

# MODEL CREDIT UNION ACT

2015



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## **HOW TO USE THIS RESOURCE**

The Model Credit Union Act is a guide to help frame issues and initiate discussions within the credit union system and among public policymakers. It also provides model language for leagues as they develop legislative proposals for their state legislatures, taking into consideration the unique economic and political factors in each state.

The provisions in this guide are intended to be a model for all 47 state credit union acts. To accomplish this, many of the provisions are drafted in a general way to allow for more specific editing by each league, some provisions offer alternatives depending on how the credit unions operate in a particular state and some provisions are very progressive. While maintaining the fundamental tenets of credit union philosophy, the Model Act is intended to update the historical credit union model to meet current challenges and members' needs. Please note that the model language should be viewed in the context of existing state law and edited appropriately.

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# INTRODUCTION

## **History of the Model Credit Union Act**

The Model Credit Union Act descends from many generations of credit union laws. The forerunners include the Massachusetts Credit Union Act of 1909, the New York, Wisconsin and Texas Acts of 1913, and the North Carolina Act of 1915. Credit union pioneer Roy Bergengren developed the first practical model law for credit unions in 1923 based on these early state acts. In 1930, Bergengren authored a Uniform Credit Union Law, which was the standard for more than a decade. In 1945, CUNA published its first Model Credit Union Act, which has been updated twelve times in the past 60 years. The Model Credit Union Act continues to be updated on a regular basis to ensure that it remains viable, competitive and progressive.

## **Why is a Model Law Important?**

Model laws have always been an important tool in the state legislative system. Throughout the years, model laws have been used to provide efficiency and expertise to the legislative process. However, in today's world there is an additional need for model state laws. With the globalization of our economy and an increasing number of businesses operating in numerous jurisdictions, there is support in both the public and private sectors for the federalization of many laws. This poses a significant threat to the future of state governance, as well as the credit union dual chartering system. While one approach to this situation has been the development of uniform state laws by the National Conference of Commissioners on Uniform State Laws, CUNA and the credit union leagues have always supported a Model Credit Union Law, which allows for flexibility to meet the unique needs of credit unions in each state while promoting similarities to ease compliance for businesses operating in more than one state. A Model Law also provides a centralized resource for model language and options to address current trends and developments.

## **Summary of Major Revisions in the 2015 Model Credit Union Act**

### Article 1. Definitions

- Defined terms have been capitalized
- Definition of “Charitable Donation Account” has been added (§1.07)
- Definition of “Credit Union Service Organization” has been broadened (§1.18)
- Definition of “Low Income Member” has been deleted because it is not used
- References to “Secondary Capital” have been changed to “Supplemental Capital” for accuracy (§1.75)
- Definition of “Service Facility” has been broadened (§1.78)

### Article 2. Formation of a Credit Union

- Added a provision to allow credit unions to omit the phrase “credit union” when marketing their services (§2.50(6))

### Article 3. Credit Union Powers

- Added an alternative to list examples of expanded financial services a credit union may offer (Alternative #1 to §3.10(6))
- Added a provision to allow credit unions to receive Supplemental Capital from members and non-members (§3.10(33))

### Article 4. Membership

- Allows members of the military with an FPO or APO mailing address to be conclusively presumed to satisfy the geographic area requirements of a Low Income Area (§4.15(4))
- Deleted the requirement that a credit union in a Low Income Area must establish a service facility within 12 months of designation as a low income credit union

### Article 5. Governance

None

### Article 6. Member Accounts

- Added a provision to discharge a credit union from claims for amounts paid from a joint account, regardless of whether the payment is consistent with the beneficial ownership of the account (§6.30(2))

Article 7, Loans

None

Article 8, Investments

- Allows credit unions to invest in Fixed Assets, subject to regulations promulgated by their Commissioner (§8.10(k))
- Allows credit unions to invest in a Charitable Donation Account, pursuant to a policy adopted by their board of directors (§8.10(p))

Article 9, Change in Corporate Status

None

Article 10, Supervision & Regulation

- Allows any excess in a supervisory agency fund to be credited to the credit unions and applied toward their regulatory fees, subject to specific requirements (§10.10(1))
- Requires the Commissioner to adopt rules that ensure exam consistency and due process (§10.45(5))

Article 11, General Provisions

None

Appendix A

None



# **Article 1**

## **Definitions**

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## **“AFFILIATE”**

### **Section 1.03. Affiliate.**

“Affiliate” means an organization established to serve the needs of credit unions, the business of which relates to the daily operations of credit unions.

## **“CAPITAL”**

### **Section 1.06. Capital.**

“Capital” means Membership Shares, reserves and undivided earnings.

## **“CHARITABLE DONATION ACCOUNT”**

### **Section 1.07. Charitable Donation Account.**

“Charitable Donation Account” means an account owned by a credit union that is held in a segregated custodial account or special purpose entity and specifically identified as a charitable donation account whereby, no less frequently than every five years and upon termination of the account, at least fifty-one percent of the total return on assets in the account is distributed to one or more charitable organizations or non-profit entities.

## **“COMMISSIONER”**

### **Section 1.09. Commissioner.**

“Commissioner” means the person with the highest level of authority at the state agency responsible for the supervision and regulation of credit unions.

## **“CORPORATE CREDIT UNION”**

### **Section 1.12. Corporate Credit Union.**

“Corporate Credit Union” means a credit union whose field of membership consists primarily of other credit unions.

## **“CREDIT UNION”**

### **Section 1.15. Credit Union.**

“Credit union” or “credit union” means a cooperative, not for profit corporation, organized under this Act, for the purposes of providing provident and beneficial services to its members including, but not limited to: encouraging thrift, creating a source of credit at reasonable rates of interest, and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

## **“CREDIT UNION SERVICE ORGANIZATION”**

### **Section 1.18. Credit Union Service Organization.**

“Credit Union Service Organization” means an organization, corporation, or association providing services associated with the general purposes of the credit union or engaging in activities incidental to the operations of a credit union.

## **“DEPOSITS”**

### **Section 1.21. Deposits.**

“Deposits” means a balance held by a credit union and established by a credit union member or non-member, another credit union or a Government Unit in accordance with standards specified by the credit union including balances designated as deposits, deposit certificates, checking accounts or accounts by other names. Ownership of a deposit account does not confer membership or voting rights and does not represent an interest in the Capital of the credit union upon dissolution or conversion to another type of institution. A deposit account is a debt owed by the credit union to the account holder.

## **“FEDERAL CREDIT UNION”**

**Section 1.24. Federal Credit Union.** “Federal Credit Union” means a credit union organized and operating under the laws of the United States.

## **“FIXED ASSET”**

**Section 1.27. Fixed Asset.** “Fixed Asset” means land, structures, and all improvements thereto, as well as office furnishings, office machines, computer hardware and software, and leased assets, net of depreciation.

## **“FOREIGN CREDIT UNION”**

**Section 1.30. Foreign Credit Union.** “Foreign Credit Union” means a credit union organized and operating under the laws of another state, territory, or other foreign jurisdiction.

## **“GOVERNMENT UNIT”**

**Section 1.33. Government Unit.** “Government Unit” means any board, agency, department, authority, instrumentality or other unit or organization of the federal, state, county, municipal or other level of government.

## **“INSOLVENT”**

**Section 1.36. Insolvent.**

(1) A credit union will be determined to be Insolvent when the total amount of its shares exceeds the present cash value of its assets after providing for liabilities unless:

(a) The Commissioner determines that the circumstances leading to the deficient share to asset ratio no longer exist;

(b) The likelihood of further depreciation of the share to asset ratio is not probable;

(c) The return of the share to asset ratio to its normal limits within a reasonable time for the credit union concerned is probable; and

(d) The probability of a further potential loss to the insurance fund is negligible.

(2) For purposes of this section, the following definitions are applicable:

(a) “Cash value of assets.” Recorded value will be considered the cash value of any asset account provided accepted accounting principles and practices are followed, and the provisions of law, regulation, and the credit union’s bylaws are met.

(b) “Liabilities.” Recorded liabilities which are due and payable, excluding member and nonmember shares, are considered liabilities.

## **“INSURING ORGANIZATION”**

**Section 1.39. Insuring Organization.**

“Insuring Organization” means an organization that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share and deposit accounts in the credit unions shall be protected or guaranteed against loss up to a specified level for each account.

## **“LOANS”**

### **Section 1.42. Loans.**

“Loans” or “loans” means the extension of credit under either an open-end or closed-end agreement.

## **“LOW INCOME AREA”**

### **Section 1.45. Low Income Area.**

“Low Income Area” means:

- (1) An area that wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code (26 U.S.C. 1391);
- (2) An area where the percentage of the population living in poverty is at least 20 percent;
- (3) An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;
- (4) An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan national non-Metropolitan Area median family income, whichever is greater;
- (5) An area where the unemployment rate is at least 1.5 times the national average;
- (6) An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury; or
- (7) Other area approved by the Commissioner.

## **“MEMBER”**

### **Section 1.51. Member.**

“Member” or “member” means a person who has met the membership criteria of the credit union and has been accepted into membership of the credit union.

## **“MEMBERSHIP SHARE”**

### **Section 1.54. Membership Share.**

“Membership Share” means a share of the credit union which shall be the balance held by a credit union and established by a member in accordance with standards specified by the

credit union. If the bylaws of the credit union so require, each member will be required to purchase one Membership Share. In the case of a joint account, the account may serve to represent the membership of each of the joint owners who have applied for and were accepted as members, as long as a full Membership Share for each joint owner seeking membership is maintained in the account.

#### **“NET WORTH”**

##### **Section 1.57. Net Worth.**

“Net Worth” means the retained earnings balance of the credit union, as determined under generally accepted accounting principles, and other forms of Capital approved by the Commissioner pursuant to rulemaking.

#### **“OFFICER”**

##### **Section 1.60. Officer.**

When used to describe members of the credit union board and its committees, “officer” refers to the Chair, Vice Chair, Treasurer and Secretary, and such other individuals appointed by the board to serve as officers of the credit union.

#### **“OFFICIAL”**

##### **Section 1.63. Official.**

An “official” of the credit union includes any member of the board of directors or other committee of the credit union, and such other individuals appointed by the board to serve as officers of the credit union.

#### **“ORGANIZATION”**

##### **Section 1.66. Organization.**

“Organization” or “organization” means any corporation, association, partnership, limited liability company, trust or other legal entity.

#### **“PERSON”**

##### **Section 1.69. Person.**

“Person” or “person” means any natural person or organization.

## **“PREDOMINANTLY”**

### **Section 1.72. Predominantly.**

The term “predominantly” mean more than one half.

## **“SUPPLEMENTAL CAPITAL”**

### **Section 1.75. Supplemental Capital.**

“Supplemental Capital” means other forms of capital approved by the Commissioner that is subordinate to shares, other liabilities and share insurance.

## **“SERVICE FACILITY”**

### **Section 1.78. Service Facility.**

A “Service Facility” is defined as a place of business of a credit union, where the credit union may transact business authorized by the credit union board.

## **“SHARES”**

### **Section 1.81. Shares.**

“Shares” means a balance held by a credit union and established in accordance with standards specified by the credit union including, but not limited to shares, share accounts, share certificates, share draft accounts, custodial accounts, individual retirement accounts established pursuant to United States tax law, payable on death accounts, trust accounts, money market accounts, share checking accounts, business share accounts or other such accounts. “Shares” does not include Membership Shares.

## **Article 2**

### **Formation of a Credit Union**

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# ORGANIZATION

## *ALTERNATIVE #1*

### **Section 2.10. Organization of Credit Union.**

(1) Any seven or more persons, the majority of which must be residents of this state, of legal age, and within the credit union's field of membership, may organize a credit union by complying with this section.

## *ALTERNATIVE #2*

### **Section 2.10. Organization of Credit Union.**

(1) Any seven or more persons of legal age, within the credit union's field of membership, the majority of whom are residents of this state, may organize a credit union by complying with this section.

(2) The organizers shall prepare "articles of incorporation," in accordance with the rules set forth by the Commissioner, and agree to the terms thereof. The articles shall state:

(a) The credit union's name, which shall comply with Section 2.50, and the location of the proposed credit union's initial principal office;

(b) The par value of Membership Shares of the credit union; and

(c) The names, addresses, and taxpayer identification numbers of the subscribers to the articles.

(3) The organizers shall prepare, in accordance with rules set forth by the Commissioner, bylaws consistent with this Act for the general governance of the credit union.

(4) The organizers shall select an odd number of directors, not less than five, who are eligible for membership and who agree to become members and serve on the board of directors. The persons selected to serve on the board of directors shall execute an agreement to serve in this capacity until the first annual meeting or until the election of their respective successors, whichever is later.

(5) The organizers shall forward to the Commissioner the chartering fee, if any, a copy of the articles of incorporation, and bylaws.

(6) The board of directors may adopt general business corporation provisions that are not inconsistent with the provisions of this Act.

# ARTICLES OF INCORPORATION

## **Section 2.20. Articles of Incorporation.**

(1) Before the organizers of a credit union forward the corporate documents to the Commissioner they shall apply for insurance on share and deposit accounts.

(2) The Commissioner shall act upon the application for a charter within sixty days. A certificate of charter shall be issued if the articles of incorporation and bylaws are in conformity with this Act and the Commissioner is satisfied that:

(a) The characteristics of the credit union set forth in the proposed bylaws reasonably appear to be economically viable; and

(b) The reputation and character of the initial board of directors provides assurance that the credit union's affairs will be properly administered.

(3) The Commissioner may decline the issuance of a certificate of charter for a new credit union based on the grounds of unlikelihood of economic success and lack of qualified leadership.

### ***ALTERNATIVE #1***

(4) If a certificate of charter is denied, the Commissioner shall notify the organizers and set forth reasons for the denial. The credit union organizers may appeal the Commissioner's decision as allowed by the state's Administrative Procedures Act.

### ***ALTERNATIVE #2***

(4) If a certificate of charter is denied, the Commissioner shall notify the organizers and set forth reasons for the denial. The credit union organizers may appeal the Commissioner's decision to the credit union council within thirty days.

(5) The subscribers may not transact any credit union business until a certificate of charter has been received.

# BYLAWS

## **Section 2.30. Bylaws.<sup>1</sup>**

Persons applying for the organization of a credit union shall adopt bylaws that prescribe the manner in which the business of the credit union shall be conducted. The bylaws shall include:

- (1) The name of the credit union;
- (2) The field of membership of the credit union;
- (3) Qualifications for membership in the credit union, including, but not limited to, the minimum number of shares, and the payment of an entrance or membership fee, if any, required for membership, and the policies for expelling a member;
- (4) The number of directors, the length of terms they may serve and, specifically, the permissible term length of any interim director;
- (5) Any qualification for eligibility to serve on the credit union's board;
- (6) The number of credit union employees that may serve on the board, if any;
- (7) The frequency of regular meetings of the board, and the manner in which members of the board are to be notified of meetings;
- (8) The powers and duties of board officers;
- (9) The timing of the annual membership meeting;
- (10) The manner in which vacancies shall be filled which shall be either until a successor is elected at the next membership meeting or for the remainder of the unexpired term;
- (11) The manner in which members may call a special membership meeting;
- (12) The manner in which members are to be notified of membership meetings;
- (13) The number of members constituting a quorum at a membership meeting and at a meeting of the board of directors;
- (14) Provisions, if any, for the indemnification of directors, officers, employees, and others by the credit union, if not included in the articles of incorporation; and
- (15) Any other provision which is not inconsistent with this chapter.

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<sup>1</sup> *The list of provisions here are the very minimum of what a credit union should have in its bylaws.*

## **AMENDMENTS TO ARTICLES OF INCORPORATION & BYLAWS**

### **Section 2.40. Amendments to Articles of Incorporation & Bylaws**

(1)(a) The articles of incorporation may be amended by the members at any regular or special meeting for which the call of the meeting includes the proposed amendment. The amendment must be approved by at least two-thirds of the members voting at which a quorum is present. Amendments to the articles of incorporation shall be filed with the Commissioner.<sup>2</sup>

(b) Amendments to the articles of incorporation shall become effective upon filing with the Commissioner. If the Commissioner disapproves any proposed amendment, the credit union may appeal the decision.<sup>3</sup>

(2) Amendments to the bylaws may be made by the board of directors at any regular or special meeting for which the call of the meeting includes the proposed amendment. The amendment must be approved by two-thirds of the directors present at a meeting at which a quorum is present.

(3) A report shall be made by the board of directors to the members at the next annual meeting of any amendments to the articles of incorporation or bylaws.

## **CREDIT UNION NAME**

### **Section 2.50. Credit Union Name.**

(1) Notwithstanding any other remedies provided by law, the name of every credit union organized under this Act shall include the phrase “credit union.” No credit union may adopt or use a name either identical to the name of any other credit union doing business in this state or so similar to the name of any other credit union doing business in this state as to be substantially misleading.

(2) No person, other than a credit union, a Federal Credit Union, a Foreign Credit Union, an association of credit unions, or an organization or corporation, whose membership or ownership is limited to credit unions or credit union organizations, may use a name, a

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<sup>2</sup> Refer to state law for permissible voting methods and meeting requirements. Meeting “in person” may be by electronic or other means.

<sup>3</sup> Refer to credit union council section of this Act (section 10.20) or the state Administrative Procedures Act or respective state law for the proper appeal process.

website URL, or title containing the phrase “credit union” or any derivation thereof, or may represent itself as a credit union, or conduct business as a credit union.

(3) Violation of this section constitutes a misdemeanor punishable by a fine of not more than \$5,000, by imprisonment for not more than 30 days, or both.<sup>4</sup>

(4) The Commissioner may petition a court of competent jurisdiction to enjoin a violation of this section.

(5) Notwithstanding any other provision of law, a credit union may use the terms “bank”, “banker”, or “banking” to describe its services.

(6) Notwithstanding any other provision to the contrary, a credit union may omit the phrase “credit union” when marketing its services.<sup>5</sup>

## **SERVICE FACILITIES**

### **Section 2.60. Service Facilities.**

(1) A credit union may maintain service facilities, at locations other than its principal office.

(2) A credit union may join with one or more other credit unions or other financial organizations in the operation of automated teller machines or other service facilities.

## **FISCAL YEAR**

### ***ALTERNATIVE #1***

#### **Section 2.70. Fiscal Year.**

The fiscal year of each credit union chartered under this Act shall end on the last day of December of each year.

### ***ALTERNATIVE #2***

#### **Section 2.70. Fiscal Year.**

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<sup>4</sup> Refer to state criminal law for penalties consistent with similar crimes.

<sup>5</sup> This provision allows credit unions to market and advertise without using the words “credit union” in marketing or advertising materials or content.

The board of directors shall determine the fiscal year of the credit union, which shall be specified in the credit union's bylaws.<sup>6</sup>

## OUT OF STATE CREDIT UNIONS

### **Section 2.80. Out-of-State Credit Unions.**

(1) A credit union chartered under the laws of another state or territory of the United States may conduct business as a credit union in this state with the approval of the Commissioner, provided credit unions incorporated under this Act are allowed to do business in the other state under conditions similar to these provisions. Before granting the approval, the Commissioner must find that the out-of-state credit union:

- (a) Is a credit union organized under laws similar to this Act;
- (b) Is financially solvent;
- (c) Insures the share and deposit accounts of its members as provided by the National Credit Union Administration under Title II of the Federal Credit Union Act, as amended (12 U.S.C. section 1781 et. seq.), or alternatively, by a share guaranty corporation approved by the Commissioner of the Foreign Credit Union's state of domicile.
- (d) Is examined and supervised by a regulatory agency of the state in which it is organized; and

(2) No out-of-state credit union may conduct business in this state unless it:

- (a) Charges interest in compliance with the provisions of Section 7.20 when making loans in this state;
- (b) Complies with the consumer protection statutes and rules applicable to credit unions incorporated under this Act;
- (c) Agrees to furnish the Commissioner with a copy of the examination report conducted by its regulatory agency, or to submit and pay for the cost of an examination by the Commissioner; and
- (d) Designates and maintains an agent for the service of process in this state.

(3) The Commissioner may revoke the approval of a credit union conducting business in this state if the Commissioner finds that:

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<sup>6</sup> *Alternative #2 allows the board of directors the flexibility to determine the credit union's fiscal year.*

- (a) The credit union no longer meets the requirements of subsection (1);
  - (b) The credit union has violated the laws of this state or lawful rules or orders issued by the Commissioner;
  - (c) The credit union has engaged in a pattern of unsafe or unsound credit union practices;
  - (d) Continued operation by the credit union is likely to have a substantially adverse impact on the financial, economic or other interests of residents of this state; or
  - (e) The credit union is prohibited from operating in its own home state.
- (4) In implementing this section, the Commissioner may cooperate with credit union regulators in other states or jurisdictions and may share with the regulators the information received in the administration of this chapter.
- (5) The Commissioner may enter into supervisory agreements with out-of-state and Foreign Credit Unions and their regulators to prescribe the applicable laws governing the powers and authorities of out-of-state or Foreign Credit Unions' branches. The Commissioner may also enter into supervisory agreements with the credit union regulators in other states or jurisdictions to prescribe the applicable laws governing the powers and authorities of out-of-state or foreign branches and other facilities of credit unions.
- (a) The agreements may address, but are not limited to, corporate governance and operational matters. The agreements may resolve any conflict of laws, and specify the manner in which the examination, supervision, and application processes must be coordinated with the regulators.
  - (b) The Commissioner may adopt rules for the periodic examination and investigation of the affairs of an out-of-state or Foreign Credit Union operating in this state. The costs of examination and supervision must be fully borne by the out-of-state or Foreign Credit Union.
- (6) If an out-of-state credit union from a state that allows credit unions to exercise additional powers not allowed in this state, exercises those powers in this state, then credit unions chartered under this Act may also exercise those powers in this state.

## CONDUCTING BUSINESS OUTSIDE THE STATE

### **Section 2.90. Conducting Business Outside the State.<sup>7</sup>**

(1) A credit union chartered under this Act may conduct business outside of this state, in other states or territories where it is permitted to conduct business as a credit union, under conditions similar to the provisions of this section.

(2) If another state's credit union law or regulation allows credit unions operating in that state to exercise additional powers not allowed in this state, the credit union conducting business outside this state may exercise those additional powers while operating in that state and may request permission from the Commissioner to exercise those additional powers while operating in this state.

(3) Upon request for approval to exercise a power not granted under this statute, the Commissioner must respond with a determination in not more than sixty days. If no response is received, the requesting credit union may exercise the power.

(4) If the Commissioner allows a credit union to exercise additional powers in this state, other credit unions may also exercise the power in this state.<sup>8</sup>

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<sup>7</sup> "Exporting powers" refers to an out-of-state financial institution being allowed to exercise powers that its home state law allows, even if the state it is branching into does not authorize such powers. This is not an uncommon practice in the banking industry, and is a significant tool used to entice financial institutions into a state. In order to avoid a competitive advantage for the out-of-state financial institutions, there are a number of state banking statutes, and at least one state credit union law, that allow, through a wild card provision, a state chartered financial institution to exercise any power that a foreign financial institution, doing business in the state, is allowed to exercise.

<sup>8</sup> Exportation of powers into a state through "reverse parity" is expressly allowed, giving state charters the ability to exercise those powers that an out-of-state credit union has exported into the state.



## **Article 3**

### **Credit Union Powers**

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# GENERAL POWERS

## Section 3.10. General Powers

### *ALTERNATIVE #1<sup>9</sup>*

(1) A credit union may exercise any power necessary or useful to its members and related to the business of being a financial institution without regulatory approval.

(2) A credit union may exercise any power necessary or useful to its members and unrelated to the business of being a financial institution with regulatory approval.

### *ALTERNATIVE #2*

A credit union may:

(1) Enter into contracts of any nature;

(2) Sue and be sued;

(3) Acquire, lease as lessor or lessee, hold, assign, pledge, mortgage, sell, or otherwise dispose of real or personal property or assets, either in whole or in part;

(4) Borrow from any source, provided that a credit union must notify the Commissioner in writing of its intention to borrow in excess of fifty percent of its Net Worth, shares and Deposits;

(5) Purchase the assets of another credit union or sell all, or substantially all of its assets to another credit union;

(6) Offer related financial services, including, but not limited to, electronic fund transfers, safe deposit boxes, negotiable instruments, leasing and correspondent arrangements with or to other financial institutions and their members;

### *ALTERNATIVE #1*

(6) Offer related financial services, including, but not limited to, electronic fund transfers, safe deposit boxes, negotiable instruments, leasing and correspondent arrangements with or to other financial institutions and their members including, but not limited to, loan processing, loan servicing, member check cashing services, disbursing share withdrawals and loan proceeds, cashing and selling

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<sup>9</sup> This alternative allows for the broadest possible scope of credit union powers. Under this provision, a credit union can do anything a bank can without restriction and can even offer non-bank products and services as long as the regulator approves.

- money orders, ACH and wire transfer services, prepaid debit cards, payroll debit cards, coin and currency services, performing internal audits, and automated teller machine deposit services;
- (7) Hold membership in other credit unions, Federal Credit Unions or Foreign Credit Unions, and in credit union-related associations and organizations;
  - (8) Engage in activities and programs as requested by any Government Unit;
  - (9) Act as fiscal agent for, and receive payments on share and deposit accounts from any Government Unit;<sup>10</sup>
  - (10) Make reasonable contributions to any nonprofit civic, charitable or service organization;
  - (11) Require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership, pursuant to the credit union's bylaws;
  - (12) Receive Deposits from its members in the form of shares and Deposits and honor requests for withdrawals or transfers of all or any part of share and deposit accounts, in any manner approved by the board of directors;
  - (13) Lend funds to its members;
  - (14) Discount and sell any obligations owed to the credit union;
  - (15) Invest surplus funds as provided in this Act;
  - (16) Invest in shares of other credit unions and make Deposits in other financial institutions and trust companies;
  - (17) Invest in Credit Union Service Organizations;
  - (18) Issue certificates of indebtedness to members that are subordinated to all other claimants on the credit union;
  - (19) Assess fees and charges to members;
  - (20) Declare dividends on shares and interest on deposit accounts and pay interest refunds to borrowers;

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*10 Credit union acts that allow credit unions to accept public funds, limit the amount of funds to the insurance limit; however, banks do not have that limitation. This subsection may be expanded to read "(9) Act as fiscal agent for, and receive payments on share and deposit accounts from any Government Unit, up to and in excess of insurance limits;"*

(21) Receive savings from non-members in the form of shares in the case of credit unions serving predominantly low-income members;

(22) Receive Deposits from or lend funds to other credit unions, Federal Credit Unions or Foreign Credit Unions;

***ALTERNATIVE #1***

(23) Purchase or make insurance available to its members on either an individual or group basis;

***ALTERNATIVE #2***

(23) Sell insurance products subject to applicable insurance laws;

(24) Purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability;

(25) Offer services permitted for state chartered and national banks, savings and loans, mutual savings banks, their subsidiaries and affiliates, including, but not limited to, electronic fund transfers, safe deposit boxes, trust services, the issuance of negotiable instruments, and leasing and correspondent arrangements with other financial institutions;

(26) Receive payments on share, share draft, and share certificate accounts;

(27) Enter into lease agreements, lease contracts and lease-purchase agreements with members;

(28) Indemnify and/or limit the personal liability of officials in accordance with the credit union's articles of incorporation and bylaws;

(29) Act as agent for any electric, electric distribution, gas, water or telephone company or other utility company operating within this state in receiving money due such company for utility services furnished by it;

(30) Exercise the powers granted to corporations and nonprofit corporations. In the event of a conflict between those provisions and this title, the provisions of this title shall govern;

(31) Offer debt cancellation and debt suspension contracts;

(32) Notwithstanding any other provision of law, funds deposited in a share account, share certificate, or any other program offered by the credit union for the purpose of promoting consumer savings will not constitute consideration or a thing of value for the purposes of a promotional contest or raffle under state law;<sup>11</sup>

(33) Receive Supplemental Capital from members and non-members; and

(34) Exercise other powers granted by the Commissioner.

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<sup>11</sup> Refer to state gaming provisions to ensure the permissibility of prize-linked savings account programs.

## INCIDENTAL POWERS

### Section 3.20. Incidental Powers.<sup>12</sup>

A credit union may exercise all incidental powers, as permitted by law and within the purposes stated in these sections or incidental to these sections, that are convenient, suitable or necessary to enable it to carry out its purposes.

## PARITY

### Section 3.30. Parity.<sup>13</sup>

#### *ALTERNATIVE #1*

The Commissioner may authorize credit unions to exercise any of the powers conferred upon Federal Credit Unions.

#### *ALTERNATIVE #2*

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<sup>12</sup> The Model Credit Union Act has historically been significantly broader in regard to incidental powers than the Federal Credit Union Act. Even so, most state credit union acts have followed the more restrictive language of the federal law. Based on a 1972 Supreme Court case interpreting the incidental powers of national banks, the Federal Credit Union Act requires that incidental powers be “necessary and requisite to enable it to carry on the business for which it was incorporated.” However, the NCUA has noted that recent case law has broadened the “business of banking” analysis, expanding the incidental powers of banks so that incidental powers are no longer limited to activities deemed essential to the exercise of express powers.

<sup>13</sup> Traditionally, “parity” or “wild card” statutes were meant to equalize the competitive balance between state and federally chartered institutions. State credit unions would be able to take advantage of federal legislation or regulations extending broader powers to Federal Credit Unions. Competitive losses due to an imbalance in power would be minimized, and would provide incentives to convert from a state to a federal charter.

More recently, the focus has shifted to competition among the various states. With the development of interstate branching, some home state banks found themselves at a disadvantage when out-of-state banks branched into their state from a jurisdiction that allowed for more expansive products and services. To address this growing problem, some states passed parity laws that would allow a home state bank to exercise any of the powers exercised by an out-of-state bank branching into the home state. Most states have retained a traditional parity provision. However, since some credit unions have expressed interest in this type of expanded parity provision and believe it is the parity provision of the future, both options are included here.

In states without a prospective parity provision, the statute could provide credit union parity with other financial institutions combined with regulatory approval of new powers as set forth in Alternatives #3, and 4.

The Commissioner may authorize credit unions to exercise any of the powers conferred upon Federal Credit Unions and upon Foreign Credit Unions operating in this state.

***ALTERNATIVE #3***

Notwithstanding any other provision of this Act or any other law, credit unions may offer any product or service that is at the time authorized or permitted to any insured credit union chartered under the laws of the United States or any other state, provided that powers conferred by this subsection:

(1) shall always be subject to the same limitations and restrictions that are applicable to the out of state or federally-chartered credit union for the product or service by such applicable law;

(2) shall not include the right to own or conduct a business for which a license would be required under the laws of this State. The prohibition against such business activities shall not prohibit a credit union from engaging in indirect activities through a duly licensed Credit Union Service Organization or other permissible parity authorities. Further, such prohibition shall expire automatically under the granting of such licensed business activities under state or federal law.

***ALTERNATIVE #4***

Notwithstanding any other provision of this Act or any other law, credit unions may offer any product or service that is at the time authorized or permitted to any other financial institution chartered under the United States, any other states, or territories.<sup>14</sup>

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<sup>14</sup> *This alternative allows the broadest possible scope of parity powers, essentially allowing credit unions to offer any product or service that another financial institution in the U.S. is permitted to offer.*

## **Article 4**

### **Membership**

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## MEMBERSHIP

### **Section 4.05. Membership.**

The membership of a credit union shall be determined by the board of directors of such credit union and shall consist of persons who have been duly admitted as members.<sup>15</sup>

## ORGANIZATIONS THAT QUALIFY FOR CREDIT UNION MEMBERSHIP

### **Section 4.10. Organizations That Qualify For Credit Union Membership.<sup>16</sup>**

Any incorporated or unincorporated organization, and the organization's employees may be admitted to membership in the same manner and under the same conditions as individuals.

## SERVICE TO LOW INCOME CONSUMERS

### *ALTERNATIVE #1*

#### **Section 4.15. Service to Low Income Consumers<sup>17</sup>**

(1) A credit union, including a credit union in the process of incorporating under this title, may submit an application to the Commissioner to be designated as a "low-income credit union".

(2) The Commissioner may approve the application if at least 50 percent of a well-defined segment of members to be served are a) within a recognizable geographic area primarily located in a Low Income Area or b) qualified to receive benefits from any program designed to revitalize the local economy or assist the economically disadvantaged.

(3) For purposes of this section, natural persons enrolled as full-time or part-time students in a college, university, high school, or vocational school shall be conclusively presumed to satisfy the provisions of subsection (2).

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<sup>15</sup> This provision allows the board of directors to determine the field of membership and any further qualifications for membership without restriction.

<sup>16</sup> This provision clarifies that organizations, the majority of whose employees are eligible for credit union membership, may be credit union members.

<sup>17</sup> Alternative #1 simplifies the designation of a "low income credit union." A credit union need only demonstrate that a segment of its membership is low income to qualify.

(4) For purposes of this section, members of the military whose primary mailing address is an FPO or APO shall be conclusively presumed to satisfy the provisions of subsection (2).

(5) The application specified in subdivision (1) shall be developed by regulations of the Commissioner.

(6) The Commissioner shall approve or deny an application to be designated as a low-income credit union within 60 days of receiving a completed application.

(7) In addition to the powers granted under this title, a low-income credit union shall also be permitted to do the following:

(a) Receive funds from non-members.

***ALTERNATIVE (if public deposits are not permissible for all state-chartered credit unions under this Act)***

(b) Act as fiscal agent for and receive payments on shares and Deposits from the federal government or this state, and any agency or political subdivision thereof.<sup>18</sup>

***ALTERNATIVE (if Supplemental Capital is not permissible for all state-chartered credit unions under this Act)***

(c) Receive Supplemental Capital from members and non-members. The offer and sale of Supplemental Capital shall be subject to regulations promulgated by the Commissioner that shall address issues of safety and soundness, including the Supplemental Capital's maturity, term of sale, terms of Capital, total amount of Supplemental Capital that may be outstanding at one time, redemption, and eligibility of the investors. In addition, Supplemental Capital shall be subject to all of the following:

- (i) The Supplemental Capital shall be established as an uninsured Supplemental Capital or other form of non-share account.
- (ii) The Supplemental Capital may not be insured by the National Credit Union Share Insurance Fund (NCUSIF) or any other governmental or private entity.
- (iii) The Supplemental Capital holder's claim against the credit union shall be subordinate to all other claims including those

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<sup>18</sup> Refer to the respective state law to ensure that credit unions are eligible depositories for public funds. Public funds may be obtainable for only low-income credit unions if the authority cannot be obtained for all credit unions.

of shareholder's creditors, and the NCUSIF, or an approved insurer.

- (iv) The Supplemental Capital may not be pledged or provided by the account holder as a security on a loan or other obligation with the credit union or any other party.

(b) Receive property tax credits.<sup>19</sup>

(8) Supplemental Capital authorized in this section does not limit the authority of the Commissioner to approve other forms of equity capital.

## ***ALTERNATIVE # 2***

### **Section 4.15. Service to the Economically Disadvantaged.**

(1) Persons who reside, work, worship, or attend school in a Low Income Area, and organizations located in a Low Income Area, may be admitted to membership in credit unions able to serve the areas, subject to such rules as the Commissioner may promulgate hereunder.

(2) Any credit union that is serving a Low Income Area may invoke any of the powers and authorities of another financial institution doing business in the state.

## **CREDIT UNIONS IN SCHOOLS**

### **Section 4.20. School service facilities.<sup>20</sup>**

(1) As used in this section the following terms shall have the following meanings:

- (a) "School" shall mean any accredited educational institution;
- (b) "Student" shall mean an individual enrolled in a school;
- (c) "Student service facility" shall mean the designation provided to a credit union's facilities providing in-school services and financial education offered to students.

(2) A credit union organized under this article may, upon agreement with a school's governing body, open and maintain a student service facility.

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<sup>19</sup> Refer to respective state property tax credit law.

<sup>20</sup> The term "school service facilities" is used instead of "in-school branches" to allow more flexibility.

## MEMBERSHIP RETENTION

### **Section 4.25. Retention of Membership.**

Unless the credit union's bylaws state otherwise, once a person becomes a member of a credit union in accordance with this Act, that person or organization may remain a member of that credit union until the person or organization chooses to withdraw from the membership of the credit union, or is terminated under Section 4.35 of this Act.

## MEMBER LIABILITY

### **Section 4.30. Liability of Members.**

The members of the credit union shall not be personally or individually liable for the payment of the credit union's debts solely by virtue of their membership in the credit union.

## TERMINATION OF MEMBERSHIP

### **Section 4.35. Membership Termination.<sup>21</sup>**

(1) The board of directors may expel a member for cause by a majority vote of a quorum of directors, pursuant to a written policy adopted by the board. For the purposes of this section, "cause" includes a loss to the credit union, a violation of the membership agreement or any policy or procedure adopted by the board, or inappropriate behavior such as physical or verbal abuse of credit union members or staff. All members shall be given written notice of such policies. Any person expelled by the board shall have the right to request a hearing before the board to reconsider the expulsion.

(2) A credit union may terminate the membership of any member who withdraws his or her shares to less than one par share.

(3) Persons whose membership has been terminated, whether by withdrawal or expulsion, shall have no further rights in the credit union, but are not released from any obligation owed to the credit union.

(4) A member who has been expelled as provided herein, may not be readmitted to membership except upon approval by a majority vote of the board after application and proof that the applicant remains within the credit union's field of membership, has

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<sup>21</sup> *The provision for termination of membership gives the board of directors the sole power to terminate a membership for cause.*

adequately explained, addressed or remedied the conditions leading to expulsion and will abide by the terms and conditions of membership. Not more than one such application for readmission may be made within any twelve month calendar period.

## **SUSPENSION OF SERVICES**

### **Section 4.40. Suspension of Services.<sup>22</sup>**

A credit union may, for cause, suspend certain services to a credit union member under a policy adopted by the credit union's board of directors. Members with suspended services may maintain a share account, and continue to vote at annual and special meetings.

## **MEETINGS OF MEMBERS**

### **Section 4.45. Meetings of Members.**

(1) The annual meeting and any special meetings of the members of the credit union shall be held in accordance with the credit union's bylaws.

#### ***ALTERNATIVE #1***

(2) On all questions and elections brought to the membership for a vote, each member shall have one vote, regardless of the member's shares and Deposits. No member may vote by proxy, but a member may vote by absentee ballot, mail ballot or other method, if the bylaws of the credit union so provide.

#### ***ALTERNATIVE #2***

(2) There shall be no voting by proxy, except on the election of directors, proposals for merger, or proposals for voluntary dissolution. All voting on the election of directors shall be by ballot, but when there is no contest, written ballots need not be cast. A member may vote by absentee ballot, mail ballot or other method if the bylaws so provide.

#### ***ALTERNATIVE #3<sup>23</sup>***

(2) On all questions and elections brought to the membership for a vote, each member shall have one vote, regardless of the member's shares and Deposits. A

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<sup>22</sup> *The provision for suspension of services gives the board of directors the sole power to create policies that suspend services to members for cause.*

<sup>23</sup> *Alternative #3 allows voting by proxy on any matter brought to a vote of the members.*

member may vote by proxy, absentee ballot, mail ballot or other method if the bylaws of the credit union so provide.

(3) The bylaws may establish a minimum age, not greater than eighteen years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.

(4) An organization having membership in the credit union, may be represented and have its vote cast by an officer of the organization or its designated agent so authorized by the organization's governing body as evidenced by a copy of such authorization provided to the credit union before the vote is cast.

## **SPECIAL MEMBERSHIP MEETINGS**

### **Section 4.50. Special Membership Meetings.<sup>24</sup>**

The credit union's bylaws may also prescribe the manner in which a special meeting of the members may be called by the members, or by the board of directors, or both.

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<sup>24</sup> *This provision allows flexibility in how special membership meetings may be called.*

## **Article 5**

### **Governance**

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## AUTHORITY AND DUTY OF DIRECTORS

### **Section 5.05. Authority and Duty of Directors.<sup>25</sup>**

The business and affairs of a credit union shall be managed by the board of the credit union. The duties of the board include, but are not limited to, the duties enumerated in this section. The duties listed in subsection (1) of this section may not be delegated by the credit union's board of directors. The duties listed in subsection (2) of this section may be delegated to a committee, officer, or employee, with appropriate reporting to the board.

(1) The board shall:

- (a) Set the par value of shares, if any, of the credit union.
- (b) Set the minimum number of shares, if any, required for membership.
- (c) Designate those persons or positions authorized to execute or certify documents or records on behalf of the credit union.
- (d) Authorize the purchase of adequate fidelity and insurance coverage for officers, directors, committee members and employees and for losses caused by persons outside the credit union for which the credit union may be liable.
- (e) Authorize the employment and compensation of the chief executive officer.
- (f) Approve an annual operating budget for the credit union.
- (g) Authorize the conveyance or lease of real property.
- (h) Review and approve the annual audit.
- (i) Appoint any committees deemed necessary.
- (j) Establish conditions under which a member may be removed for cause.
- (k) Perform such other duties or authorize any action not inconsistent with this Act.

(2) In addition, unless delegated, the board shall:

- (a) Establish policies under which the credit union may borrow, lend and invest money to carry on the functions of the credit union.

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<sup>25</sup> *The list of directors' duties is divided into those that cannot be delegated and those that can be delegated, allowing the board to focus on strategic issues and delegating operational issues to staff.*



- (b) Act upon applications for membership in the credit union.
- (c) Establish the loan policies under which loans may be approved.
- (d) Declare dividends on shares and set the rate of interest on Deposits.
- (e) Determine the amount which may be loaned to a member together with the terms and conditions of loans.
- (f) Approve the charge-off of credit union losses.

## **ELECTION OF DIRECTORS**

### **Section 5.10. Election of Directors.**

The board shall consist of an odd number of directors, at least five in number, to be elected by and from natural person members. Qualifications for nomination to the board shall be set forth in the credit union's bylaws. All members of the board shall hold office for such terms as the bylaws provide, except that terms may be staggered so that an approximately equal number expire each year. A director shall hold office for the term for which he or she is elected and until his or her successor is elected and qualified.

## **APPOINTMENT OF COMMITTEES**

### **Section 5.15. Appointment of Committees.<sup>26</sup>**

(1) Audit Committee. The board of directors shall appoint from among the members of the credit union, an audit committee of not less than three persons at the organization meeting held within thirty days following each annual election for such terms as the bylaws provide. Members of the audit committee may, but need not be, on the board of directors.

(2) The board of directors may appoint other committees necessary or convenient to the operation of the credit union.<sup>27</sup>

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<sup>26</sup> This provision only requires the appointment of one committee, the Audit Committee – appointment of other committees is at the discretion of the board. It allows for the elimination of the traditional Supervisory Committee, in a shift towards a post-Sarbanes-Oxley corporate audit committee.

<sup>27</sup> State law may require the appointment of specific committees.

(3) Unless specifically prohibited by the bylaws, committee members may participate in and act at any meeting of the committee through the use of communications equipment through which all persons participating in the meeting can speak with and hear each other at the same time.<sup>28</sup> Participation in the meeting in this manner shall constitute attendance.

(4) Unless specifically prohibited by the bylaws, any action required by this Act to be taken at a committee meeting, or any other action that may be taken at a committee meeting, may be taken without a meeting if a consent in writing setting forth the action taken is signed by all the members of the committee. The consents shall be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more committee members.

## VACANCIES

### **Section 5.20. Vacancies.**

A credit union board or committee seat will be considered vacant if the board or committee member resigns from his or her position on the board or committee, is removed, is unable to carry out his or her duties as a director or committee member, or is made ineligible by operation of law.

The board of directors shall fill any vacancies occurring on the board from among the credit union members. The board shall also fill vacancies on any board-appointed committees from among the credit union members.

## COMPENSATION OF OFFICIALS

### **Section 5.25. Compensation of Officials.**

A credit union may compensate an officer, director or committee member for their services to the credit union.<sup>29</sup> Providing reasonable life, health, accident and similar insurance protection shall not be considered compensation. Directors, officers and committee members may be reimbursed for necessary expenses incidental to the performance of the official business of the credit union.

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<sup>28</sup> Refer to state disability law for participation by the hearing-impaired.

<sup>29</sup> Compensation of officials is permissible, but not required, recognizing that some compensation of officials is already allowed in some states provided that the authority is set forth in the credit union's bylaws.

## LIMITED LIABILITY OF DIRECTORS

### Section 5.30. Limited Liability of directors and officers.

(1) No director or officer of a credit union serving shall be liable, and no cause of action may be brought,

(a) For damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director or officer unless the act or omission involved willful or wanton conduct; or

(b) For damages resulting from an act or omission in rendering such service, unless the act or omission involved willful or wanton conduct.

(2) As used in this Section, “willful or wanton conduct” means a course of action which shows an actual or deliberate intention to cause harm or violate a statute, or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.

(3) Nothing in this Section is intended to bar any cause of action against the credit union or change the liability of the credit union arising out of an act or omission of any director, officer or person exempt from liability for negligence under this Section.

(4) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:<sup>30</sup>

(a) One or more officers or employees of the credit union whom the director reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person’s professional or expert competence; or

(c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(5) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by this Section unwarranted.

(6) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director’s office in compliance with this Section.

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<sup>30</sup> This provision explicitly limits the liability of directors when relying on the opinions of experts.

## CONFLICTS OF INTEREST

### **Section 5.35. Conflicts of Interest.<sup>31</sup>**

Directors, committee members, and officers shall disclose all conflicts of interests. No director, committee member, officer, or employee of the credit union shall, in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting that person's pecuniary interest or the pecuniary interest of any corporation, partnership, or association in which that person is directly or indirectly interested.

## OFFICERS

### **Section 5.40. Officers.**

(1) At their organization meeting, the board of directors shall elect, from their own number, a chair of the board, treasurer, and a secretary. They may also elect any other officers of the board that are specified in the bylaws.

(2) The terms of the officers shall be one year, or until their successors are chosen and have been duly qualified, unless otherwise provided in the bylaws.

(3) The duties of the officers shall be prescribed in the bylaws.

(4) Notwithstanding any other provision of this Act, a credit union may use any titles it chooses for the officials holding the positions described in this section, as long as such titles are not misleading.

## MEETINGS OF DIRECTORS

### **Section 5.45. Meetings of Directors.**

(1) The board of directors shall meet on a regular basis, and at least quarterly.

(2) Unless specifically prohibited by the bylaws, directors may participate in and act at any meeting of the board through the use of communications equipment through which all

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<sup>31</sup> *An affirmative duty to disclose conflicts of interest provides more transparency in board decision-making.*

persons participating in the meeting can speak with and hear each other at the same time.<sup>32</sup> Participation in the meeting in this manner shall constitute attendance.

(3) Unless specifically prohibited by the bylaws, any action required by this Act to be taken at a meeting of the board of directors, or any other action that may be taken at a meeting of the board of directors may be taken without a meeting if a consent in writing setting forth the action taken is signed by all the directors entitled to vote with respect to the subject matter thereof. The consents shall be evidenced by one or more written approvals, each of which sets forth the action taken.

## AUDITS

### **Section 5.50. Audits.**

(1) Unless the credit union has been audited by a licensed public accountant or other qualified person or firm, the audit committee shall make, or cause to be made a comprehensive annual audit of the books and affairs of the credit union. It shall submit a report of each annual audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union.

(2) The audit committee shall make, or cause to be made such supplementary audits, examinations, and verifications of members' accounts as it deems necessary or as are required by the Commissioner or by the board of directors, and submit reports of these supplementary audits to the board of directors.

## SUSPENSION AND REMOVAL OF OFFICERS

### **Section 5.55. Suspension and Removal Powers.<sup>33</sup>**

(1) The board of directors, by a two-thirds vote of a quorum of the board, may suspend any member of the credit union's board of directors, for cause, until the next members' meeting, which shall be held not less than seven nor more than sixty days after such suspension. The suspended person will be notified of the details of their suspension, and shall have a right to request a hearing before the board to reconsider his or her suspension prior to the membership meeting.

(2) Any suspended member of the board of directors may be removed by a majority vote of a quorum of members at a properly called membership meeting. The removed person

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<sup>32</sup> Refer to state disability law for participation of the hearing-impaired.

<sup>33</sup> The board of directors, not the supervisory committee, has the power to suspend and remove an officer or director from his or her position.

will be notified of the details of the removal. At the membership meeting, the suspended person shall have the right to appear and be heard. The suspension shall be acted upon by the members and the person shall be removed from, or restored to, office.

(3) The board of directors, by a two-thirds vote of a quorum of the board, may, for cause, suspend or remove any officer from his or her office. The officer affected will be notified of his or her suspension or removal and shall have the right to request a hearing before the board for reconsideration of the board's decision.

## **Article 6**

### **Member Accounts**

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## SHARE ACCOUNTS AND MEMBERSHIP SHARES

### **Section 6.05. Shares and Membership Shares.**

- (1) Shares and Membership Shares shall be subscribed to and paid for in such manner as the bylaws prescribe.
- (2) The par value of shares and Membership Shares shall be as prescribed in the bylaws.
- (3) Membership Shares may not be pledged as security on any loan.
- (4) A credit union may limit the number of shares which may be owned by a member.
- (5) Shares may be subscribed to, paid for and transferred in such manner as the bylaws prescribe.
- (6) The board of directors may establish different classes of share accounts classified in relation to different rights, restrictions and dividend rates.

## DIVIDENDS

### **Section 6.10. Dividends.**

- (1) At such intervals, and for such periods as the board of directors may authorize, and after provision for required reserves, the board of directors may declare dividends to be paid on share accounts and Membership Shares, if any, from the net earnings or undivided earnings, as provided in the bylaws.
- (2) Dividends may be paid at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.
- (3) A dividend need not be paid on Membership Shares, but if such a dividend is paid it may be added to the Membership Share held by each member.
- (4) Dividends shall not be declared or paid at a time when the credit union is Insolvent or its net assets are less than its stated Capital or when the payment thereof would render the credit union Insolvent or reduce its net assets below its stated Capital.



## DEPOSIT ACCOUNTS

### **Section 6.15. Deposit Accounts.**

(1) A credit union may accept deposit accounts from its members, other credit unions and Government Units subject to the terms, rates and conditions established by the board of directors.

(2) Interest may be paid on deposit accounts at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

(3) A credit union may engage in savings or account programs established by federal, state or local governments.

(4) A credit union designated as a low income credit union may accept nonmember Deposits.

## WITHDRAWALS

### **Section 6.20. Withdrawals.**

(1) Funds in share and deposit accounts may be withdrawn for payment to the account holder or to third parties, in such manner and in accordance with such procedures as are established by the board of directors, subject to any regulations the Commissioner prescribes.

(2) Share, Membership Share, and deposit accounts shall be subject to any withdrawal notice requirement which is imposed pursuant to the bylaws.

(3) A Membership Share may only be redeemed or withdrawn, at a value proportionate to its current value, after termination of membership in the credit union.

## ACCOUNTS FOR MINORS

### **Section 6.25. Accounts for Minors.**

Payments on share accounts may be received from a minor in his or her own name. The minor may withdraw funds from such accounts including the dividends and interest thereon. If shares are issued in the name of a minor, redemption of any part or all of the shares or a withdrawal of funds by payment to the minor of the shares or funds and any

declared dividends or interest releases the credit union from all obligations to the minor as to the shares redeemed or funds withdrawn.

## JOINT ACCOUNTS

### **Section 6.30. Joint Accounts.**

(1) A member may designate any person or persons to own a share account with the member, in joint tenancy with the right of survivorship, as a tenant in common or under any other form of joint ownership permitted by law and allowed by the credit union.

(2) Payment may be made, in whole or in part, to any of the joint owners, if an agreement permitting such payment was signed and dated by all persons when the shares were issued or thereafter. Payment made pursuant to this section discharges the credit union from all claims for amounts paid, whether or not the payment is consistent with the beneficial ownership of the account.<sup>34</sup>

(3) If more than one joint owner seeks credit union membership through a joint account, each prospective member must meet any membership requirements described in the credit union's bylaws.

## TRUST ACCOUNTS<sup>35</sup>

### **Section 6.35. Payable on Death Accounts.**

Notwithstanding any other provision of law, a credit union may establish share and deposit accounts payable to one or more persons during their lifetimes and on the death of all of them to one or more payable on death payees. Any transfer to a payable on death payee is effective by reason of the account contract and shall not be considered a testamentary transfer.

### **Section 6.40. Trust Accounts.**

(1) Share and deposit accounts may be owned by one or more members in trust for one or more beneficiaries, or owned by one or more nonmembers in trust for one or more beneficiaries who are members.

(2) Payment of part or all of such a trust account to the party in whose name the account is held shall, to the extent of such payment, discharge the liability of the credit union to that

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<sup>34</sup> Refer to respective state law to ensure that this provision is consistent therewith.

<sup>35</sup> Refer to respective state law to ensure that credit unions are eligible to offer trust services.

party and the beneficiary, and the credit union shall be under no obligation to see to the application of such payment.

**Section 6.45. Trust Services.**

Credit unions may accept and execute trusts pursuant to the laws of this state.

## LIENS

**Section 6.50. Liens.**

The credit union shall have a lien on the Membership Share, shares, Deposits, and accumulated dividends and interest of a member in his or her individual, joint, trust, or payable on death account for any obligation owed the credit union by said member or for any loan co-signed or guaranteed by the member. The credit union shall also have a right of immediate set-off with respect to every deposit and share account. The credit union may refuse to allow withdrawals from any share or deposit account while the member has any outstanding obligation to the credit union.

## REDUCTION IN MEMBERSHIP SHARES

**Section 6.55. Reduction in Membership Shares.**

(1) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserves so that the estimated value of its assets is less than its liabilities, and the board of directors determines that the credit union may be subject to involuntary liquidation, the board may propose a reduction in Membership Shares. The credit union may, by a majority vote of those voting on the proposition, order a reduction in the Membership Shares, and of each of its shareholders, to divide the loss in proportion to the shares held by shareholders in their respective Membership Share accounts.

(2) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be proportionately restored to the shareholders whose assets were reduced, but only to the extent of such reduction.

(3) Deposit accounts and regular share accounts will not be subject to such a reduction in shares.

## SHARE AND DEPOSIT INSURANCE

### **Section 6.60. Share and Deposit Insurance.**

(1) A credit union shall apply for and obtain insurance on its members' share and deposit accounts as provided by the National Credit Union Administration under Title II of the Federal Credit Union Act, as amended (12 U.S.C. section 1781 et. seq.), or alternatively, under a contract of insurance issued by a share guaranty corporation approved by the credit union Commissioner. Any Membership Share issued by a credit union may be excluded from the requirement for insurance. The issuance of such a contract and the activities of the share guaranty corporation shall not constitute the transaction of insurance.<sup>36</sup>

(2) No credit union shall be granted a charter by the Commissioner unless such credit union has applied for and obtained insurance of its members' share and deposit accounts as provided by this section, or received a written commitment to insure or guarantee such member accounts.

(3) A credit union with debt and equity capital consisting primarily of funds received from other credit unions shall not be subject to the requirements of this section.

(4) Any credit union which has been denied a commitment of insurance or guarantee of its members' share and deposit accounts, or which has had such insurance or guarantee revoked, cancelled or terminated, shall within thirty (30) days of the effective date of such denial, cancellation or termination, commence steps to liquidate, merge with an insured credit union, or apply in writing to the Commissioner for an extension of time to obtain an insurance commitment.

(5) The Commissioner shall grant one or more extensions of time in which to obtain the insurance commitment upon satisfactory evidence that the credit union has made, or is making, a substantial effort to satisfy the conditions precedent to the issuance of an insurance commitment.

(6) In order to permit the National Credit Union Administration or an authorized share guaranty corporation to assess the financial condition and performance of a credit union, the Commissioner shall provide such organization with any and all reports of examination conducted by the Commissioner, and copies of orders and notices issued by the Commissioner, regarding any credit union under the supervision of the Commissioner.

(7) In addition to the primary guaranteed amount, an authorized share guaranty corporation or other insurance company may provide an excess coverage guarantee for the benefit of those credit unions that voluntarily elect to obtain such additional guarantee.

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<sup>36</sup> Refer to respective state insurance law for applicable cross-reference.

(8) The National Credit Union Administration or an authorized share guaranty corporation shall provide copies to the Commissioner of any report of examinations conducted by such organization on credit unions in this state.

(9) The Commissioner may appoint the National Credit Union Administration or any official of an authorized share guaranty corporation as liquidating agent of a credit union.

## **AUTHORITY TO WITHHOLD PAYMENT**

### **Section 6.65. Authority to Withhold Payment.**

Nothing contained in this Act shall be deemed to require a credit union to make any payment from an account to a depositor, shareholder, or any trust or payable-on-death account beneficiary, or any other person claiming an interest in any funds in an account, if the credit union has actual knowledge of the existence of a dispute between the depositors, shareholders, beneficiaries, or other persons concerning their respective rights of ownership to the funds contained in, or proposed to be withdrawn, or previously withdrawn from the account, or in the event the credit union is otherwise uncertain as to who is entitled to the funds pursuant to the account agreement. In any such case, the credit union may, without liability, notify, in writing, all depositors, shareholders, beneficiaries, or other persons claiming an interest in the account of its uncertainty as to who is entitled to the funds or the existence of any dispute, and may also, without liability, refuse to disburse any funds contained in the account to any depositor, shareholder, and/or trust or payable on death account beneficiary thereof, and/or other persons claiming an interest therein, until such time as either:

- (1) All such depositors, shareholders, and/or beneficiaries have consented, in writing, to the requested payment; or
- (2) The payment is authorized or directed by a court of proper jurisdiction.

## **Article 7**

### **Loans**

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## PURPOSE AND CONDITION OF LOANS

### **Section 7.10. Purpose and Conditions of Loans.**

A credit union may loan to members for such purposes and upon such conditions as prescribed by the board of directors. The board of directors shall establish written policies with respect to the granting of loans and the extending of lines of credit, including the terms, conditions and acceptable forms of security.

## INTEREST RATE

### **Section 7.20. Interest Rate.**

Notwithstanding the provisions of any other law in connection with extensions of credit, a credit union may elect to contract for and receive interest for extensions of credit subject only to the provisions of this Act and rules promulgated under this Act.

## OTHER LOAN-RELATED CHARGES

### **Section 7.30. Other Loan-Related Charges.<sup>37</sup>**

Notwithstanding the provisions of any other law in connection with extensions of credit, a credit union may elect to contract for and receive fees and other charges for extensions of credit, in connection with the making, closing, disbursing, extending, collecting or renewing or enforcing the debt in the event of a delinquency by the member, or in the event of a breach of any obligation of the member under the credit union's loan contract, subject only to the provisions of this Act and rules promulgated under this Act. A contingency or hourly arrangement established under an agreement entered into by a credit union with an attorney or collection agency to collect a loan of a member in default shall be presumed prima facie reasonable.

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<sup>37</sup> This provision allows credit unions to establish their own loan policies.

## LOAN LIMIT

### **Section 7.40. Loan Limit.<sup>38</sup>**

The board of directors may place a limit upon the aggregate amount to be loaned to, or co-signed by, any one member; provided that the aggregate of loans to any one member shall not exceed five percent of the credit union's Capital or one percent of shares and Deposits, whichever is greater. This limit shall not apply to loans that are fully secured by shares or Deposits in the credit union.

## LINES OF CREDIT

### **Section 7.50. Lines of Credit.**

(1) A credit union may approve lines of credit to members, and loan advances may be granted to members within the limit of such lines of credit. The terms and conditions upon which a line of credit is extended to any member may be different from the terms and conditions established for another member. Where a line has been approved, no additional credit application is required as long as the aggregate indebtedness does not exceed the approved limit.

(2) Lines of credit shall be subject to periodic review by the credit union, in accordance with the written policies adopted by the board of directors.

## PARTICIPATION LOANS

### **Section 7.60. Participation Loans.**

(1) A credit union may participate in loans to credit union members jointly with other credit unions, credit union organizations or other organizations pursuant to written policies established by the board of directors.

(2) If the aggregate amount of participation loans exceeds the credit union's lending limitations, the credit union may originate such participation loans only on a non-recourse basis. An interest in a participation loan may be negotiated to another credit union, credit union organization or other approved organization.

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<sup>38</sup> *The limit on loans to one member is based on Capital or Shares and Deposits, as this is a more accurate safety and soundness predictor and for purposes of consistency.*



(3) The member benefiting from the proceeds of the loan need not be a member of every credit union participating in the loan.

## **OTHER LOAN PROGRAMS**

### **Section 7.70. Other Loan Programs.**

(1) A credit union may participate in any guaranteed loan program of the federal or state government under the terms and conditions specified in the law under which such a program is provided.

(2) A credit union may purchase the conditional sales contracts, notes and similar instruments which evidence the indebtedness of its members, persons within its field of membership, or members of another credit union.

(3) A credit union may finance for any person, the sale of the credit union's property, including property obtained as a result of defaults on obligations owed to it.

(4) A credit union may make student loans to its members in accordance with state law or scholarship programs which are subject to a federal or state law providing a 100 percent repayment guarantee.

## **LOANS TO OFFICIALS**

### **Section 7.80. Loans to Officials.**

(1) A credit union may make loans to its officers, directors, and members of its committees, provided that the loan complies with all requirements of this Act and is not on terms or conditions more favorable than those extended to other borrowers.

(2) A credit union may permit officers, directors, and members of its committees to act as co-makers, cosigners, or guarantors of loans to other members, subject to the requirements of subsection (1).

## **Article 8**

### **Investments**

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## AUTHORIZED INVESTMENTS

### **Section 8.10. Authorized Investments.**<sup>39</sup>

(1) Credit unions may invest in:

(a) Securities, obligations, or other instruments issued by, or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof or in any trust or trusts established for investing directly or collectively in the same.

(b) Securities, obligations, or other instruments of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress. A credit union may also invest in securities, obligations and other instruments which are backed by the full faith and credit of a political subdivision of the state or territory.

(c) Shares, Deposits, share certificates, certificates of deposit, obligations or other accounts of insured financial institutions organized under state or federal law.

(d) Shares, Deposits, or loans to insured credit unions, Federal Credit Unions, credit unions chartered under the laws of another state, or Corporate Credit Unions.

(e) Deposits in, loans to, or shares of any Federal Reserve Bank or of any central liquidity facility established under state or federal law.

(f) Shares, stocks, Deposits in, loans to, or other obligations of any Credit Union Service Organization. Such investments in the aggregate may not exceed ten percent of the credit union's Capital and Deposits.

(g) Shares of a cooperative society, in which the credit union has some type of membership relationship, organized under the laws of this state, the laws of another state, or of the laws of the United States in a total amount not exceeding ten percent of the Capital and Deposits of the credit union.

(h) Stocks of corporations, not to exceed five percent of the credit union's Capital and Deposits.

(i) Bonds or other obligations of corporations organized in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the several territories organized by Congress. Such investments shall be limited to bonds or other obligations rated among the three highest ratings established by one or more national rating service of corporate securities designated by the State.

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<sup>39</sup> Provisions allow maximum flexibility of investing powers within acceptable regulatory limits.

(j) Participation loans with other credit unions, Federal Credit Unions, credit unions chartered under the laws of another state, credit union-owned organizations or other organizations existing primarily to serve credit unions or their members.

(k) Fixed Assets, subject to regulations promulgated by the Commissioner.

(l) In shares, obligations, and loans to a credit union trade association or an organization owned by a credit union trade association organized under the laws of this state or the laws of the United States in a total amount not exceeding ten percent of the Capital and Deposits of the credit union.

(m) In mortgages, securities, obligations, bonds and stock of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, and other government sponsored enterprises.

(n) In participations or obligations which have been subjected by one or more government agencies to a trust or trusts for which an executive department, agency, or instrumentality of the United States has been named to act as trustee.

(o) In common trust or mutual funds whose investment portfolios consist of securities otherwise permitted for credit unions.

(p) In a Charitable Donation Account pursuant to a policy adopted by the board of directors, which may be amended from time to time.

(q) In any investment not otherwise specified in this section not to exceed three percent of the credit union's Capital and Deposits.

(r) In other investments, or in amounts in excess of the thresholds listed in this section as approved by the Commissioner upon written application.<sup>40</sup>

(2) If the status or form of credit union's investment changes during the life of the investment, the credit union may continue to hold and maintain the investment regardless of such change.

(3) This section does not apply to funds invested in the credit union's employee benefits plan. A credit union investing to fund an employee benefit plan obligation is not subject to the investment limitations of this section, if the investment is directly related to the credit union's obligation under the employee benefit plan and the credit union holds the investment only for so long as it has an actual or potential obligation under the plan.

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<sup>40</sup> This provision was added to allow any investment, as long as the regulator approves.

## **Article 9**

### **Change in Corporate Status**

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## VOLUNTARY LIQUIDATION

### **Section 9.10. Voluntary Liquidation.<sup>41</sup>**

(1) A credit union may elect to dissolve voluntarily and liquidate its affairs by a two-thirds vote of the board of directors and in the manner described in this section.

(2) Within ten days after the board of directors votes to liquidate, the board shall notify the Commissioner in writing, setting forth the reasons for the proposed liquidation, and a plan for liquidation. Depending on the credit union's circumstances, a liquidation plan may, or may not, require the suspension of: payments on accounts, withdrawal of funds, transfer to loan accounts, investments, new loans or other similar financial transactions.

(3) The Commissioner will determine whether this section has been complied with and, if the Commissioner's decision is favorable, he or she shall prepare a certificate to the effect that this section has been complied with, a copy of which will be retained by the commission and the other copy forwarded to the credit union.

(4) The terms and conditions of the liquidation plan approved under this section shall go into effect immediately upon approval.

(5) Voluntary liquidation requires approval by a vote of two-thirds of the members present, either in person, by mail ballot, or by electronic means at a regular meeting which specifically included the liquidation issue on the notice, or by a special meeting called specifically to vote on the liquidation issue with a minimum of 25 percent of the total membership voting. When authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first class mail, at least ten days, but no more than thirty days, prior to such meeting.

(6) If liquidation is approved, the board of directors shall appoint a liquidating agent or committee for the purpose of conserving and collecting the assets, closing the affairs of the credit union and distributing the assets as required by this Act.

(7) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting on loans and distributing its assets, and doing all acts required in order to terminate operations and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully concluded.

(8) The liquidating agent or committee shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in section 10.35(2).

(9) As soon as the liquidating agent determines that all assets from which there is a reasonable expectancy of recovery have been liquidated and distributed as set forth in this

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<sup>41</sup> This provision gives the board of directors the power to initiate the process of voluntary liquidation by a two-thirds vote of the board and to specify the process by which the members would approve a voluntary liquidation.

section, the liquidating agent shall execute a certificate of dissolution on a form prescribed by the Commissioner and file the same, together with all pertinent books and records of the liquidating credit union, with the Commissioner, whereupon such credit union shall be dissolved. The liquidating agent or committee must, within three years after issuance of a certificate by the director referred to in subsection (3) of this section, discharge the debts of the credit union, collect and distribute its assets and do all other acts required to wind up its business.

(10) If the Commissioner determines that the liquidating agent or committee has failed to make reasonable progress in the liquidating of the credit union's affairs and distribution of its assets or has violated this Act, the Commissioner may issue a cease and desist order against the liquidating agent or committee and appoint a new liquidating agent to complete the liquidation under the Commissioner's direction and control. The Commissioner shall fill any vacancy caused by the resignation, death, illness, removal, desertion or incapacity to function as the liquidating agent.

(11) Any funds representing unclaimed dividends and shares in liquidation and remaining in the hands of the board of directors or the liquidating agent or committee at the end of the liquidation must be deposited by them, together with all books and papers of the credit union, with the Commissioner. Such funds must be deposited by the Commissioner with the State Treasurer.<sup>42</sup>

## **VOLUNTARY MERGER OF CREDIT UNIONS**

### **Section 9.20. Voluntary Merger of Credit Unions.**

(1) A credit union organized under this Act may, with the approval of the Commissioner, merge with one or more other credit unions, Foreign Credit Unions or Federal Credit Unions, regardless of whether the credit unions serve the same field of membership.

(2) When a credit union merges with one or more credit unions, Foreign Credit Unions or Federal Credit Unions, they shall either designate one of them as the continuing credit union, or they shall structure a new credit union and designate it as the new credit union. All participating credit unions other than the continuing or new credit union shall be designated as merging credit unions.

(3) Any merger of credit unions shall follow a merger plan. After approval by a majority of the directors of all participating credit unions, the plan shall be submitted to the appropriate regulatory authorities for preliminary approval. If the plan includes the creation of a new credit union, all documents required by this Act shall be submitted as part of the

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<sup>42</sup> Refer to the relevant state law on disposition of unclaimed property or the Uniform Disposition of Unclaimed Property Act.

plan. In addition, each participating credit union except the continuing credit union shall submit the following:

- (a) The time and place of the meeting of the board of directors at which the plan was agreed upon;
- (b) The vote of the directors in favor of the adoption of the plan; and
- (c) A copy of the resolution or other action by which the plan was agreed upon.

***ALTERNATIVE #1***<sup>43</sup>

(4) Each merging credit union shall conduct a membership vote on its participation in the plan. Members shall be provided at least ten days, but no more than thirty days, prior written notice of the meeting, with such notice stating the purpose of the meeting. The vote shall be conducted at either a special membership meeting called for that purpose, by mail ballot, or by electronic means. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the Commissioner indicating the vote by which the members approved the plan, and submitting copies of notices provided to members including copies of the membership meeting notice and mail or electronic ballot if the vote was conducted by mail or electronic means.

***ALTERNATIVE #2***

(4) Both the merging and continuing credit unions shall conduct membership votes on their participation in the plan. Members shall be provided at least ten days, but no more than thirty days, prior written notice of the meeting, with such notice stating the purpose of the meeting. The votes shall be conducted at either a special membership meeting called for that purpose, by mail ballot, or by electronic means. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the Commissioner indicating the vote by which the members approved the plan, and submitting copies of notices provided to members including copies of the membership meeting notice and mail or electronic ballot if the vote was conducted by mail or by electronic means.

(5) The Commissioner shall approve the merger plan after determining that the requirements of subsection (4) have been met. If the merger plan includes the creation of a new credit union, the Commissioner must approve the organization of the new credit union under Article 2 of this Act. The Commissioner shall notify all participating credit unions of the commission's action on the plan.

(6) Upon approval of the plan by the Commissioner, each merging credit union shall cease operations. All property, property rights, and members' interests in each merging credit union shall vest in the continuing or new credit union as applicable without deed,

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<sup>43</sup> *Alternative #1 allows the surviving credit union to avoid the expense of an unnecessary vote.*



endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each merging credit union shall remain intact; however, if a person is a member of more than one of the participating credit unions, that person shall be entitled to only a one set of membership rights in the continuing or new credit union.

(7) If the continuing or new credit union is chartered by another state or territory of the United States, it shall be subject to the requirements of Section 2.80.

## **CREDIT UNION CHARTER CONVERSION**

### **Section 9.30. Credit Union Conversion.**

(1) A credit union chartered under the laws of this state may be converted to a Federal Credit Union or a Foreign Credit Union, subject to regulations issued by the Commissioner.

(2) A Federal Credit Union or a Foreign Credit Union may convert to a credit union incorporated under the laws of this state. To effect such a conversion, a converting federal or Foreign Credit Union must comply with all of the requirements of its current chartering jurisdiction, and the requirements of the Commissioner, and must file proof of such compliance with the Commissioner.

## **BANK TO CREDIT UNION CONVERSION**

### **Section 9.40. Bank to Credit Union Conversion.<sup>44</sup>**

(1) A bank may convert its charter to a credit union charter under this Act. The converting bank must submit an adequate conversion plan to the Commissioner for approval. The Commissioner shall prescribe procedures for banks to convert to a credit union charter.

(2) The procedures prescribed by the Commissioner must include the following:

(a) The converting bank must prepare and submit to the Commissioner a conversion plan that provides:

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<sup>44</sup> *If you choose to introduce legislation containing this provision, be prepared to also include a provision that allows credit unions to convert to or merge into banks.*

(i) How the converting bank will comply with the membership requirements under this Act, including the possible divestiture of customers who do not meet the membership limitations;

(ii) How the converting bank will convert its board to a voluntary, non-paid structure if the credit union does not provide for the compensation of its directors;

(iii) How the converting bank will divest its board of stock options;

(iv) How the converting bank will divest its capital stock;

(v) How the converting bank will phase out all impermissible investments; and

(vi) How the converting bank will comply with credit union business loan limitations.

(b) The converting bank must perform a complete policy review to address appraisal restrictions, lending restrictions, investment restrictions, corporate structure restrictions and power structure in order to ensure compliance with this Act and the Commissioner's regulations.

(3) The conversion plan must be adopted by not less than a majority of the board of directors of the converting bank.

(4) Upon approval of a plan of charter conversion by the board of directors of the converting bank, the conversion plan and certified copy of the resolution of the board of directors approving the conversion plan must be submitted to the Commissioner for approval.

(5) The Commissioner may authorize a credit union resulting from a charter conversion under this chapter to do the following:

(a) Wind up any activities that the converting bank legally engaged in at the effective time of the charter conversion but that otherwise are not permitted to credit unions.

(b) Retain for a transitional period any assets that the converting bank legally held at the effective time of the charter conversion that otherwise may not be held by credit unions.

(c) The terms and conditions of the winding up of activities under subdivision (a) and the retention of assets under subdivision (b) are subject to the discretion of the Commissioner. However, the transitional period during which activities may be carried out under subdivision (a) or assets may be retained under subdivision (b) may not exceed ten (10) years after the effective time of the charter conversion.

## **DISSENTERS' RIGHTS IN CREDIT UNION TO BANK CONVERSION**

### **Section 9.50. Dissenters' Rights in Credit Union to Bank Conversion.<sup>45</sup>**

(1) If at any time the credit union members vote to convert the credit union to a non-credit union structure, credit union members who vote to oppose the conversion may withdraw their ownership equity shares along with their regular credit union accounts to join another credit union.

(2) Ownership equity shares will be calculated by subtracting the percentage of Capital required for a mutual savings bank from the total assets of the credit union. This amount will then be divided on a pro rata basis among all of the credit union members taking into consideration the shares on deposit, loans outstanding and the amount of interest and fees paid and earned at the credit union by the members over the past 24 months.

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<sup>45</sup> *This provision provides some protection to dissenters in a credit union to bank conversion, if the state act allows for credit union to bank conversions.*

## **Article 10**

### **Supervision & Regulation**

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## CREATION OF A CREDIT UNION COMMISSION OR DIVISION

### *ALTERNATIVE #1*

#### **Section 10.05. Creation of Commission.**

(1) A credit union commission is created as a separate division of state government charged with the supervision and regulation of credit unions organized under the laws of this state.

(2) The commission shall be administered by the Commissioner of credit unions who shall be appointed by the governor. The Commissioner shall have knowledge and experience in the operations or supervision of financial institutions, preferably credit unions.

(3) The Commissioner is the state's credit union regulatory authority whose purpose is to protect members' financial interests, the interests of the general public, and to ensure that credit unions remain viable and competitive in this state.

### *ALTERNATIVE #2*

#### **Section 10.05. Creation of Division.**

(1) The Commissioner of the commission of financial institutions shall be responsible for the supervision and regulation of credit unions incorporated under this Act. There is created within the commission a separate division of credit unions, specifically charged with administering the supervisory and regulatory responsibilities set forth in this Act.

(2) The division of credit unions shall be headed by a deputy Commissioner appointed by, and serving at the pleasure of the Commissioner. The deputy Commissioner shall have knowledge and experience in the operations or supervision of financial institutions, preferably credit unions.

(3) The Commissioner is the state's credit union regulatory authority whose purpose is to protect members' financial interests, the interests of the general public, and to ensure that credit unions remain viable and competitive in this state.

## SUPERVISORY AGENCY FUND

#### **Section 10.10. Supervisory Agency Fund.**

(1) A credit union supervision fund is created in the state treasury. The Commissioner shall deposit all money received from credit unions and Foreign Credit Unions under this section, this Act, or the federal government as reimbursement for conducting credit union

examinations in the credit union fund. The money in the fund shall only be used for expenses incurred in the supervision, examination, and regulation of credit unions under this Act and shall not be subject to appropriation to the general fund. The fund may be expended by the Commissioner solely for such administrative, supervisory, or other expenses incurred in implementing the credit union laws of this state, including the establishment of a reasonable reserve, in conformity with the budget approved for the commission. The money in the fund shall not be subject to appropriation to the general fund. When the balance in the fund at the end of a fiscal year exceeds twenty-five percent of the administrative and operational expenses incurred by the state to administer and enforce the state credit union act and other laws and regulations applicable to their administration and enforcement for that fiscal year, such excess shall be credited to credit unions and applied against their regulatory fees for the subsequent fiscal year. The amount credited to each credit union shall be in the same proportion as the regulatory fee paid by such credit union for the fiscal year in which the excess is produced bears to the aggregate amount of all fees collected by the [Department] under [this Act] for the same fiscal year.

(2) The Commissioner may waive all or a portion of such fees or assessments.

## **EMPLOYEES OF THE COMMISSION**

### ***ALTERNATIVE #1***

#### **Section 10.15. Officers and Employees of the Commission.**

(1) The salary of the Commissioner shall be as established in the executive pay schedule of this state.<sup>46</sup>

(2) All officers and employees of the commission, other than the Commissioner, shall be in the competitive class of the classified civil service.

(3) The Commissioner may delegate to any officer or employee of the commission power to perform any duty of that office.

### ***ALTERNATIVE #2***

#### **Section 10.15. Officers and Employees of the Division.**

(1) The salary of the deputy Commissioner shall be as established in the executive pay schedule of this state.

(2) All officers and employees of the division, other than the deputy Commissioner, shall be in the competitive class of the state civil service.

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<sup>46</sup> Refer to respective state personnel law for applicable cross-reference.

(3) The Commissioner and the deputy Commissioner may delegate to any officer or employee of the division the power to perform any of their duties.

## **CREDIT UNION COUNCIL**

### **Section 10.20. Credit Union Council.**

(1) A credit union council is created which shall consult with, advise, and make recommendations to the governor and to the Commissioner on matters pertaining to the chartering, operations, and supervision of credit unions.

#### ***ALTERNATIVE #1***

(2) The council shall consist of five persons who shall be appointed by the governor. Each member of the council shall have a minimum of three years' experience as a credit union officer or director or as a government supervisor of credit unions. An appointment to the council shall be for a term of five years, except that four of the initial appointments shall be for terms of four, three, two, and one year, respectively so that in each subsequent year, one member shall be appointed to a full term. The governor may remove any appointed council member whenever the governor deems such removal is in the public's best interest.

#### ***ALTERNATIVE #2***

(2) The council shall consist of seven individuals appointed by the governor. One council member shall be either the Commissioner or deputy Commissioner of credit unions. The six remaining council members shall meet qualification requirements established by the governor, and shall be limited to two consecutive three year terms. An appointment to the council shall be for a term of three years with no more than two council members appointed each year, except, however, the Commissioner or deputy Commissioner of credit unions shall continue to serve on the council and will not be subject to term limits. The governor may remove any appointed council member whenever the governor deems such removal is in the public's best interest.

(3) All members shall serve until their successors have been appointed and qualified. In the event a vacancy occurs, the appointment to fill the vacancy for the unexpired term shall be made in the manner of the original appointment.

(4) The chair of the council shall be elected annually by and from the members thereof at the first meeting of the council each year.

(5) The initial meeting of the council shall be called by the Commissioner. Thereafter regular meetings shall be held at such times and places as shall be determined by the governor, the chair or the Commissioner, but at least once each six months. Special

meetings may be called by the governor, the chair, the Commissioner, or a majority of the council members. The council may establish its own procedures and practices.

(6) The commission shall reimburse council members for their actual and necessary travel and subsistence expenses, with such reimbursement drawn from the credit union supervision fund.

(7) The commission shall provide such clerical, technical, and legal assistance as the council may require.

(8) A majority of the members of the council shall constitute a quorum. The act of a majority of the council members present at a meeting at which a quorum is present shall be the act of the council.

## POWERS OF COMMISSIONER

### **Section 10.25. Powers of Commissioner.<sup>47</sup>**

(1) The Commissioner may prescribe regulations to implement any provision of this Act, and to define any term not defined in the Act. The provisions of the State Administrative Procedure Act, as now or hereafter amended, are hereby expressly adopted and incorporated herein as though a part of this Act, and shall apply to all regulations, procedures and orders of the Commissioner under this Act.

(2) The Commissioner may restrict withdrawals from share or deposit accounts, or both, of any credit union if the Commissioner determines that circumstances exist making such restriction necessary for the proper protection of shareholders or depositors.

(3) The Commissioner may issue cease and desist orders:

(a) After having determined, from competent and substantial evidence:

(i) That a credit union is engaged, or has engaged in an unsafe or unsound practice; or

(ii) That a credit union is violating, or has violated, a material provision of any law, regulation or any condition imposed in writing by the Commissioner or any written agreement made with the Commissioner.

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<sup>47</sup> *The Uniform State Administrative Procedure Act (APA) or a comparable law has been enacted in many states. The APA provides safeguards to credit unions and credit union officials, including the right to adequate notice, the opportunity to comment, as well as the right to an administrative hearing and to judicial appeal. Each state's Administrative Procedures Act should be carefully reviewed to assure that the credit union act is consistent with the APA. Additionally, each state should determine whether a simple reference to the state's APA is sufficient, or whether the opportunity for a notice and hearing must be explicitly stated in each pertinent section of the credit union act.*



(b) When the Commissioner has reasonable cause to believe:

(i) That the credit union is engaged, or is about to engage in an unsafe or unsound practice;  
or

(ii) That a credit union is violating, or has violated, a material provision of any law, regulation or any condition imposed in writing by the Commissioner or any written agreement made with the Commissioner.

(4) The Commissioner may suspend from office, and prohibit from further participation in any manner in the conduct of the affairs of a credit union, Federal Credit Union or Foreign Credit Union operating within the state, any director, officer or committee member who has committed any violation of a law, regulation or a cease and desist order, or who has engaged or participated in any unsafe or unsound practice in connection with the credit union, or who has committed or engaged in any act, omission, or practice which constitutes a breach of that person's fiduciary duty as such director, officer or committee member, when the Commissioner has determined that such action or actions have resulted, or will result in substantial financial loss or other damage that seriously prejudices the interests of the credit union's members.

(5) The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any hearing conducted by the Commissioner.

(6) The Commissioner may suspend the operations of a credit union, may appoint a conservator to take possession or control of the business and assets of a credit union, and may involuntarily merge or involuntarily liquidate a credit union, in accordance with the further provision of this Act.

(7) The Commissioner may suspend the declaration of dividends and the payment of interest if the Commissioner has reasonable cause to believe that the credit union is Insolvent.

(8) The Commissioner shall not hold any credit union or other person liable under this Act for acts or omissions made in good faith reliance on any rule, interpretation or opinion issued by the Commissioner.

(9) The Commissioner has the power to exercise all other rights, authorities and duties set forth in this Act.

## INVOLUNTARY MERGER

### **Section 10.30. Involuntary Merger of Credit Union.**

(1) Notwithstanding any other provision of law, if the Commissioner determines that:

(a) An emergency requiring expeditious action exists with respect to a credit union, Federal Credit Union or Foreign Credit Union;

(b) Other alternatives are not reasonably available; and

(c) The public interest, including the interests of the members of the credit union, would best be served by such action, the Commissioner may:

(i) initiate the involuntary merger of a credit union which is Insolvent or is in danger of insolvency with any other credit union, Federal Credit Union or Foreign Credit Union or may authorize a credit union to purchase any of the assets of, or assume any of the liabilities of, any other credit union, Federal Credit Union or Foreign Credit Union which is Insolvent or in danger of insolvency; or

(ii) authorize a financial institution whose deposits or accounts are insured to purchase any of the assets of, or assume any of the liabilities of a credit union which is Insolvent or in danger of insolvency, except that prior to exercising this authority the Commissioner must attempt to effect a merger with, or purchase and assumption by, another credit union as provided in subsection (i).

(2) For purposes of the authority contained in this section, insured share and deposit accounts of the credit union may, upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the Commissioner and the Insuring Organization shall be relieved of any liability to the credit union's members with respect to those accounts.

## INVOLUNTARY LIQUIDATION

### **Section 10.35. Involuntary Liquidation.**

(1) If the Commissioner determines that any credit union is bankrupt or Insolvent, the Commissioner may issue a notice of involuntary liquidation, revoke the credit union's charter, and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action.

(2) In the event of liquidation, the assets of the credit union or the proceeds from any disposition of assets shall be applied and distributed in the following sequence:

- (a) Secured creditors up to the value of their collateral;
- (b) Costs and expenses of liquidation;
- (c) Wages due the employees of the credit union;
- (d) Taxes owed to any Government Unit;
- (e) Debts owed to the United States;
- (f) General creditors, and secured creditors to the extent their claims exceed the value of their collateral;
- (g) Costs and expenses incurred by creditors in successfully opposing the release of the credit union from certain debts as allowed by the Commissioner;
- (h) Shareholders or depositors, to the extent of uninsured share or deposit accounts; and
- (i) Members, to the extent of Membership Shares.

## **CONSERVATORSHIP**

### **Section 10.40. Conservatorship.<sup>48</sup>**

(1) If the Commissioner determines that any credit union is engaging in materially unsafe or unsound practices, the Commissioner may, at the Commissioner's sole discretion and without advance notice, self appoint, or appoint an Insuring Organization or any other person as conservator to immediately take possession and control of the business and assets of any credit union. The conservator, representing the best interests of the credit union members, shall be vested with the full power of management of the credit union.

(2) Not later than fifteen days after the date on which the conservator takes possession and control of the business and assets of a credit union pursuant to subsection (1), such credit union may apply to the appropriate court for an order requiring the Commissioner to show cause why the Commissioner or the conservator designee should not be enjoined from continuing such possession and control.

(3) Except as provided in subsection (2), the conservator may maintain possession and control of the business and assets of such credit union and may operate such credit union until such time as:

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<sup>48</sup> A reference to the state's Administrative Procedures Act should be included in order to clarify whether or not the APA is applicable to this section.

(a) The Commissioner shall permit such credit union's officials to continue business subject to such terms and conditions as the Commissioner imposes; or

(b) Such credit union is involuntarily merged or involuntarily liquidated in accordance with section 10.33 or 10.35.

(4) The Commissioner may appoint such agents as considered necessary in order to assist the conservator in carrying out the duties of the conservator under this section.

(5) After taking possession of the property and business of a credit union, through conservatorship or receivership, the conservator or receiver may terminate or adopt any executory contract to which the credit union may be a party, including leases of real or personal property. The termination of any contracts shall be made within six months after obtaining knowledge of the existence of the contract or lease. Any provision in the contract or lease which provides for damages or cancellation fees upon termination shall not be binding on the conservator, receiver, or credit union. The director, conservator, or receiver, and credit union are not liable for damages.

(6) All expenses incurred by the conservator in exercising the authority of that office under this section with respect to any credit union shall be paid out of the assets of such credit union, except that the Commissioner may waive all or a part of such expenses.

## EXAMINATIONS

### **Section 10.45. Examinations.**

(1) The Commissioner shall examine or cause to be examined each credit union on a regular basis.<sup>49</sup> A credit union and any of its officers and agents shall be required to give the Commissioner or the Commissioner's representatives full access to all books, papers, securities, records, and other sources of information under their control unless such information is otherwise protected by law.

(2) A report of such examination shall be forwarded to the credit union's chair of the board within thirty days after completion. The report shall contain comments relative to the management of the affairs of the credit union and the general condition of its assets. Within thirty days after the receipt of such report, the directors shall meet to consider and respond to matters contained in the report.

(3) All information contained in or related to the examination report prepared by, or on behalf of, the commission will be deemed the property of the commission and any

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<sup>49</sup> "On a regular basis" shall mean at periodic intervals as determined by regulation or annually or at least every twelve months.

dissemination of the contents of the examination report by any officers, employees, or agents of the commission or the credit union, for any reason other than the business of the commission or the credit union, will be subject to liability. Furthermore, the contents of the examination report shall not be subject to subpoena.

(4) In lieu of making an examination of a credit union, the Commissioner may accept an examination of the credit union made by the National Credit Union Administration. The cost of any such examination shall be borne by the credit union, except that the costs of any regular or special examination initiated by the National Credit Union Administration will be assessed no more than once annually.<sup>50</sup>

(5) The Commissioner shall adopt rules that ensure consistency and due process in the examination process. The Commissioner may also establish guidelines that (i) define the scope of the examination process and (ii) clarify examination items to be resolved. The rules, formal guidance, interpretative letters, or opinions furnished to credit unions by the Commissioner may be relied upon by the credit unions.

## RECORDS

### **Section 10.50. Records.**

A credit union shall maintain all books, records, accounting systems, and procedures that accurately reflect its operations and enable the Commissioner to readily ascertain the true financial condition of the credit union and whether it is complying with this Act. These books, records, accounting systems and procedures shall be maintained at the credit union's principal place of business in accordance with the credit union's record retention policy.

## RECORDS OF THE COMMISSION

### **Section 10.55. Records of the Commission.**

(1) Information from the records of the commission shall only be disclosed pursuant to law.<sup>51</sup>

(2) A copy of any document on file with the commission which is certified by the Commissioner as being a true copy, may be introduced as evidence as if it were the original.

(3) The following are confidential and privileged and not subject to public disclosure:

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<sup>50</sup> This provision prohibits the regulator from assessing the costs of examinations more than once a year.

<sup>51</sup> "Law" refers to the freedom of information act, public records law, or other applicable state law.

- (a) Examination reports and related information from insurers or other regulators;
  - (b) Business plans and other proprietary information of a credit union, its subsidiaries or Affiliates;
  - (c) Reports of investigations; and
  - (d) Notices related to enforcement actions and consent orders.<sup>52</sup>
- (5) Examination reports furnished by the Commissioner remain the property of the commission and no person to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except information that is already in the public domain.
- (6) In a civil action in which the reports or information are sought to be discovered or used as evidence, a party upon notice to the commission, may petition the court for an in-camera review of the reports or information. The court may permit discovery and introduction of only those portions of the report or information which are relevant and otherwise unobtainable by the requesting party.
- (7) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor.

***Option for states with Credit Union Councils:***

- (8) The council shall have access to the records of the commission.

## **CONFLICTS OF INTEREST**

**Section 10.60. Conflicts of Interest.**

No employee of the commission shall be an officer, director, committee member, employee or attorney for any credit union incorporated under the laws of this state, or receive, directly or indirectly, any payment or gratuity from any such credit union, or be indebted to any credit union incorporated under the laws of this state, or engage in negotiation of loans for others with any such credit union provided that the foregoing does not prohibit any such person from being a member of a credit union chartered under this Act on the same terms as are available to other credit union members, or from doing business at another financial institution on the same terms as other customers. These specific restrictions are in addition to any general conflict of interest statute applicable to all state employees.

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<sup>52</sup> *This provision broadens the category of examination materials protected from public disclosure.*

## **Article 11**

### **General Provisions**

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## TAX EXEMPTION

### **Section 11.10. Tax Exemption.<sup>53</sup>**

(1) Credit unions organized under the laws of this state, their property, their franchises, Capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation imposed by the United States or by any state, territorial, or local taxing authority; except that real property shall be subject to federal, state, territorial, and local taxation to the same extent as other similar property is taxed.

(2) The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

## PENALTY FOR FALSE REPORTS

### **Section 11.20. Penalty for False Reports.**

Whoever knowingly spreads false reports about the management or finances of any credit union that would cause a reasonable consumer to question the solvency of the credit union, shall be guilty of a crime and subject to the fines and penalties provided for under the laws of this state and the federal government.

## COMPLIANCE REVIEW DOCUMENTS

### **Section 11.30. Compliance Review Documents.**

(1) Compliance review documents are privileged and confidential and are nondiscoverable and nonadmissible. However, a credit union may, but is not required to, provide access to compliance review documents to an Affiliate, regulatory agency, or share insurer, and the delivery of compliance review documents to such shall not constitute a waiver of the privilege granted in this section.

(2) This section shall not be construed to limit the discovery or admissibility in any civil action of any documents other than compliance review documents.

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<sup>53</sup> A 1917 U.S. Attorney General's opinion serves as the basis for exempting state chartered credit unions from taxation. The Attorney General's opinion made it clear that institutions "organized and operated for mutual purposes and without profit" should not be subject to the tax imposed by the 1913 income tax law. This revised provision broadens the tax exemption.



(3) For the purposes of this section, “compliance review documents” will include, but not be limited to, documents used to evaluate and seek to improve the credit union’s loan policies or underwriting standards, asset quality, financial reporting to federal or state governmental agencies, or compliance with federal or state statutory or regulatory requirements.

## APPENDIX A

### CREDIT UNION CONVERSION TO MUTUAL BANK

Currently, the Model Credit Union Act does not provide for the conversion of a credit union to a non-credit union structure. Concerns have been raised in national discussions that a small number of credit union members could eventually benefit financially from a credit union-to-mutual savings bank conversion, while the large majority of the credit union members lose their equity capital when the credit union ceases to exist.

If the circumstances in your state require the development of language that would allow a credit union to convert to a non-credit union structure, the following provisions may be considered:

#### **Section 10.43. Credit Union Conversion to Mutual Savings Bank or Mutual Savings Association.**

(1) Notwithstanding any other provision in this chapter, with the approval of the Commissioner and upon the affirmative vote of two-thirds of the members who vote on the proposal, a credit union organized under this act may convert into a mutual savings bank or mutual savings association, subject to this section and, if a holding company is to be formed in connection with the conversion, also subject to the regulations of the federal reserve board of governors or of the office of thrift supervision applicable to holding companies.

(2) The converted credit union must retain at least 50 percent of the net conversion proceeds;

(3) The board of directors, by an affirmative vote of two-thirds of the entire board, shall approve any plan of conversion under subsection (1) before submitting the plan to the Commissioner for preliminary review.

#### ***DISCLOSURE ALTERNATIVE***

(4) At least 30 days before voting on the plan, the board of directors shall give notice to the credit union's members that it is considering a conversion. The notice shall be mailed to the credit union's membership and shall not be included with other mailings sent to the credit union's membership. The notice shall include all of the following:

(a) In clear and conspicuous print, a brief statement as to why the board is considering the conversion.

(b) In clear and conspicuous print, a brief statement of the major positive and negative effects of the proposed conversion.

(c) In clear and conspicuous print, a request for members' written comments on the proposed conversion.

(5) The Commissioner shall review the contents of and member comments on the conversion plan and grant preliminary approval before the credit union board presents the conversion plan to the members for a vote. The Commissioner shall grant preliminary approval of the contents of the conversion plan only if the Commissioner is satisfied of all of the following:

(a) The conversion plan discloses to the members, in clear and conspicuous print, information concerning the advantages and disadvantages of the proposed conversion and contains a statement indicating any material differences in powers.

(b) The conversion plan includes a comprehensive business plan reflecting the board's intended plans for the proposed conversion. At a minimum, the business plan must address:

(i) The converting credit union's projected operations and activities for four years following the conversion.

(ii) Four years of projected financial statements;

(iii) The board's plan for deploying conversion proceeds to meet credit and lending needs in the proposed market areas;

(iv) The risks associated with the board's plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(v) The expertise of the current management and board of directors, or an explanation of plans for future adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in the business plan.

(c) The conversion would not be made to circumvent a pending supervisory action that is initiated by the Commissioner or other regulatory agency because of a concern over the safety and soundness of the credit union.

(d) The conversion plan does not provide any official of the credit union with any remuneration or other economic benefit in connection with the conversion of the credit union.

(e) The converted organization is likely to be economically viable.

(6) Upon preliminary approval of the contents of the conversion plan by the Commissioner, the credit union shall:

(a) Call a special meeting of the members to vote on the conversion plan. The special meeting must be held in a reasonable manner conducive to accommodating members that wish to attend.

(b) Mail to each member of the credit union, at least 90 days but no more than 120 days before the special meeting of the members, a notice of the meeting and a written copy of the proposed conversion. The notice of the meeting shall include:

(i) In clear and conspicuous print, a statement of the positive and negative effects of the proposed conversion.

(ii) In clear and conspicuous print, a statement whether the directors of the converted organization will receive future compensation and that interested persons may obtain more detailed information from the credit union at its offices or by other methods having the prior approval of the Commissioner.

(iii) In clear and conspicuous print, a statement describing the total equity of the credit union as of the last reporting date and an explanation of the member's partial ownership of this equity amount.

(iv) In clear and conspicuous print, a statement that the proposed plan of conversion may be substantively amended by the board of directors as a result of comments from regulatory authorities or otherwise before the meeting, and that the proposed plan may be terminated by the board of directors.

(v) In clear and conspicuous print, directions for obtaining copies of the conversion plan.

(vi) In clear and conspicuous print, the date of the special meeting and a statement that the vote on the conversion will close on that date.

(vii) Other information as required by the Commissioner.

(c) Credit union members opposing the proposed conversion may submit an opposition statement to the board of directors. Credit union members supporting the proposed conversion may submit a support statement to the board of directors.

(d) All opposition and support statements must be received at least 60 days prior to the annual meeting date. The board shall review all opposition and support statements and prepare a consolidated opposition and/or support statement which reflects the opinions of those credit unions' members who submitted statements.

(e) At least 30 days prior to the annual meeting date, the board shall mail a ballot, purpose statement and consolidated opposition and/or support statements and a meeting notice to all member credit unions entitled to vote.

(7) The 30-day notice required under subsection (4)(b) shall include the date, time, and place of the special member meeting, a ballot and postage-paid return envelope and the methods permitted for casting votes.

(8) The vote on the conversion proposal must be by secret ballot and conducted by an outside, independent, certified public accounting firm. The outside, independent, certified public accounting firm must be a company with experience in conducting corporate elections. No official or senior manager of the credit union, or the immediate family members of any official or senior manager, may have any ownership interest in, or be employed by, the certified public accounting firm. The certified public accounting firm may not be hired by the credit union as a conversion consultant or be an affiliate of the conversion consultant.

(9) If the plan of conversion is substantively amended by the board of directors, at least 30 days before the vote of the members on the proposal the credit union shall provide members with notice containing the information required by subparagraphs (i) to (vi) of subsection (4)(b) that accurately describes the amended plan of conversion.

(10) In addition to accepting member votes at the special meeting and by mail, with the prior approval of the Commissioner, a credit union may also accept member votes on the conversion by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote. The credit union shall file with the Commissioner all of the following:

a) Certified copies of records of all proceedings held by the board of directors and members of the credit union.

(b) Copies of member comments submitted to the credit union under subsection (2)(c).

(c) A certified copy of consent or approval of the federal regulatory authority or the regulatory authority of the applicable state, territory, or protectorate of the United States if the consent or approval is required by the laws of the applicable jurisdiction.

(d) Evidence that the converted organization is eligible for federal insurance of deposits.

(11) If all of the conditions required by this section have been met and the Commissioner determines that notices to members were accurate, timely, and not misleading, and that conduct of the vote on the conversion plan was fair and lawful, the Commissioner shall approve the conversion and the conversion shall become effective.

(12) Except as otherwise required by the Commissioner, this section does not apply to a credit union that submitted to the Commissioner a plan of conversion into a mutual savings bank or mutual savings association before the effective date of this section.