

## **DEPARTMENT OF REGULATORY AGENCIES**

### **DIVISION OF FINANCIAL SERVICES**

#### **RULES AND REGULATIONS OF THE COLORADO DIVISION OF FINANCIAL SERVICES PERTAINING TO CREDIT UNIONS**

### **3 CCR 703-3**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

#### **2.1 Amendments to Bylaws.**

A request for approval of amendments to the bylaws shall be submitted by the directors to the Commissioner in a form prescribed by the Commissioner. No bylaws amendment shall become effective until it has been approved by the Commissioner. C.R.S 11-30-102

#### **3.1 Joint Tenancy Accounts.**

A credit union member may establish an account in joint tenancy with any other person regardless of whether or not that person would otherwise qualify within the field of membership of the credit union. The joint tenancy account must be clearly indicated and specified in writing. C.R.S. 11-30-103 (4)

#### **3.2 Small Groups.**

- (a) For purposes of implementing C.R.S. 11-30-103 (2), the Commissioner shall consider that small groups consisting of at least 1 but not more than 1,000 persons having a common bond of employment or association lack the potential membership to organize their own credit union and, therefore, may be accepted into the membership of an existing state-chartered credit union, provided that the following requirements are met:
  - (1) The bylaws of the credit union allow such groups as members.
  - (2) The credit union is not receiving financial assistance from the National Credit Union Administration pursuant to 12 U.S.C. 1788, in effect as of April 13, 2007. Incorporation by reference of this federal statute does not include amendments to this federal statute made after April 13, 2007. The title and address of the division employee responsible for providing information regarding how the incorporated material may be obtained or examined is as follows: Commissioner, Division of Financial Services, 1560 Broadway, Suite 950, Denver, Colorado 80202. Any material that has been incorporated by reference in this rule may be examined at any state publications depository library.
  - (3) Within thirty days after the group is accepted for membership, the credit union has filed with the Commissioner, in a form prescribed by the Commissioner, the following information:
    - (i) Name and address of the group.
    - (ii) Description of the group's common bond.
    - (iii) Size of the group.
    - (iv) Date accepted into membership.
    - (v) Identification of any other credit union in which the group is eligible for membership.

- (vi) An affidavit of the small group representing that the group is not interested in organizing its own credit union.
- (b) In cases where the size of the group exceeds 1,000 or where other exceptions to the requirements of subsection (a) of this rule exist, the credit union must apply for and receive the Commissioner's prior approval to accept the group into membership. Said application shall be in a form prescribed by the Commissioner.
- (c) Notwithstanding any other provision of this rule to the contrary, the Commissioner may, at any time, limit or prohibit a particular credit union from acceptance of small groups of any size or a particular small group into its membership if, in the opinion of the Commissioner, any of the following circumstances exist:
  - (1) The credit union has failed to comply with the provisions of subsection (a) of this rule.
  - (2) The credit union is insolvent.
  - (3) The credit union is operating in an unsafe or unsound manner.
  - (4) The credit union has willfully violated any provisions of Article 30 of Title 11, C.R.S., or the regulations duly promulgated thereunder.
  - (5) The credit union's acceptance of a small group may result in an unsafe and unsound condition in another credit union that serves the same group. C.R.S. 11-30-103 (2)

#### **4.2 Investments.**

- (a) A credit union may invest in deposit accounts in federally-insured financial institutions and in the shares and deposits of a central credit union, pursuant to C.R.S. 11-30-104 (1) (d).
- (b) A credit union may invest in United States Government obligations, United States agency insured or guaranteed securities, obligations of any state or territory of the United States, and certain obligations of a political subdivision or instrumentality of a state or territory, pursuant to C.R.S. 11-30-104 (1) (e).
- (c) In accordance with C.R.S. 11-30-104 (1) (j), a credit union may make any investment authorized for a federal credit union under the Federal Credit Union Act, 12 U.S.C. 1757, and National Credit Union Administration Rules and Regulations, 12 C.F.R. parts 703 and 712, in effect as of April 13, 2007. Incorporation by reference of this federal law and these federal rules does not include amendments to this federal law and these federal rules made after April 13, 2007. The title and address of the division employee responsible for providing information regarding how the incorporated material may be obtained or examined is as follows: Commissioner, Division of Financial Services, 1560 Broadway, Suite 950, Denver, Colorado 80202. Any material that has been incorporated by reference in this rule may be examined at any state publications depository library.
- (d) Pursuant to C.R.S. 11-30-104 (1) (e), a credit union may make an investment in obligations or securities other than those specifically authorized in this rule 4.2, provided it complies with the following conditions:
  - (1) The credit union's board of directors has adopted written investment policies that authorize such an investment.
  - (2) The book value of the investment, when added to the book value of all other investments subject to the same limitation, does not exceed 10% of the credit union's shares, deposits

and undivided earnings as of the month end preceding the date of investment.

- (3) The credit union has received the Commissioner's prior written approval of the investment as prudent and sound.
- (e) If the nature of an investment changes so that it is no longer in compliance with subsections (a), (b) or (c) of this rule, the credit union must promptly seek approval from the Commissioner, pursuant to subsection (d) of this rule, to maintain the investment or must divest itself of the investment.
- (f) Notwithstanding any other provision of this rule to the contrary, if at any time the Commissioner determines that any investment authorized in this rule is no longer a prudent and sound investment, approval under this rule may be modified or revoked.
- (g) A corporate credit union may make any investment authorized under the National Credit Union Administration Rules and Regulations, 12 C.F.R. part 704.5, in effect as of April 13, 2007. Incorporation by reference of this federal rule does not include amendments to this rule made after April 13, 2007. The title and address of the division employee responsible for providing information regarding how the incorporated material may be obtained or examined is as follows: Commissioner, Division of Financial Services, 1560 Broadway, Suite 950, Denver, Colorado 80202. Any material that has been incorporated by reference in this rule may be examined at any state publications depository library. C.R.S. 11-30-104 (1) (d), (e) and (j)

#### **4.3 Incidental Powers.**

- (a) In accordance with C.R.S. 11-30-104(1)(i), a credit union may engage in any activity authorized for a federal credit union as an incidental power under the National Credit Union Administration Rules and Regulations, 12 C.F.R. part 721, in effect as of April 13, 2007. The activities covered by the National Credit Union Administration Rules and Regulations, 12 C.F.R. part 701.30, in effect as of April 13, 2007 are incidental powers for purpose of this rule. Incorporation by reference of these federal rules do not include amendments to these rules made after April 13, 2007. The title and address of the division employee responsible for providing information regarding how the incorporated material may be obtained or examined is as follows: Commissioner, Division of Financial Services, 1560 Broadway, Suite 950, Denver, Colorado 80202. Any material that has been incorporated by reference in this rule may be examined at any state publications depository library.
- (b) To engage in an activity that may be within a credit union's incidental powers, pursuant to C.R.S. 11-30-104(1)(j), but does not fall within a category of activities referenced in subsection (a) of this rule, a credit union may submit an application for the prior written approval of the Commissioner. The application shall be in such form and contain such information as prescribed by the Commissioner. In approving an application, the Commissioner may establish such terms or conditions to the approval as necessary to ensure that any approved activity does not adversely impact the credit union. C.R.S. 11-30-104(1)(i) and (j)

#### **4.4 Sale of Loans.**

In accordance with C.R.S. 11-30-104(1)(k), and without further approval by the Commissioner, a credit union may sell, in whole or in part, to any party, a loan or group of loans to its members, provided it complies with the following conditions:

- (a) The credit union's board of directors has adopted written policies that authorize such loan sales.
- (b) The credit union retains a written agreement and a schedule of the loans sold pursuant to the agreement. C.R.S. 11-30-104(1)(k)

## **6.1 Financial Reports.**

Periodic financial reports shall be submitted by each credit union in a form prescribed by the Commissioner. Such reports shall be filed in the office of the Commissioner no later than the due date specified by the Commissioner. For failure to file a report when due, unless excused by the Commissioner for cause, a credit union shall pay to the Commissioner a penalty of \$25.00 for each day of delinquency in filing. C.R.S. 11-30-106 (2)

## **6.2 Establishment and Maintenance of Credit Union Books and Records.**

- (a) Each credit union, credit union service organization, as that term is defined in 12 C.F.R. part 712 of the National Credit Union Administration Rules and Regulations, in effect as of April 13, 2007 or joint venture in which a credit union has an investment or loan thereto, shall establish and maintain such accounting and other records that will provide an accurate and complete record of all business it transacts. Incorporation by reference of this federal rule does not include amendments to this federal rule made after April 13, 2007. The title and address of the division employee responsible for providing information regarding how the incorporated material may be obtained or examined is as follows: Commissioner, Division of Financial Services, 1560 Broadway, Suite 950, Denver, Colorado 80202. Any material that has been incorporated by reference in this rule may be examined at any state publications depository library.
- (b) Credit unions shall maintain all books, records, accounting systems, and procedures in accordance with generally accepted accounting principles, except as may otherwise be approved in writing by the Commissioner. The board of directors of a credit union may utilize the National Credit Union Administration Accounting Manual For Federal Credit Unions, in effect as of April 13, 2007 as guidance in the maintenance of its accounting records. Incorporation by reference of this federal publication does not include amendments to this federal publication made after April 13, 2007. The title and address of the division employee responsible for providing information regarding how the incorporated material may be obtained or examined is as follows: Commissioner, Division of Financial Services, 1560 Broadway, Suite 950, Denver, Colorado 80202. Any material that has been incorporated by reference in this rule may be examined at any state publications depository library.
- (c) Unless otherwise approved by the Commissioner, all of the books, records, and papers of any credit union relating to its business in any fashion shall be available for inspection and examination by the Commissioner or his designee at any time between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays falling within such periods of time. Noncompliance shall be conclusively presumed whenever the Commissioner or his designee shall call upon the credit union at its place of business within the times specified in this rule or otherwise approved by the Commissioner and determine that the books, records, and papers of the credit union are not available or made available for examination. C.R.S. 11-30-106 (1) and (3)

## **6.4 Fixed Assets.**

- (a) The definitions of terms used in this regulation are as follows:
  - (1) "Premises" means any office, branch office, service center, parking lot, other facility, or real estate where the credit union transacts or intends to transact business.
  - (2) "Furniture, fixtures, and equipment" means all office furnishings, office machines, computer hardware and software, automated terminals, automated teller machines, heating and cooling equipment.
  - (3) "Fixed assets" means premises and furniture, fixtures, and equipment as those terms are defined above.

(4) "Investment in fixed assets" means:

- (i) Any investment in real property improved or unimproved which is being used or is intended to be used as premises;
- (ii) Any leasehold improvement on premises;
- (iii) The aggregate of all capital and operating lease payments pursuant to lease agreements for fixed assets;
- (iv) Any investment in the bonds, stock, debentures, or other obligations of a partnership or corporation, including a credit union service organization, holding any fixed assets used by the credit union and any loans to such partnership or corporation;  
or
- (v) Any investment in furniture, fixtures and equipment.

(5) "Immediate family" means the same as set forth in C.R.S. 11-30-103 (2).

(6) "Net worth ratio" means the ratio of the net worth of a credit union to its total assets as defined in 12 C.F.R. part 702 of the National Credit Union Administration Rules and Regulations, in effect as of April 13, 2007 . Incorporation by reference of this federal rule does not include amendments to this rule made after April 13, 2007 . The title and address of the division employee responsible for providing information regarding how the incorporated material may be obtained or examined is as follows: Commissioner, Division of Financial Services, 1560 Broadway, Suite 950 , Denver, Colorado 80202. Any material that has been incorporated by reference in this rule may be examined at any state publications depository library.

(b) Limitations on investment in fixed assets.

- (1) Without the prior written approval of the Commissioner, a credit union shall not make an investment in fixed assets if, after the investment, the aggregate of all such investments exceeds 5% of total assets.
- (2) Notwithstanding the provisions of paragraph (1) of subsection (b) of this rule, a credit union shall have additional fixed assets investment authority as follows:
  - (i) If a credit union's net worth ratio is at least 8% and its composite CAMEL rating for the last two regular examinations conducted is at least a 2 (with management rated no lower than 2), the credit union may make investments in fixed assets not in excess of 5.5% of total assets without the prior written approval of the Commissioner.
  - (ii) If a credit union's net worth ratio is at least 9% and its composite CAMEL rating for the last two regular examinations conducted is a 1 (with management rated no lower than 2), the credit union may make investments in fixed assets not in excess of 6% of total assets without the prior written approval of the Commissioner.
- (3) A credit union shall submit such information and reports as the Commissioner may require in support of any investment in fixed assets in excess of the limits specified above.
- (4) If the Commissioner determines that the proposed investment will not adversely affect the credit union, the Commissioner shall approve an aggregate dollar amount or percentage

of assets for investment in fixed assets. The Commissioner may establish other terms or conditions to the approval.

- (5) The credit union may make such investment in fixed assets, unless the Commissioner within 30 days of receipt of a request for approval from the credit union, gives written notification of his objection and the grounds for his objection to the credit union or requests additional information. If the Commissioner requests additional information, the above 30-day period shall commence upon receipt of such information.
- (c) A credit union shall not acquire or lease premises or acquire or lease furniture, fixtures or equipment, without the prior written approval of the Commissioner, from any of the following parties:
  - (1) Elected or appointed officials of the credit union.
  - (2) Officers or employees of the credit union.
  - (3) Immediate family members of any of the foregoing individuals.
  - (4) A corporation, partnership, or other business in which any of the foregoing individuals have, directly or indirectly, an ownership interest of 10% or more, or are officers or directors thereof. C.R.S. 11-30-106 (1) and (3)

## **6.5 Appraisals.**

The Commissioner is authorized to obtain or cause a credit union to obtain, at the credit union's expense, appraisals of real estate owned by the credit union or securing the credit union's assets when, in the opinion of the Commissioner, the credit union's policies or practices or operating results or trends are such as to cause supervisory concern as to the quality or value of such assets, or when it appears that real estate owned or assets secured by real estate are worth substantially less than the book value thereof, or when there are other indications of the need to evaluate appraisal practices and policies. This rule also shall apply to premises, as defined in rule 6.4 (a) (1), either acquired or to be acquired by a credit union. C.R.S. 11-30-106 (1) and (5)

## **8.1 Report of Election or Appointment.**

Within 20 days after election or appointment, the Commissioner shall be provided with a record of the names and addresses of all current members of the board of directors, supervisory committee members, credit committee members (and alternates, if any) or the credit officer, and the officers of such bodies. Such report of election or appointment shall be filed in a form prescribed by the Commissioner. In addition, the Commissioner shall be notified in writing of any appointments to such positions made between elections within 20 days after the appointment. C.R.S. 11-30-108

## **9.1 Directors' Policies and Business Plan.**

- (a) The board of directors of each credit union shall establish sufficient written policies to guide the credit union's operations. The directors shall annually review and revise, as necessary, all policies previously established. All policies of the board of directors and the current bylaws shall be made available for inspection at the office of the credit union by any member during normal business hours.
- (b) In carrying out their statutory responsibility for the general management of the affairs of the credit union, the board of directors also shall adopt a written business plan that specifies the credit union's operating goals and details the strategies to achieve the credit union's goals. The content of the business plan shall be commensurate with the size and complexity of operations of the credit union. The directors' adoption of a business plan and any amendments thereto shall be

recorded in the minutes of the board of directors. C.R.S. 11-30-109

## **9.2 Compensation of Directors and Committee Members.**

Members of the board of directors, credit committee, and supervisory committee shall receive no compensation for the performance of duties for the credit union in such capacities. However, such persons may be reimbursed for reasonable and actual out-of-pocket expenses incurred by them in the normal performance of their duties. Such persons may also be reimbursed for actual wages or salary lost by virtue of the performance of duties for the credit union only if authorized by a majority of the members voting at an annual meeting or meeting specifically called for that purpose. C.R.S. 11-30-109 (3)

## **9.3 Officer's Duty Upon Payment of Loan.**

It shall be the responsibility of the treasurer or general manager to insure that all promissory notes, evidence of indebtedness, and security instruments are promptly returned to each borrower upon repayment of the loan, except in the case of open-end credit. C.R.S. 11-30-109 (2)

## **11.1 Supervisory Committee.**

The supervisory committee shall verify or cause to be verified members' share, deposit, and loan accounts at least once in each 2-year period. In order to satisfy this rule and the statute, the members' accounts must be verified under controlled conditions. Controlled conditions mean the records are controlled by the supervisory committee to prevent substitution, removal or alteration. C.R.S. 11-30-111 (1)

## **16.1 Loans to Non-Members.**

Credit unions may not make loans to non-members or permit the assumption of existing loans by non-members if the member is no longer liable on the note. This shall not prevent a credit union from selling such items of property acquired by the credit union upon foreclosure or repossession to a non-member purchaser on an installment contract or similar document of time purchase. A non-member joint tenant may neither borrow nor enjoy any of the remaining privileges of membership except as is otherwise specified in Rule 3.1. The following shall not be deemed to be a loan to a non-member:

- (a) When a non-member joint tenant acts as a comaker, cosignor or guarantor of a loan; or
  - (b) In the case of a loan to a member with the participation of a non-member as comaker, cosignor or guarantor, when the credit union considers the non-member to receive little or no benefit from the loan for himself/herself and considers the non-member as the secondary source of repayment.
- C.R.S. 11-30-103 (4) and 11-30-116

## **17.5 Confidentiality of Examinations.**

the Commissioner's report of examination and report of supervision contact are the property of the Division of Financial Services and are furnished to the credit union for its confidential use. Under no circumstances shall any of a credit union's directors, officers or employees disclose or make public in any manner such a report or any portion thereof. However, a credit union may share such a report with a Federal Home Loan Bank of which the credit union is a member or has applied for membership. C.R.S. 11-30-117.5 (4)

## **18.1 Dividends.**

The amount of a dividend shall not be paid until provisions for reserves as required by law and these regulations have been properly made. No dividend may be paid by a board of directors having knowledge at the time of such payment that an asset charge-off directed by the Commissioner has not

been entered and reflected on the books of the credit union. C.R.S. 11-30-118

## **20.1 Definition of Insolvency.**

A credit union shall be considered insolvent either when the book value of its shares and liabilities exceeds the book value of its assets or when it is unable to pay withdrawals of shares or deposits at the end of the notice period allowed by C.R.S. 11-30-119 (1) or to pay other obligations as they become due. C.R.S. 11-30-120 (1)

## **22.1 Mergers.**

The merger of two or more credit unions may take place if the requirements of C.R.S. 11-30-122 are satisfied and the merger is approved by the Financial Services Board ("Board") or the State Commissioner of Financial Services ("Commissioner") acting under authority delegated by the Board and other applicable regulatory authority.

- (a) When a determination has been made to effect a merger, the board of directors of each credit union shall develop the terms of the proposed merger. Some or all of the terms shall be set forth in a merger plan. The plan of merger shall address at least the following:
  - (1) probable asset/share ratios of the credit unions;
  - (2) share adjustments to member accounts, if any;
  - (3) amendments to the continuing credit union's field of membership;
  - (4) structure of the board and committees of the continuing credit union;
  - (5) senior management and employees of the merging credit union;
  - (6) existing contracts and agreements of both credit unions; and
  - (7) such other matters as the boards of directors of each credit union deem advisable or as required by other applicable regulatory authority.
- (b) The merger plan must be approved by a majority of the directors of both the merging and continuing credit unions.
- (c) A merger resolution of the board of directors of each credit union must be completed and forwarded to the division of financial services ("Division").
- (d) A merger agreement must be executed by the Chair/President and Treasurer of both the merging and continuing credit unions and submitted to the Division for approval. The merger agreement includes the merger plan.
- (e) A proposed notice of special meeting of the members and a summary of the merger plan must be submitted to the Division at least 21 days prior to sending the information to members of the merging credit union (if state-chartered).
- (f) The meeting notice shall contain the date, time and place of the meeting and shall contain a summary of the merger plan, either as part of the notice or as a separate attachment. The summary of the merger plan shall contain the following, as applicable:
  - (1) current financial reports for each credit union;

- (2) a combined financial report;
- (3) an analysis of share values, and proposed share adjustments, if any;
- (4) an explanation of any changes relative to insurance of member accounts;
- (5) the reasons for the proposed merger;
- (6) the name and location, including branches, of the continuing credit union;
- (7) an explanation of any changes in the organization of the board of directors and committees of the continuing credit union;
- (8) an explanation of any new or expanded products and services that may be made available to the members;
- (9) an explanation of any contracts or agreements relating to any senior management officials of the merging credit union (by position only without identification of individuals);
- (10) an explanation of any incentive plans or benefits offered to any employees of the merging credit union (by employee class only without identification of individuals);
- (11) an itemized estimate of the cost of the merger if in excess of \$25,000; and
- (12) such other information, including any special merger terms, which the boards of directors of each credit union determine should be included or as required by other applicable regulatory authority.

The notice shall inform the members that they have the right to vote on the proposed merger in person at the meeting or by written ballot prior to the meeting. A form of ballot shall be included with the meeting notice.

- (g) The Commissioner shall review the information submitted and evaluate the completeness and accuracy of the disclosure to members of the material terms of the merger. The Commissioner shall advise the merging credit union of the Division's findings in this regard.
- (h) If the Division finds that the merger proposal complies with state credit union law and Division rules, the Board (or Commissioner) shall grant conditional approval to the merger application. The merger application consists of the information described in subsections (c) through (f) of this rule and any information required by other applicable regulatory authority. In making its finding, the Division may consider the interests of the members of the merging and continuing credit unions, whether the members of the merging credit union received sufficient information to make an informed decision on the benefits of the merger, and the safety and soundness of the continuing credit union following the merger.
- (i) The merger proposal must be presented at a meeting of the members of the merging credit union. Notice of the meeting and the ballot for merger proposal shall be sent to each member of the credit union no more than 30 days nor less than 10 days prior to the time of the meeting. A quorum (at least 15 members) must be present at the special meeting to conduct business. The affirmative vote of not less than two-thirds of the members voting shall constitute approval. The requirements of this subsection (i) only apply in the case of a merging state-chartered credit union. A merging federal credit union shall follow the procedures and use the forms prescribed by the National Credit Union Administration for conducting the membership vote.
- (j) In order to complete the merger, the credit unions must execute, in duplicate, a certificate of merger in

a form prescribed by the Division and submit it to the Division for approval.

- (k) The continuing credit union (if state-chartered) also shall execute, in duplicate, and submit a bylaws amendment to the Board (or Commissioner) for approval in order to add the merging credit union's field of membership.
- (l) The Board (or Commissioner) shall execute, in duplicate, a certificate of approval of the merger and return it and the certificate of merger to the continuing credit union. The duplicate certificate of approval and certificate of merger shall be filed with the Secretary of State in order to record the merger. This action also cancels the charter of merging credit union (if state-chartered).
- (m) The requirements of this rule may be waived by the Board (or Commissioner) as necessary in the case of a merger initiated for supervisory reasons. C.R.S. 11-30-122

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### **Editor's Notes**

### **History**

Sections 3.2; 4.2; 4.3; 6.2; 6.4 eff. 5/30/2007