-employed or work for or with others in Birmingham, Alabama" NOT "Computer hackers who work in Birmingham, Alabama".)

(4) If the proposed group is one based on a geographic area, the description must define specifically an area in terms that are commonly known, and designations that are permanent or nearly permanent. (e.g. "Shelby County" OR "the area bound by County Road 12, Alabama 119, County Road 22, and Alabama 25 "NOT "Voting District 5 of the City of Montevallo".) The description must also define some easily distinguishable and permanent relationship among the individuals in the area (e.g. "persons who live, work or attend school or church in Shelby County, NOT "persons who shop, or visit tourist attractions in Shelby County"). A geographic area Field of Membership will not be granted if it would permit "cherry-picking" of individuals for membership (e.g. "persons residing in Shelby County with individual annual incomes of $25,000 or more combined family annual incomes of $50,000 or more, or property owners in Shelby

County"). A geographic area Field of Membership will not be granted if the obvious intent of the request is to include ONLY an employer or group of employers in an area where the only employer or group of employers is/are the one (s) in the geographic area requested (e.g. "persons living, working or attending school or church in the area bound by Highland Street, Bloch Street, County Road 10 and Salem Road in Montevallo, which outlines basically the University of Montevallo campus").

(B) If the applicable group is 500 or more potential members, and would increase the applicant credit union's FOM by 50% or more, the credit union shall provide:

(1) Description of services to be offered;

(2) An explanation of how the credit union intends to offer the services;

(3) An outline of the credit union's marketing plan and business plan that addresses strategic analysis, implementation of strategic objectives and financial impact.

1705.34 Other Application Requirements for Geographic Area Based Field of Membership

Geographic areas added to the existing Field of Membership of a credit union need not be a "community" as required by the National Credit Union Administration pursuant to the provisions of the Federal Credit Union Act. The ACUA will authorize expansion of a Field of Membership to include a particular geographic area based upon the following considerations.

(A) Whether the applicant credit union provides a rational basis for the area description and establishes appropriate reasons for specifying the geographic area to be added.

(B) The adequacy of the description of services to be added, the adequacy of the explanation of how the credit union intends to offer the services and meet the needs and conveniences of the potential members.

1705.35 Geographic Area Based on Fields of Membership approval to be probationary, and require subsequent review

Geographic areas shall be added on a probational basis and shall be reviewed at the request of the Administrator. With five (5) years of approval of such geographic area field of membership, if the Administrator finds that a credit union with a geographic area based field of membership has not complied with the plans set forth as required in Section 1705.33(b), the Administrator may suspend or remove such geographic area from the field of membership as specified in the credit union's charter.

1705.4 No Overlap Protection for Geographic Area Based Field(s) of Membership

Overlap protection will not be afforded any credit union to serve a geographic area. Applications for additional geographic are based Fields of Membership by other credit unions will not be denied because of overlaps between or among geographic are Fields of Membership.

1705.41 Temporary Overlap Protection among Single Select Groups

A credit union with a select group (SG) as its Field of Membership may be granted temporary protection from overlap of its group with other credit unions by the Administrator. Whether or not, and for how long, overlap protection may be granted will be at the discretion of the Administrator.

1705.5 Approval

Applications for Field of Membership expansion may be denied or granted with a specific effective date. The effective date may be extended by the Administrator as he or she deems fit.

The Administrator, upon request, shall provide notice to any state-chartered credit union of the approval of any geographic area field of membership or of the approval of any group that is 500 or more persons.

1705.51 Field of Membership Expansion Approval May be Appealed

A credit union or any other person may appeal the granting of any Field of Membership expansion by written appeal delivered to the administrator with sixty (60) days after discovery or ninety (90) days after issuance of an order of approval, whichever is later.

In the event of an appeal, the Administrator shall hold a hearing not later than sixty (60) days after the filing of an appeal. The Administrator shall render a decision regarding an appeal within ten (10) days after the hearing.

The Administrator's decision may be appealed by written notice delivered to the Administrator within 30 days after the decision is rendered. The Credit Union Board of the Alabama Credit Union Administration shall then determine if a second hearing is appropriate within 10 days after the filing of the appeal of the Administrator's decision. If the ACUA Board so determines, a second hearing may be scheduled before that Board with 30 days after filing of the second appeal. If a second hearing is not schedule, the parties will be given the opportunity to file written documents supporting their positions.

1705.6 Penalty for Violation

Upon finding violation of any of the requirements of this regulation the Administrator may revoke the expansion and the right to serve a group if sand expansion might not have been so granted without violation.