

**ARTICLE 13-01 GENERAL
ADMINISTRATION**

13-01-01 — Organization of Department

CHAPTER 13-01-01 ORGANIZATION OF DEPARTMENT

Section

13-01-01-01 — Organization and Functions of the Department of Financial Institutions

~~13-01-01-01. Organization and functions of the department of financial institutions.~~

~~1. **Organization of department.**~~

~~a. Scope. The department of financial institutions is responsible for the organization and regulation of all state financial institutions, excluding the Bank of North Dakota. The following types of state-chartered or state-licensed financial institutions are dependent upon the department in their organization, and are subject to its continued regulation:~~

- ~~(1) Banks.~~
- ~~(2) Trust companies.~~
- ~~(3) Savings and loan associations.~~
- ~~(4) Mutual savings corporations.~~
- ~~(5) Credit unions.~~
- ~~(6) Agents for deposit.~~
- ~~(7) Consumer finance companies.~~
- ~~(8) Collection agencies.~~
- ~~(9) Sale of checks.~~
- ~~(10) Money brokers.~~
- ~~(11) Deferred presentment service providers.~~

~~The department is also responsible for the examination of the Bank of North Dakota.~~

~~b. Divisions. The department consists of the following three divisions, based on scope of authority and responsibility as delegated by the legislative assembly.~~

- ~~(1) Those responsibilities entrusted to the state banking board.~~
- ~~(2) Those responsibilities entrusted to the state credit union board.~~
- ~~(3) Those responsibilities entrusted to the department and the commissioner of financial institutions.~~

~~c. Board composition and department personnel.~~

- ~~(1) The commissioner of financial institutions is appointed by the governor, with confirmation by the senate, for a term of four years. In addition to other qualifications, the commissioner must be a skilled accountant.~~
- ~~(2) The state banking board consists of the commissioner and six other members, with the commissioner as chairperson. The six members are appointed by the governor for a term of five years with one member's term expiring every year. Four of the members must have five or more years of experience in an executive capacity in the management of a state bank, one must have the five or more years of experience in an executive capacity in the management of a state or national bank, and one member shall be a lay member from the public at large. The banking board holds regular meetings in January, March, May, July, September, and November, with special meetings at the call of the commissioner.~~
- ~~(3) The state credit union board consists of the commissioner and four other members, with the commissioner as chairperson. Two of the members must have three or more years of experience as an officer, director, or committee member of a state chartered credit union, one member of the board shall have had at least three years of experience as an officer, director, or committee member of a federally chartered credit union, and one member of the board shall be a lay member from the public at large. The credit union board holds regular meetings in March, June, September, and December of each year, and special meetings at the call of the commissioner.~~
- ~~(4) By statute, the commissioner may designate one deputy examiner as chief deputy examiner, now entitled assistant commissioner. The assistant commissioner has authority to act during the absence or disability of the commissioner. The assistant commissioner, by statute, serves as the secretary of the banking board and the credit union board.~~
- ~~(5) The attorney general of North Dakota is the ex officio attorney for the department and the boards.~~
- ~~(6) The department employs two chief examiners who are responsible for the examination of financial institutions in subdivision a.~~
- ~~(7) The department employs a business manager responsible for the operations and administrative detail of the department.~~
- ~~(8) The department's examining staff consists of deputy examiners who are now entitled financial institution examiners and supervisory examiners, who the commissioner appoints, and who are under the direct supervision of the chief examiner.~~
- ~~(9) In addition, the department staff consists of secretaries, who are under the direct supervision of the business manager.~~

~~2. Functions.~~

- ~~a. The banking board is responsible for the organization and regulation of banks, trust companies, savings and loan associations, mutual investment corporations, banking institutions, and other financial institutions. A grant of authority from the board is necessary prior to the establishment and operation of any of the above organizations. The board has the power and responsibility to ensure compliance with the statutes, regulations, and sound banking principles, and to protect the depositors, creditors, and the public.~~

- b. ~~The credit union board is responsible for the supervision of credit unions. This power concerns the operation of established credit unions and approves bylaws. The board is responsible for ensuring compliance with the statutes, regulations, and sound operational principles.~~
- c. ~~The state credit union board has the authority to grant or deny approval for the organization of a credit union.~~
- d. ~~The department, headed by the commissioner, has the responsibility of administering all other functions within its jurisdiction.~~
 - (1) ~~The department licenses and regulates consumer finance companies, collection agencies, check sellers, agents for deposit, money brokers, and deferred presentment service providers.~~
 - (2) ~~The department is charged with the responsibility of examining all financial institutions within its control, and the Bank of North Dakota. The examination process involves the inspection and analysis of all business affairs and the financial condition of the institutions it is charged with examining. This includes analysis of the assets, liabilities, methods of operation, management, recordkeeping, accounting systems, and compliance with all applicable laws and regulations.~~

3. ~~**Inquiries.** All inquiries regarding the department of financial institutions may be addressed to the business manager. All requests for hearings and for participating in rulemaking may be addressed to the assistant commissioner, unless specific public notice directs otherwise.~~

~~Address correspondence as follows:~~

~~Department of Financial Institutions
2000 Schafer Street, Suite G
Bismarck, North Dakota 58501-1204
(701) 328-9933~~

~~**History:** Amended effective November 1, 1981; August 1, 1983; November 1, 1985; November 1, 1987; August 1, 1991; January 1, 1992; February 1, 1993; October 1, 1995; November 1, 1997; March 1, 1999; June 1, 2002.~~

~~**General Authority:** NDCC 28-32-02.1~~

~~**Law Implemented:** NDCC 28-32-02.1~~

~~13-01.1-01-02. Address Sessions.~~

~~The principal office of the board is located at 2000 Schafer street, suite g, Bismarck, North Dakota.~~

~~**History:** Effective January 1, 1980; amended effective November 1, 1994; May 1, 1996; November 1, 1997.~~

~~**General Authority:** NDCC 6-01-04, 28-32-02~~

~~**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05~~

~~13-01.1-01-03. Communications.~~

~~All correspondence and filings forwarded to the board shall be addressed to:~~

~~State Banking Board
2000 Schafer Street, Suite G
Bismarck, North Dakota 58501-1204~~

~~History: Effective January 1, 1980; amended effective August 1, 1991; May 1, 1996; November 1, 1997.~~

~~General Authority: NDCC 6-01-04, 28-32-02~~

~~Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05~~

~~13-01.1-01-12. Facsimile transmission.~~

~~Any paper may be filed with the department or board by facsimile transmission. Filing must be deemed complete at the time that the facsimile transmission is received and the filed facsimile has the same force and effect as the original. The facsimile must be legible or it will not be deemed as being received. Within five days after the department or board has received the transmission, the party filing the document shall forward the original signed document and the applicable filing fee, if any.~~

13-01.1-01-14 Duplication of Records and Digital Records

1. Digital copies of facts, reports, or other records created by the commissioner or the department have the same level of confidentiality as physical records outlined in 6-01-07.1.
2. Facts, reports, or other records created by the commissioner or the department deemed confidential by law may not be copied or otherwise duplicated, including the redistribution of digital records, without the prior approval of the commissioner. This does not apply to examined entity's duplication of the record for their own use or the use by third parties as authorized in North Dakota Century Code 6-01-07.1.
3. Meetings and conversations involving the commissioner or the department staff discussing examination facts, reports, or other records created by the commissioner or the department may not be recorded without the prior approval of the commissioner.

History: Effective

General Authority: NDCC 6-01-07.1

Law Implemented: NDCC 6-01-07.1

CHAPTER 13-03-01.1 PRACTICE AND PROCEDURE

Section

13-03-01.1-01 Applicability

~~13-03-01.1-02 Communications~~

~~13-03-01.1-03 Copies~~

~~History: Effective October 1, 1994.~~

~~General Authority: NDCC 6-01-04, 28-32-02~~

~~Law Implemented: NDCC 6-01-01, 6-01-04, 28-32-05~~

~~13-03-01.1-02. Communications.~~

~~All correspondence and filings forwarded to the board must be addressed to:~~

~~State Credit Union Board~~

~~2000 Schafer Street, Suite G~~

Bismarck, ND 58501-1204

~~Correspondence and filings may also be submitted to the attention of the board in electronic format, addressed to the following:~~

~~Fax number: 701-328-0290~~

~~E-mail address: dfi@nd.gov~~

~~**History:** Effective October 1, 1994; amended effective May 1, 1996; December 1, 1997; January 1, 2013.~~

~~**General Authority:** NDCC 6-01-04, 28-32-02~~

~~**Law Implemented:** NDCC 6-01-01, 6-01-04~~

~~**13-03-01.1-03. Copies.**~~

~~For any application or administrative hearing procedure, the original and eight copies of any documents must be furnished to the board.~~

~~**History:** Effective October 1, 1994.~~

~~**General Authority:** NDCC 6-01-04, 28-32-02~~

~~**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05~~

CHAPTER 13-03-02 LIMITING AND RESTRICTING THE AMOUNT THAT MAY BE LOANED ON REAL PROPERTY SECURITY

Section

| | |
|-------------|---|
| 13-03-02-01 | Aggregate Limited to Percent of Paid-In Shares and Deposits - Type of Lien [Repealed] |
| 13-03-02-02 | Requirements for Advancement of Money on Security of Real Property |
| 13-03-02-03 | Length of Term - Amortization - Limitation on Amount of Percent of Appraised Value |
| 13-03-02-04 | Limitation on Amount Loaned to One Member [Repealed] |
| 13-03-02-05 | Second Mortgages - Approval of Credit Union Board [Repealed] |
| 13-03-02-06 | Exemption From Restrictive Provisions |
| 13-03-02-07 | Exceptions |

13-03-02-02. Requirements for advancement of money on security of real property.

No state-chartered credit union may advance money on security of real property until the following requirements are met:

1. The mortgage has been properly signed and recorded in the office of the county recorder where the real property is located.
2. The credit union must verify that the mortgagor ~~is the owner of the real property in fee simple~~ has the right to convey the real property and the credit union must determine the order of priority of the lien established by the mortgage.
3. For real estate loans equal to or more than ~~two hundred fifty thousand dollars~~ one million dollars or four hundred thousand dollars for residential real estate not insured, an appraisal must be conducted by a licensed or certified appraiser if required under 12 Code of Federal Regulations part 722.
4. For real estate loans that do not meet the requirements of subsection 3, a credit union must obtain an appropriate evaluation of real property collateral for transactions if an appraisal by a licensed or certified appraiser is not obtained.
5. Regardless of the value of a real estate loan, the commissioner may issue an order requiring

an appraisal by a licensed or certified appraiser when necessary to address safety and soundness concerns.

6. Adequate casualty fire and tornado insurance has been obtained and is maintained throughout the life of the loan with a mortgage clause for the benefit of the credit union.
7. A note for the amount of the loan has been signed by the mortgagor or mortgagors consistent with the terms of the mortgage.
8. The credit union may make exceptions to subsections 2, 3, and 6 of this section if the mortgage is taken as an abundance of caution as set forth in 12 CFR 722.3, and the value of the real property security is not used as part of the analysis of the borrower's credit worthiness.

History: Amended effective May 1, 1982; November 1, 1985; October 1, 1994; August 1, 1998; December 1, 2002; January 1, 2013; January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-03
INVESTMENT IN FIRST LIEN, PUBLIC UTILITY, INDUSTRIAL, CORPORATION,
OR ASSOCIATION BONDS, NOTES, OR OTHER EVIDENCES OF DEBT ISSUED
BY CORPORATIONS LOCATED IN THE UNITED STATES OF AMERICA

Section

- 13-03-03-01 Individual Investment Limitation - Total Investment Limitation
- 13-03-03-02 Applicability
- 13-03-03-03 Investment in Other Evidences of Debt

13-03-03-01. Individual investment limitation - Total investment limitation.

No credit union organized and operating under the laws of North Dakota shall invest more than ten percent, in the aggregate, of the total paid in shares and deposits of the credit union in first lien, public utility, industrial, corporation, or association bonds, or notes issued by corporations located in the United States of America, unless an exemption is granted by the state credit union board. In determining whether to grant an exemption, the board shall consider the following:

1. The net worth ratio of the credit union;
2. The capital, asset quality, management, earnings, ~~and~~ liquidity, and sensitivity to market risk (~~CAMEL~~) (CAMELS) rating of the credit union;
3. The experience of the credit union's management; and
4. Other factors deemed pertinent by the board.

History: Amended effective December 1, 1978; January 1, 2007; January 1, 2013.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-04
INVESTMENT IN AN OFFICE BUILDING, FURNITURE, AND FIXTURES -
APPLICATION TO THE STATE CREDIT UNION BOARD

Section

- 13-03-04-01 Maximum Investment in Fixed Assets to be Determined by State Credit Union Board
- 13-03-04-02 Procedure for Investment in Building
- 13-03-04-03 Application to Board to Invest in Building - Requirements

13-03-04-01. Maximum investment in fixed assets to be determined by state credit union board.

No credit union organized and operating under the laws of North Dakota shall invest more than the greater of six percent of assets or fifty percent of net worth, but not to exceed ten percent of assets, in a credit union office building, including the lot, piece, or parcel of land on which the same is located, furniture, fixtures, and equipment Land and Building and Other Fixed Assets, without first applying for and obtaining approval from the state credit union board.

History: Amended effective June 1, 1984; January 1, 2007; January 1, 2013; January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-04-02. Procedure for investment in building.

Any state-chartered credit union planning to construct or purchase a building shall follow and comply with the following procedure:

1. The board of directors shall adopt a resolution to invest in a building, and stating the maximum funds to be invested in a lot and building.
2. If the resolution is adopted by a majority of the board of directors, and if the resolution involves an investment, including the depreciated value of the building, and all furniture, fixtures, and equipment carried as an asset of the credit union, of more than six percent of assets of the credit union which exceeds the maximum investment established in 13-03-04-01, the board of directors shall then make application to the North Dakota state credit union board for permission to invest in a building. If the totals six percent or less of the assets investment is within the limit established by 13-03-04-01, the board of directors and management will proceed with the project as approved by the board of directors.

History: Amended effective June 1, 1984; January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-04-03. Application to board to invest in building - Requirements.

When applying to the state credit union board for permission to invest in a building which, ~~when added to the depreciated value of the building and all furniture, fixtures, and equipment carried as an asset of the credit union, totals more than six percent of the credit union's assets exceeds the limit established in 13-03-04-01~~, the following procedures will be followed:

1. The secretary of the credit union will certify compliance with the provisions of section 13-03-04-02.
2. The treasurer will certify the amount to be invested. The credit union, by letter, will make a special request of the state credit union board and state the amount, and the percentage of assets and net worth they desire to invest in the lot, building, furniture, fixtures, and equipment.

History: Amended effective June 1, 1984.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

**CHAPTER 13-03-05
MERGERS**

Section

| | |
|---------------|--|
| 13-03-05-00.1 | Definitions |
| 13-03-05-01 | Procedure |
| 13-03-05-02 | Determination by Board - Surrender of Charter [Repealed] |
| 13-03-05-03 | Compatibility With Other Laws and Rules [Repealed] |
| 13-03-05-04 | Considerations for Approval |
| 13-03-05-05 | Prohibitions |
| 13-03-05-06 | Determination by Board - Surrender of Charter |
| 13-03-05-07 | Compatibility With Other Laws and Rules |

13-03-05-01. Procedure.

Any state-chartered credit union planning to merge shall follow and comply with the following procedure:

1. The board of directors of each state-chartered credit union shall pass a resolution by a majority of the directors, in favor of the merger, stating specific terms, if any.
2. The resolution shall be submitted to the entire membership of the affected credit unions at the time of and accompanying the notice of a regular or special meeting, and must be approved by a majority of the membership of each affected credit union present at the meeting. The state credit union board, in the exercise of the board's discretion, may suspend this subsection when such suspension is in the best interests of the affected credit unions and their members. Alternatively, the commissioner, in the exercise of the commissioner's discretion, may temporarily suspend this subsection until after approval is obtained from the state credit union board, if the merging credit union is federally chartered.
3. An application to merge must be filed with the state credit union board to approve the merger by the proper officials of each of the credit unions.
4. At least thirty days prior to the date of consideration of the application by the state credit union board, the secretary of the board shall notify all credit unions within a seventy-five-mile [120.7-kilometer] radius of the continuing credit union's home office and each county in which the merging credit union maintains its principal office or a branch. The notice must specify the names and locations of both the merging credit union and the continuing credit union, and the time and place of the board meeting at which the proposed merger will be considered. Interested credit unions will be given an opportunity to comment on the proposed merger in writing and at the meeting at which the proposal is considered. The board may, when it believes it to be in the public interest, request a hearing be held. Notice of hearing on an application will, if requested, be at least thirty days prior to the hearing. Notice of the proposed merger does not have to be given or a hearing held when the continuing credit union is to receive assistance from the national credit union administration.
5. All laws and regulations of the national credit union share insurance fund applicable to merging insured credit unions must be complied with before the merger is consummated.
6. Upon approval of the merger, the continuing credit union may ~~apply to~~ elect to assume the field of membership of the merging credit union, ~~pursuant to the requirements of chapter 13-03-14.~~

13-03-05-04. Considerations for approval.

In considering the application for merger, the board shall examine and consider all relevant factors including:

1. Whether proper notification has been given to all members, unless the membership meeting

has been waived by the board.

2. The comments of the members of each credit union to be merged.
3. The financial condition of the continuing credit union.

In the event that a merging credit union is a failing institution under North Dakota Century Code section 6-06-08.2, the board shall have the authority to waive any application requirements or considerations for approval otherwise mandated under rule. ~~Additionally, if there is more than one potential merger partner for the failing institution, the board may give consideration to the credit union with a moresimilar field of membership or in closer proximity to the failing institution.~~

CHAPTER 13-03-06 CREDIT UNION RESERVE FUNDS AND PROMPT CORRECTIVE ACTION

Section

| | |
|-------------|--|
| 13-03-06-01 | Definitions |
| 13-03-06-02 | Maintaining an Allowance for Loan and Lease Loss Account |
| 13-03-06-03 | Calculation |
| 13-03-06-04 | Prompt Corrective Action |
| 13-03-06-05 | Requirements |

13-03-06-01. Definitions.

1. "Commercial loan" means any loan, line of credit, or letter of credit, including any unfunded commitments, and any interest a credit union obtains in such loans made by another lender, to individuals, sole proprietorships, partnerships, corporations, or other business enterprises for commercial, industrial, agricultural, or professional purposes, but not for personal expenditure purposes. Excluded from this definition are loans made by a corporate credit union; loans made by a credit union to another credit union; loans made by a federally insured credit union to a credit union service organization; loans secured by a one-to-four family residential property, unless meeting the definition of an improved property loan; loans fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions; loans secured by a vehicle manufactured for household use; and loans that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balances plus unfunded commitments less any portion secured by shares in the credit union to a borrower or an associated borrower, are equal to less than fifty thousand dollars.
2. "Credit grading system" means the same as credit risk rating system.
3. "Credit risk rating system" means a formal process that identifies and assigns a relative credit risk score to each commercial loan in a credit union's portfolio, using ordinal ratings to represent the degree of risk. The credit risk score is determined through an evaluation of quantitative factors based on financial performance and qualitative factors based on management, operational, market, and business environmental factors.
4. "Improved property loan" means an extension of credit secured by one of the following types of real property:
 - a. Farmland, ranchland, or timberland committed to ongoing management and agricultural production;
 - b. One-to-four family residential property that is not owner-occupied;
 - c. Residential property containing five or more individual dwelling units;
 - d. Completed commercial property; or

- e. Other income-producing property that has been completed and is available for occupancy and use, except income-producing owner-occupied one-to-four family residential property.
5. "Net worth" means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. Net worth does not include the allowance for loan and lease loss account or other comprehensive income/loss account. Additionally:
 - a. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the national credit union share insurance fund;
 - b. For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero; the acquired retained earnings must be determined at the point of acquisition under generally accepted accounting principles; and a mutual combination is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union; and
 - c. The term "net worth" also includes loans to and accounts in an insured credit union established under section 208 of the Federal Credit Union Act (73 Stat. 628, 84 Stat. 944, 12 U.S.C. 1788), provided such loans and accounts:
 - (1) Have a remaining maturity of more than five years;
 - (2) Are subordinate to all other claims including those of shareholders, creditors, and the national credit union share insurance fund;
 - (3) Are not pledged as security on a loan to, or other obligation of, any party;
 - (4) Are not insured by the national credit union share insurance fund;
 - (5) Have noncumulative dividends;
 - (6) Are transferable; and
 - (7) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.
 6. "Net worth ratio" means the ratio of net worth of the credit union to the total assets of the credit union.
 7. "Net worth restoration plan" means a plan submitted by the credit union and approved by the commissioner outlining the actions the credit union will take and time frames for improving the credit union's capital position and becoming well-capitalized. The plan must comply with part 702 of the national credit union administration's rules and regulations.
 8. "Quarterly reserve requirement" means a transfer from current quarter earnings into the regular reserve account equal to one-tenth of one percent of assets.
 9. "Risk-based capital net worth requirement" means the level of net worth necessary given the risk level of the credit union as defined in part 702 of the national credit union administration's rules and regulations.
 10. "Total assets" means quarter end asset balance, average daily balance over the calendar quarter, average month-end balances over the three calendar months in the calendar quarter, or the average of quarter end balances of the current and preceding calendar quarters.

11. "Total reserves" means, for the purpose of this chapter, the sum of the following:
 - a. The retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles;
 - b. The allowance for loan and lease loss account;
 - c. Other comprehensive income or loss;
 - d. Unrealized gain or loss on available for sale securities; and
 - e. Secondary capital.
12. "Retained earnings" means undivided earnings, regular reserves, and any other appropriations designated by regulatory authorities.

History: Amended effective January 1, 1981; August 1, 1984; June 1, 2002; January 1, 2007; January 1, 2013; January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-08.4, 6-06-21

13-03-06-04. Prompt corrective action.

When the credit union's net worth ratio falls below seven percent after allowing for full and fair disclosure in the allowance for loan and lease loss account, or fails to meet the risk-based ~~net worth~~ capital requirements of part 702 of the national credit union administration's rules and regulations, the credit union is required to meet the prompt corrective action requirements under North Dakota Century Code section 6-06-08.4 and part 702 of the national credit union administration's rules and regulations. Any required reserves to be made under prompt corrective action will be made to the regular reserve account.

History: Effective January 1, 1981; amended effective May 1, 1981; January 1, 2007; January 1, 2013; January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-08.4, 6-06-21

CHAPTER 13-03-14 FIELD OF MEMBERSHIP

Section

- 13-03-14-01 Definitions
- 13-03-14-02 Field of Membership Expansion
- 13-03-14-03 Application to Expand Field of Membership
- 13-03-14-04 Waiver
- 13-03-14-05 Field of Membership of Continuing Credit Union in the Event of Merger

13-03-14-05. Field of membership of continuing credit union in the event of merger.

In the event of a merger between credit unions with different ~~geographic~~ fields of membership, the surviving credit union may, at the election of the surviving credit union, expand its field of membership to include the ~~geographic~~ field of membership of the merged credit union.

1 **History:** Effective January 1, 2007.
2 **General Authority:** NDCC 6-01-04
3 **Law Implemented:** NDCC 6-06-06, 6-06-07

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6 **CHAPTER 13-03-15**
7 **BRANCHING**

8 Section
9 13-03-15-01 Definitions
10 13-03-15-02 Establishment of a Branch
11 13-03-15-03 Location of Branch
12 13-03-15-04 Application to Establish a Branch
13 13-03-15-05 Waiver
14 13-03-15-06 Notice Regarding Closing of a Branch
15 13-03-15-07 Operations during epidemic or emergency - Notice to commissioner
16

17 **History:** Effective April 1, 1988.
18 **General Authority:** NDCC 6-01-04
19 **Law Implemented:** NDCC 6-06-06

20 **13-03-15-04. Application to establish a branch.**

- 21 1. A credit union wishing to establish a branch shall comply with the following:
- 22 a. Approval to establish the branch must be given by the board of directors of the credit union
23 by a majority of that board;
- 24 b. After approval by the credit union's board of directors, application must be made to the
25 state credit union board or to the commissioner to establish the branch. The necessary
26 forms for "application to establish a branch", including the business plan and the financial
27 impact to the credit union, may be secured from the department of financial institutions;
- 28 ~~c. The credit union shall, at least thirty days prior to the date of consideration by the state~~
29 ~~credit union board, cause to be published a notice in the official newspaper of the county~~
30 ~~of the credit union's home office and the county in which the proposed branch expansion~~
31 ~~is to be located. The notice must specify the field of membership, and, if an open charter,~~
32 ~~the geographical boundaries; and~~
- 33 ~~d. The notice must specify the time and place of the meeting of the state credit union board~~
34 ~~at which the application for establishing the branch will be acted upon. Written comments~~
35 ~~may be submitted to the board concerning the application, or a written request for an~~
36 ~~opportunity to be heard before the board may be submitted. The board may, when it~~
37 ~~believes it to be in the public interest, order a hearing to be held.~~
- 38 2. The state credit union board or commissioner, when considering the branching of a credit union,
39 shall consider the following:
- 40 a. If the branch is for an open charter, and if the application to establish the branch is
41 accompanied by an application to expand the field of membership, the exact geographical
42 boundaries, expressed by city, county, township, or highway boundaries, ora stated radius
43 from the branch office, must be clearly spelled out;
- 44 ~~b. Whether serious injury would result to any other state or federally chartered credit union in~~
45 ~~North Dakota;~~
- 46 c. Whether the credit union has demonstrated the ability to succeed with the branch; and

1 d. Any other factor that the state credit union board or commissioner deems pertinent.

2 3. If the commissioner's decision with respect to an application is unfavorable, the applicant credit
3 union may appeal the decision to the state credit union board by filing a notice of appeal with the
4 commissioner within twenty days after the commissioner has notified the applicant credit union
5 of the decision.

6 **History:** Effective April 1, 1988; amended effective June 1, 2002; January 1, 2007; January 1, 2013;
7 January 1, 2019.

8 **General Authority:** NDCC 6-01-04

9 **Law Implemented:** NDCC 6-06-06

10 **13-03-15-05. Waiver.**

11 The state credit union board or commissioner, in the exercise of ~~its~~their discretion, may waive
12 the provisions of this chapter when such waiver is in the best interests of a failing institution.

13 **History:** Effective April 1, 1988.

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17 **General Authority:** NDCC 6-01-04

18 **Law Implemented:** NDCC 6-06-06

19 **13-03-15-06. Notice regarding closing of a branch.**

20 Any credit union intending to close a branch shall provide its membership and the commissioner
21 with notice of the closing at least thirty days prior to the closing date.

22 **History:** Effective January 1, 2013.

23 **General Authority:** NDCC 6-01-04

24 **Law Implemented:** NDCC 6-06-06

25
26 **13-03-15-07. Operations during epidemic or emergency - Notice to department.**

27
28 A credit union that operates physical facilities in any area that is experiencing an epidemic or other
29 emergency may adjust the credit union's operations in any manner that is reasonable to protect the
30 credit union's members, employees, assets, or business. Under this section a credit union may
31 temporarily close or relocate offices, employees, or operations; restrict access to offices or services; and
32 change the manner in which the credit union provides services. A credit union shall notify the
33 Department of Financial Institutions of any actions the credit union takes under the authority of this
34 section if such action results in a closure greater than one business day. The credit union shall give the
35 department notice promptly and in any case within three business days of the credit union's decision to
36 adjust the credit union's operations. The notice must describe the credit union's actions and the
37 expected duration of the credit union's adjusted operations. Unless extended by the commissioner, a
38 credit union's authority to change the credit union's operations under this section may not exceed sixty
39 days.

40
41 **History:**

42 **General Authority:** NDCC 6-01-04

43 **Law Implemented:** NDCC 6-06-06

44
45
46 **13-03-21-02. Authorizations.**

47 **1. Purchase.**

48 a. A credit union may purchase, in whole or in part, within the limitations of the board of

1 directors' written purchase policies:

- 2 (1) Eligible obligations of its members, originating from any source ~~in the state of North~~
3 ~~Dakota~~ in the United States, if either they are loans it is empowered to grant or they
4 are refinanced with the consent of the borrowers, within sixty days after they are
5 purchased, so that they are loans it is empowered to grant;
- 6 (2) Eligible obligations of a liquidating credit union's individual members, from the
7 liquidating credit union;
- 8 (3) Student loans, from any source, if the purchaser is granting student loans on an
9 ongoing basis and if the purchase will facilitate the purchasing credit union's
10 packaging of a pool of such loans to be sold or pledged on the secondary market;
11 and
- 12 (4) Real estate-secured loans, originating from any source ~~in the state of North Dakota~~,
13 if the purchaser is granting real estate-secured loans on an ongoing basis and loans
14 will be sold to the secondary market in the same manner as loans to the credit union's
15 members, and loans sold include a substantial portion of loans to the credit union's
16 members.

17 b. A credit union may make purchases in accordance with this subsection provided:

- 18 (1) The board of directors or investment committee, loan committee, or credit manager
19 approves the purchase; and
- 20 (2) A written agreement and a schedule of the eligible obligations covered by the
21 agreement are retained in the purchaser's office; and for purchases under
22 paragraph 2 of subdivision a, any advance written approval from the national credit
23 union administration required by section 741.8 of national credit union administration
24 rules and regulations is obtained before consummation of such purchase.

25 c. The aggregate of the unpaid balance of eligible obligations under this subsection cannot
26 exceed five percent of the unimpaired capital and surplus of the purchaser. The following
27 can be excluded in calculating this five percent limitation:

- 28 (1) Student loans purchased in accordance with paragraph 3 of subdivision a;
- 29 (2) Real estate loans purchased in accordance with paragraph 4 of subdivision a;
- 30 (3) Eligible obligations purchased in accordance with paragraph 1 of subdivision a that
31 are refinanced by the purchaser so that it is a loan it is empowered to grant; and
- 32 (4) An indirect lending or indirect leasing arrangement that is classified as a loan and not
33 the purchase of an eligible obligation because the credit union makes the final
34 underwriting decision and the sales or lease contract is assigned to the credit union
35 very soon after it is signed by the member and the dealer or leasing company.

36 2. **Sale.** A credit union may sell, in whole or in part, to any source, eligible obligations of its
37 members, eligible obligations purchased in accordance with paragraph 2 of subdivision a of
38 subsection 1, student loans purchased in accordance with paragraph 3 of subdivision a of
39 subsection 1, and real estate loans purchased in accordance with paragraph 4 of subdivision
40 a of subsection 1, within the limitations of the board of directors' written sale policies, provided:

- 41 a. The board of directors, investment committee, loan committee, or credit manager approves
42 the sale; and
- 43 b. A written agreement and a schedule of the eligible obligations covered by the agreement
44 are retained in the seller's office.

1 3. **Pledge.**

2 a. A credit union may pledge, in whole or in part, to any source, eligible obligations of its
3 members, eligible obligations purchased in accordance with paragraph 2 of subdivision
4 of subsection 1, student loans purchased in accordance with paragraph 3 of subdivision
5 a of subsection 1, and real estate loan purchased in accordance with paragraph 4 of
6 subdivision a of subsection 1, within the limitations of the board of directors written pledge
7 policies, provided:

8 (1) The board of directors, investment committee, loan committee, or credit manager
9 approves the pledge;

10 (2) Copies of the original loan documents are retained; and

11 (3) A written agreement covering the pledging arrangement is retained in the office of the
12 credit union that pledges the eligible obligations.

13 b. The pledge agreement shall identify the eligible obligations covered by the agreement.

14 4. **Servicing.** A credit union may agree to service any eligible obligation it purchases or sells in
15 whole or in part.

16 5. **Ten percent limitation.** The total indebtedness owing to any credit union by any person,
17 inclusive of retained and reacquired interests, shall not exceed ten percent of its unimpaired
18 capital and surplus.

19 **History:** Effective January 1, 2007; amended effective January 1, 2013.

20 **General Authority:** NDCC 6-01-04

21 **Law Implemented:** NDCC 6-06-06

22 **CHAPTER 13-03-22**
23 **INVESTMENT ACTIVITIES**

24 Section

| | | |
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40 **13-03-22-01. Definitions.**

41 The following definitions apply to this chapter:

42 1. "Adjusted trading" means selling an investment to a counterparty at a price above its current fair
43 value and simultaneously purchasing or committing to purchase from the counterparty another
44 investment at a price above its current market value.

45 2. "Borrowing repurchase transaction" means a transaction in which the credit union agrees to sell
46 a security to a counterparty and to repurchase the same or identical security from the

1 counterparty at a specified future date and at a specified price.

2 3. "Call" means an option that gives the holder the right to buy the underlying security at a specified
3 price during a fixed time period.

4 4. "Charitable contributions and donations" means gifts provided to assist others through
5 contributions of staff, equipment, money, or other resources through charities that are exempt
6 from taxation under 501(c)(3) of the Internal Revenue Code.

7 5. "Counterparty" means a Swap Dealer, Derivatives Clearing Organization, exchange, or
8 commercial loan customers that participates as the other party in a derivatives transaction with
9 a credit union.

10 6. "Derivatives" means financial instruments or other contracts whose value is based on the
11 performance of an underlying financial asset, index, or other investment that has the three
12 following characteristics:

13 a. ~~It has one or more underlyings and one or more notional amounts or payment provisions~~
14 ~~or both that determine the amount of the settlement or settlements, and, in some cases,~~
15 ~~whether or not a settlement is required;~~

16 b. ~~It requires no initial net investment or an initial net investment that is less than would be~~
17 ~~required for other types of contracts that would be expected to have a similar response to~~
18 ~~changes in market factors; and~~

19 c. ~~Its terms require or permit net settlement, it can readily be settled net by means outside~~
20 ~~the contract, or it provides for delivery of an asset that puts the recipient in a position not~~
21 ~~substantially different from net settlement.~~ contract that derives its value from the value
22 and performance of some other underlying financial instrument or variable, such as an
23 index or interest rate.

24 7. "Derivatives Clearing Organization" has the meaning as defined by the Commodity Futures
25 Trading Commission (CFTC) in 17 CFR 1.3 effective March 15, 2021.

26 8. "Distribution in kind" means acceptance of remaining charitable donation account assets, upon
27 termination of the account, in their original form instead of in cash resulting from the liquidation
28 of assets.

29 9. "Domestic interest rates" means interest rates derived in the United States and are U.S. dollar-
30 denominated.

31 10. "Earnings at Risk" means the changes to earnings, typically in the short term (for example, 12
32 to 36 months), caused by changes in interest rates.

33 11. "Economic Effectiveness" means the extent to which a Derivatives transaction results in
34 offsetting changes in the Interest Rate Risk that the transaction was, and is, intended to provide.

35 12. "Embedded option" means a characteristic of an investment that gives the issuer or holder the
36 right to alter the level and timing of the cashflows of the investment. Embedded options include
37 call and put provisions and interest rate caps and floors. Since a prepayment option in a
38 mortgage is a type of call provision, a mortgage-backed security composed of mortgages that
39 may be prepaid is an example of an investment with an embedded option.

40 13. "Eurodollar deposit" means a United States dollar denominated deposit in a foreign branch of
41 a United States depository institution.

42 14. "European financial options contract" means an option that can be exercised only on its
43 expiration date.

44 15. "External Service Provider" means any entity that provides services to management in carrying

- 1 out its Derivatives program and the requirements of this subpart.
- 2 16. "Fair value" means the amount at which an instrument could be exchanged in a current, arms-
3 length transaction between willing parties, as opposed to a forced or liquidation sale.
- 4 17. "Financial options contract" means an agreement to make or take delivery of a standardized
5 financial instrument upon demand by the holder of the contract as specified in the agreement.
- 6 18. "Futures Commission Merchant" has the meaning as defined by the CFTC in 17 CFR 1.3
7 effective March 15, 2021.
- 8 19. "Industry-recognized information provider" means an organization that obtains compensation
9 by providing information to investors and receives no compensation for the purchase or sale
10 of investments.
- 11 20. "Interest Rate Risk" means the current and prospective risk to a credit union's capital and
12 earnings arising from movements in interest rates.
- 13 21. "Introducing Broker" means a futures brokerage firm that deals directly with the client, while the
14 trade execution is done by a Futures Commission Merchant.
- 15 22. "Investment repurchase transaction" means a transaction in which an investor agrees to
16 purchase a security from a counterparty and to resell the same or an identical security to that
17 counterparty at a specified future date and at a specified price.
- 18 23. "Margin" means the minimum amount of eligible collateral, as defined 13-03-22-15 3(c), that
19 must be deposited between parties to a Derivatives transaction, as detailed in a Master Services
20 Agreement.
- 21 24. "Master Services Agreement" means a document agreed upon between two parties that sets
22 out standard terms that apply to all transactions entered into between those parties. The most
23 common form of a Master Services Agreement for Derivatives is an International Swap Dealer
24 Association Master Agreement.
- 25 25. "Maturity" means the date the last principal amount of a security is scheduled to come due
26 and does not mean the call date or the weighted average life of a security.
- 27 26. "Non-cleared" means transactions that do not go through a Derivatives Clearing Organization
28
- 29 27. "Put" means a financial options contract that entitles the holder to sell, entirely at the holder's
30 option, a specified quantity of a security at a specified price at any time until the stated expiration
31 date of the contract.
- 32
- 33 28. "Qualified charity" means a charitable organization or other non-profit entity recognized as
34 exempt from taxation under section 501(c)(3) of the Internal Revenue Code.
- 35 29. "Real estate mortgage investment conduit" means a mortgage passthrough security and is
36 synonymous with the terms MBS and passthrough. The scope of the MBS market extends to
37 structured mortgage securities such as CMOs, REMICs, and strips, for which passthroughs
38 are the most common form of collateral.
- 39 30. "Registered investment adviser" means an investment advisor registered with the Securities
40 and Exchange Committee pursuant to the Investment Advisors Act of 1940.
- 41 31. "Registered investment company" means an investment company that is registered with the
42 securities and exchange commission under the Investment Company Act of 1940 [15 U.S.C.

1 80a]. Examples of registered investment companies are mutual funds and unit trust
2 investments.

3 32. "Residual interest" means the remainder cashflows from collateralized mortgage obligations or
4 real estate mortgage conduits (CMOs or REMICs), or other mortgage-backed security
5 transaction, after payments due bondholders and trust administrative expenses have been
6 satisfied.

7 33. "Security" means a share, participation, or other interest in property or in an enterprise of the
8 issuer or an obligation of the issuer that:

9 a. Either is represented by an instrument issued in bearer or registered form or, if not
10 represented by an instrument, is registered in books maintained to record transfers by or
11 on behalf of the issuer;

12 b. Is of a type commonly recognized in any area in which it is issued or dealt in as a medium
13 for investment; and

14 c. Either is one of a class or series or by its terms is divisible into a class or series of
15 shares, participations, interests, or obligations.

16 34. "Senior Executive Officer" means a person who participates or has authority to participate in
17 major policymaking and decision-making functions of the credit union, whether or not the officer
18 has an official title. The chief executive officer, chief financial officer, chief credit officer,
19 president, vice president, and controller are considered senior executive officers.

20 35. "Structured Liability Offering" means a share product created by a credit union with contractual
21 option features, such as periodic caps and calls, similar to those found in structured securities
22 or structured notes.

23 36. "Swap Dealer" has the meaning as defined by the CFTC in 17 CFR 1.3 effective March 15,
24 2021.

25 37. "Threshold Amount" means an unsecured credit exposure that a party to a Derivatives
26 transaction is prepared to accept before requesting additional eligible collateral, as defined in
27 13-03-22-15 3(c), from the other party.

28 38. "Total return" means the actual rate of return on all investments in a charitable donation account
29 over a given period of up to 5 years, including realized interest, capital gains, dividends, and
30 distributions, but exclusive of account fees, and expenses provided they were not paid to the
31 credit union that established the account or any of its affiliates. For the purpose of this definition,
32 affiliate is an entity the credit union has an ownership interest directly or indirectly, but not an
33 ownership interest due to funding of employee benefits.

34 39. "Weighted average life" means the weighted average time to the return of a dollar of principal.
35 Calculated by multiplying each portion of principal received by the time at which it is expected
36 to be received, based on a reasonable and supportable estimate of that time, and then
37 summing and dividing by the total amount of principal.

38 40. "Zero coupon investment" means an investment that makes no periodic interest payments but
39 instead is sold at a discount from its face value. The holder of a zero coupon investment realizes
40 the rate of return through the gradual appreciation of the investment, which is redeemed at face
41 value on a specified maturity date.

42 **History:** Effective January 1, 2007.

43 **General Authority:** NDCC 6-01-04

44 **Law Implemented:** NDCC 6-06-06

45 **13-03-22-02. Permissible investments.**

1 A credit union may invest in the following types of investments:

- 2 1. Bonds of the United States without limitation in securities issued as direct obligations of the
3 United States government or any agency thereof and in any trust established for investing
4 directly or collectively in such securities.
- 5 2. Bonds or evidences of debt of this state or in bonds of states of the United States.
- 6 3. Bonds or certificates of indebtedness of any county, city, or school district in ~~this state~~ the United
7 States, issued pursuant to authority of law, subject to a limitation of thirty percent of the assets
8 of the credit union.
- 9 4. First lien, public utility, industrial, corporation, or association bonds, notes or other evidences
10 of debt issued by corporations located in the United States to the extent authorized under
11 chapter 13-03-03. These investments must be rated ~~as investment grade or better by an~~
12 ~~industry-recognized information provider such as Moody's, Standard & Poors, or Fitch in one of~~
13 the four highest rating categories by a nationally recognized statistical rating organization
14 registered with the securities and exchange commission. In the case of different ratings from
15 different rating organizations, the lower rating applies.
- 16 5. Shares of a registered investment company or collective investment fund, as long as the
17 prospectus of the company or fund restricts the investment portfolio to investments and
18 investment transactions that are permissible for state-chartered credit unions.
- 19 6. Corporate credit union shares or deposits, including paid-in or membership capital. A credit
20 union's aggregate amount of paid-in capital and membership capital in one corporate credit
21 union is limited to two percent of its assets measured at the time of investment or adjustment.
22 A credit union's aggregate amount of paid-in capital and membership capital in all corporate
23 credit unions is limited to four percent of its assets measured at the time of investment or
24 adjustment.
- 25 7. Certificates of deposit or other deposits issued by federally insured state or national banks,
26 mutual savings banks, trust companies, or issued by an insured financial institution located in
27 a territory of the United States that is either insured by the federal deposit insurance corporation
28 or by the national credit union administration. Included in these deposits are yankee dollar
29 deposits, Eurodollar deposits, banker's acceptances, deposit notes, and bank notes with original
30 weighted average maturities of less than five years.
- 31 8. Variable rate investments as long as the index is tied to domestic interest rates and not, for
32 example, to foreign currencies, foreign interest rates, or domestic or foreign commodity prices,
33 equity prices, or inflation rates. ~~For purposes of this section, the United States dollar-~~
34 ~~denominated London interbank offered rate (LIBOR) is a domestic interest rate.~~
- 35 9. A fixed rate or variable rate collateralized mortgage obligation or real estate mortgage
36 investment conduit issued by an agency of the federal government.
- 37 10. Derivative products but only for the purposes of managing interest rate risk and subject to the
38 limitations outlined in 13-03-22-15.
- 39 11. Charitable donation accounts subject to the limitations outlined in 13-03-22-16.
40
41
42

43 **History:** Effective January 1, 2007.

44 **General Authority:** NDCC 6-01-04

45 **Law Implemented:** NDCC 6-06-06

1 **13-03-22-03. Prohibited investments.**

2 A credit union cannot invest in the following types of investments:

- 3 1. Any privately issued collateralized mortgage obligation or real estate mortgage investment
4 conduit.
- 5 ~~2. Any financial derivative, such as futures, options, interest rate swaps, or forward rate~~
6 ~~agreements.~~
- 7 3. Any zero coupon investment with a maturity date that is more than ten years from the settlement
8 date.
- 9 4. Any mortgage servicing rights as an investment but may perform mortgage servicing functions
10 as a financial service for a member as long as the mortgage loan is owned by the member.
- 11 5. Any stripped mortgage-backed securities, residual interests in collateralized mortgage
12 obligations or real estate mortgage investment conduits, or residual interests in small business-
13 related securities.
- 14 6. Any commercial mortgage-related security that is not permitted by chapter 13-03-03.

15 **History:** Effective January 1, 2007.

16 **General Authority:** NDCC 6-01-04

17 **Law Implemented:** NDCC 6-06-06

18 **13-03-22-04. Permissible investment activities.**

- 19 1. Regular way settlement and delivery versus payment basis. A credit union may only contract
20 for the purchase or sale of a security as long as the delivery of the security is by regular way
21 settlement and the transaction is accomplished on a delivery versus payment basis.
- 22 2. Federal funds. A credit union may sell federal funds to an institution described in subsection 4
23 of North Dakota Century Code section 6-06-06 and credit unions, as long as the interest or other
24 consideration received from the financial institution is at the market rate for federal funds
25 transactions.
- 26 3. Investment repurchase transaction. A credit union may enter into an investment repurchase
27 transaction so long as:
- 28 a. Any securities the credit union receives are permissible investments for state-chartered
29 credit unions; the credit union, or its agent, either takes physical possession or control of
30 the repurchase securities or is recorded as owner of them through the federal reserve book
31 entry securities transfer system; the credit union, or its agent receives a daily assessment
32 of their market value, including accrued interest; and the credit union maintains adequate
33 margins that reflect a risk assessment of the securities and the term of the transaction; and
- 34 b. The credit union has entered into signed contracts with all approved counterparties.
- 35 4. Borrowing repurchase transaction. A credit union may enter into a borrowing repurchase
36 transaction so long as:
- 37 a. The transaction meets the requirements of subsection 3;
- 38 b. Any cash the credit union receives is subject to the borrowing limit specified in North
39 Dakota Century Code section 6-06-19 and any investments the credit union purchases
40 with that cash are permissible for credit unions; and
- 41 c. The investments referenced in subdivision b mature no later than the maturity of the
42 borrowing repurchase transaction.

- 1 5. Securities lending transaction. A credit union may enter into a securities lending transaction so
2 long as:
- 3 a. The credit union receives written confirmation of the loan;
- 4 b. Any collateral the credit union receives is a legal investment for credit unions; the credit
5 union, or its agent, obtains a first priority security interest in the collateral by taking physical
6 possession or control of the collateral, or is recorded as owner of the collateral through the
7 federal reserve book entry securities transfer system; the credit union, or its agent, receives
8 a daily assessment of the market value of the collateral, including accrued interest; and
9 the credit union maintains adequate margin that reflects a risk assessment of the collateral
10 and the term of the loan;
- 11 c. Any cash the credit union receives is subject to the borrowing limit specified in North
12 Dakota Century Code section 6-06-19 and any investments the credit union purchases
13 with that cash are permissible for credit unions and mature no later than the maturity of the
14 transaction; and
- 15 d. The credit union has executed a written loan and security agreement with the borrower.
- 16 6. a. Trading securities. A credit union may trade securities which are permitted for credit unions
17 to own, including engaging in when-issued trading and pair-off transactions, so long as the
18 credit union can show that it has sufficient resources, knowledge, systems, and procedures
19 to handle the risks.
- 20 b. A credit union must record any security it purchases or sells for trading purposes at fair
21 value on the trade date. The trade date is the date the credit union commits, orally or in
22 writing, to purchase or sell a security.
- 23 c. At least monthly, the credit union must give its board of directors or investment-related
24 committee a written report listing all purchase and sale transactions of trading securities
25 and the resulting gain or loss on an individual basis.

26

27 **13-03-22-06. Investment policies.**

28 A credit union's board of directors must establish written investment policies consistent with North
29 Dakota Century Code chapter 6-06, this part, and other applicable laws and regulations and must
30 review this policy at least annually. These policies may be a part of a broader asset-liability
31 management or similarly functioning policy. Written investment policies must address the following:

- 32 1. The purposes and objectives of the credit union's investment activities;
- 33 2. The characteristics of the investments the credit union may make, including the issuer, maturity,
34 index, cap, floor, coupon rate, coupon formula, call provision, average life, and interest rate risk;
- 35 3. How the credit union will manage interest rate risk;
- 36 4. How the credit union will manage liquidity risk;
- 37 5. How the credit union will manage credit risk, including specifically listing institutions, issuers,
38 and counterparties that may be used, or criteria for their selection, and limits on the amounts
39 that may be invested with each;
- 40 6. How the credit union will manage concentration risk, which can result from dealing with a single
41 issuer or related issuers, lack of geographic distribution, holding obligations with similar
42 characteristics like maturities and indexes, holding bonds having the same trustee, and holding
43 securitized loans having the same originator, packager, or guarantor;

- 1 7. Who has investment authority and the extent of that authority. Those with authority must be
2 qualified by education or experience to assess the risk characteristics of investments and
3 investment transactions. Only officials or employees of the credit union may be voting members
4 of an investment-related committee;
- 5 8. The broker-dealers the credit union may use;
- 6 9. The safekeepers the credit union may use;
- 7 10. How the credit union will handle an investment that, after purchase, is outside of board policy
8 or fails a requirement of this part; and
- 9 11. How the credit union will conduct investment trading activities, if applicable, including
10 addressing:
 - 11 a. Who has purchase and sale authority;
 - 12 b. Limits on trading account size;
 - 13 c. Allocation of cashflow to trading accounts;
 - 14 d. Stop loss or sale provisions;
 - 15 e. Dollar-size limitations of specific types, quantity, and maturity to be purchased;
 - 16 f. Limits on the length of time an investment may be inventoried in a trading account; and
 - 17 g. Internal controls, including segregation of duties.

18 **History:** Effective January 1, 2007.

19 **General Authority:** NDCC 6-01-04

20 **Law Implemented:** NDCC 6-06-06

21 **13-03-22-07. Recordkeeping and documentation requirements.**

- 22 1. Credit unions ~~with assets of ten million dollars or greater~~ must comply with all generally accepted
23 accounting principles applicable to reports or statements required to be filed with the national
24 credit union administration. ~~Credit unions with assets less than ten million dollars are~~
25 ~~encouraged to do the same, but are not required to do so. Credit unions with assets less than~~
26 ~~ten million dollars may choose to account for their investments consistent with the national~~
27 ~~credit union administration accounting manual for federal credit unions.~~
- 28 2. A credit union must maintain documentation for each investment transaction for as long as it
29 holds the investment and until the documentation has been examined in accordance with
30 North Dakota Century Code section 6-06-08. The documentation should include, when
31 applicable, bids and prices at purchase and sale and for periodic updates, relevant disclosure
32 documents or a description of the security from an industry-recognized information provider,
33 financial data, and tests and reports required by credit union's investment policy and this
34 chapter.
- 35 3. A credit union must maintain documentation its board of directors used to approve a broker-
36 dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the
37 documentation has been examined in accordance with North Dakota Century Code section 6-
38 06-08.
- 39 4. A credit union must obtain an individual confirmation statement from each broker-dealer for
40 each investment purchased or sold.

41 **History:** Effective January 1, 2007.

42 **General Authority:** NDCC 6-01-04

2
3 13-03-22-15. Derivatives

- 4 1. A state-chartered credit union may enter into Derivatives that:
- 5 a. Are for the purpose of managing interest rate risk;
 - 6 b. Denominated in US Dollars;
 - 7 c. Based on domestic interests;
 - 8 d. Not used to create Structured Liability Offerings for members or nonmembers.
- 9 2. A state-chartered credit union may not engage in embedded options required under US
10 Generally Accepted Accounting Principles to be accounted for separately from the host contract.
- 11 3. To enter into derivative transactions, a credit union must:
- 12 a. Have an executed Master Services Agreement with a Counterparty. Such agreement must
13 be reviewed by legal counsel with expertise in similar types of transactions to ensure the
14 agreement reasonably protects the interest of the credit union;
 - 15 b. Use only the following Counterparties:
 - 16 i. For exchange-traded and cleared Derivatives: Swap Dealers, Introducing Brokers,
17 and/or Futures Commission Merchants that are current registrants of the CFTC; or
 - 18 ii. For Non-cleared Derivative transactions: Swap Dealers that are current registrants of
19 the CFTC.
 - 20 iii. Commercial loan customers for the purpose of limiting the interest rate risk associated
21 with their specific loan transactions.
 - 22 c. Utilize contracted Margin requirements with a maximum Margin threshold amount of
23 \$250,000; and
 - 24 d. For Non-cleared Derivative transactions, accept as eligible collateral, for Margin
25 requirements, only the following: Cash (U.S. dollars), U.S. Treasuries, government-
26 sponsored enterprise debt, U.S. government agency debt, government-sponsored
27 enterprise residential mortgage-backed security pass-through securities, and U.S.
28 government agency residential mortgage-backed security pass-through securities.
 - 29 e. Operate according to comprehensive written policies and procedures for control,
30 measurement, and management of Derivative transactions. At a minimum, the policies and
31 procedures must address the requirements of this rule and any additional limitations
32 imposed by the credit union's board of directors. A credit union's board of directors must
33 review the policies and procedures described in this section at least annually and update
34 them when necessary.
- 35 4. A credit union engaging in derivative transactions must have sufficient reporting on the activity
36 to include:
- 37 a. Board reporting. At least quarterly, a credit union's Senior Executive Officers must deliver
38 a comprehensive Derivatives report, as described in paragraph (c) of this section to the
39 credit union's board of directors.
 - 40 b. Senior Executive Officer and asset liability or similarly functioning committee. At least

1 monthly, credit union staff must deliver a comprehensive Derivatives report, as described
2 in paragraph (c) of this section to the credit union's Senior Executive Officers and, if
3 applicable, the credit union's asset liability or similarly functioning committee.

4 c. Comprehensive Derivatives management report. At a minimum, the reports required in
5 paragraphs (a) and (b) of this section must include:

6 i. Identification of any areas of noncompliance with any provision of this subpart or the
7 credit union's policies, and the planned remediation of such noncompliance;

8 ii. An itemization of the credit union's individual transactions subject to this subpart, the
9 current values of such transactions, and each individual transaction's intended use
10 for Interest Rate Risk mitigation; and

11 iii. A comprehensive view of the credit union's risk reports, including, but not limited to,
12 Interest Rate Risk calculations with details of the transactions subject to this subpart.

13 d. Pre purchase due diligence. Before executing any Derivatives transaction, management
14 must identify and document the circumstances that lead to the decision to execute the
15 Derivatives transaction, specify the strategy management will employ, and demonstrate
16 the economic effectiveness of the transaction

17 e. Retention Requirement. Reports required by this section must, at a minimum, be retained
18 for as long as it holds the derivative and until the documentation has been examined
19 in accordance with North Dakota Century Code section 6-06-08.

20 f. Management must notify the Commissioner within 5 days of entering its first Derivatives
21 contract.

22 g. Notification of noncompliance. Notification of any noncompliance as part of the Derivatives
23 management report required in paragraph (c)(i) of this subsection must be submitted to the
24 Commissioner and to the credit union's board of directors within 30 days.

25 5. Personal and processes required to manage a derivatives program include:

26 a. A credit union using Derivative transactions must internally possess the following
27 experience and competencies:

28 i. Before entering into the initial Derivatives transaction, a credit union's board members
29 must receive training that provides a general understanding of Derivative
30 transactions, and the knowledge required to provide strategic oversight of the credit
31 union's Derivatives program.

32 ii. Any person that becomes a board member after the initial Derivatives transaction
33 must receive the same training, updated if necessary, as required by paragraph
34 (5)(a)(i) of this subsection.

35 b. A credit union's Senior Executive Officers must be able to understand, approve, and
36 provide oversight for the Derivatives program. These individuals must have a
37 comprehensive understanding of how the Derivative transactions fit into the credit union's
38 Interest Rate Risk management process.

39 c. To engage in the Derivative transactions, a credit union must employ staff with experience
40 in the following areas:

41 i. Staff must be qualified to understand and oversee asset/liability risk management,
42 including the appropriate role of the transactions subject to this subpart. Staff must
43 also be qualified to understand and undertake or oversee the appropriate modeling
44 and analytics related to Net Economic Value and Earnings at Risk;

- 1 ii. Staff must be qualified to understand and oversee appropriate accounting and
2 financial reporting for Derivatives in accordance with GAAP;
- 3 iii. Staff must be qualified to undertake or oversee Derivative trade executions; and
- 4 iv. Staff must be qualified to evaluate Counterparty, collateral, and Margin risk as
5 described in 13-03-22-15 3 (b) and (c).
- 6 d. To effectively manage the transactions subject to this subpart, management must ensure
7 that effective accounting, review processes, and internal controls have been established,
8 to include:
- 9 i. Within the first year after commencing its first Derivatives transaction, management must
10 have an internal controls review that is focused on the integration and introduction of the
11 program, and ensure the timely identification of weaknesses in internal controls,
12 accounting, and all operational and oversight processes. This review must be performed
13 by a qualified independent entity;
- 14 ii. Any credit union engaging in Derivative transactions pursuant to this subpart must obtain
15 an annual opinion audit and be compliant with GAAP for all Derivatives-related accounting
16 and reporting;
- 17 iii. Before executing its first Derivative transaction, management must establish a collateral
18 management process that monitors the credit union's collateral and Margining
19 requirements and ensures that its transactions are collateralized in accordance with the
20 collateral requirements of this subpart and the credit union's Master Services Agreement
21 with its Counterparty;
- 22 iv. Before executing its first Derivative transaction, a management must establish and
23 document a liquidity review process to analyze and measure potential liquidity needs
24 related to its Derivatives program and the additional collateral requirements due to changes
25 in interest rates. Management must, as part of its liquidity risk management, calculate and
26 track contingent liquidity needs in the event a transaction needs to be novated or
27 terminated, and must establish effective controls for liquidity exposures arising from both
28 market or product liquidity and instrument cash flows; and
- 29 v. Appropriate controls and segregation of duties.
- 30 6. A credit union using Derivatives may use External Service Providers to support or conduct
31 aspects of its Derivative management program, provided:
- 32 a. The External Service Provider, including affiliates, does not:
- 33 i. Act as a Counterparty to any Derivative transactions that involve the credit union;
- 34 ii. Act as a principal or agent in any Derivative transactions that involve the credit union; or
- 35 iii. Have discretionary authority to execute any of the credit union's Derivative transactions.
- 36 b. The credit union has the internal capacity, experience, and skills to oversee and manage
37 any External Service Providers it uses; and
- 38 c. Management documents the specific uses of External Service Providers in its policies and
39 procedures
- 40 d. The credit union retains internal staff to meet the requirements of section 5 of this rule.
- 41 7. If a credit union has violated any part of this section, is or has engaged in unsafe or unsound
42 practices, or is in unsafe or unsound condition, the Commissioner may provide written notice to

1 the credit union prohibiting them from entering into new Derivatives transactions, effective upon
2 receipt of the notice. The Commissioner may also require divesture of derivative products. The
3 credit union can appeal this prohibition or divesture to the State Credit Union Board, and must
4 provide written notice of their intent to appeal to the Department within 20 days of receipt of the
5 prohibition or divesture requirement as outlined in §6-01-04.2 of the North Dakota Century Code.

6 7 13-03-22-16 Charitable Donation Accounts

8 Credit unions may invest in charitable donation accounts provided:

- 9 1. The charitable donation account is structured as hybrid charitable and investment vehicle used
10 to provide charitable contributions and donations to a qualified charity.
- 11 2. The maximum book value of investment in all charitable donation accounts is limited to five
12 percent of credit union net worth. Any credit union in violation of this limit must bring the
13 investment into compliance with this limit within 30 days of the violation.
- 14 3. The charitable donation accounts will be held as a segregated custodial account or special
15 purpose entity and must be specifically identified as a charitable donation account.
- 16 4. Any trust established for the charitable donation account must be regulated by a state or federal
17 financial regulatory agency, and any trustee or persons making investment decisions for the
18 charitable donation account must be a registered investment advisor or regulated by a state or
19 federal agency.
- 20 5. The board of directors of the credit union has established policies governing the account
21 consistent with the requirements of this section and safe and sound business practices.
- 22 6. The terms and conditions of the written agreement between the parties to the charitable donation
23 account shall:
 - 24 a. Be consistent with the provisions of this section and safe and sound business practices.
 - 25 b. Require the charitable donation account to make charitable contributions and donations
26 only to charities named that are exempt from taxation under 501(c)(3) of the Internal
27 Revenue Code.
 - 28 c. Document the investment strategies and risk tolerances the administrator must follow.
 - 29 d. Require all aspects of the account including distributions and liquidations be accounted for
30 in accordance with generally accepted accounting principles.
 - 31 e. Identify the frequency of distributions to qualified charities.
- 32 7. The charitable donation account makes a distribution no less frequently than every five years,
33 and distributes a minimum of fifty-one percent of the account's total return over the period since
34 the last distribution.
- 35 8. Upon termination and liquidation of the charitable donation account, credit unions may receive a
36 distribution in kind of remaining assets or cash if the assets are otherwise permissible
37 investments for a credit union.

38
39 **History: General Authority: NDCC**
40 **6-01-04 Law Implemented: NDCC**
41 **6-06-06**
42

1 **CHAPTER 13-03-24**
2 **FIDELITY BOND AND INSURANCE COVERAGE OF CREDIT UNIONS**
3

4 Section

| | | |
|----|-------------|-------------------------------------|
| 5 | 13-03-24-01 | Fidelity Bond Required |
| 6 | 13-03-24-02 | Annual Review Required |
| 7 | 13-03-24-03 | Acceptable Bond Forms |
| 8 | 13-03-24-04 | Required Minimum Amount of Coverage |
| 9 | 13-03-24-05 | Maximum Allowable Deductibles |
| 10 | 13-03-24-06 | Additional Coverage Required |

11
12 **History:** Effective January 1, 2007.

13 **General Authority:** NDCC 6-01-04

14 **Law Implemented:** NDCC 6-06-06

15 **13-03-24-02. Annual review required.**

- 16 1. The board of directors of each credit union must at least annually review its fidelity and other
17 insurance coverage to ensure that it is adequate in relation to the potential risks facing the
18 credit union and the minimum requirements set by the state credit union board.
- 19 2. The board of directors must review all applications for purchase or renewal of its fidelity bond
20 coverage. The board must pass a resolution approving the purchase or renewal of fidelity
21 bond coverage and delegate one member of the board, who is not an employee of the credit
22 union, to sign the purchase or renewal agreement and all attachments; provided, however,
23 that no board members may be a signatory on consecutive purchase or renewal agreements
24 for the same fidelity bond coverage policy.

25
26 **History:** Effective January 1, 2007.

27 **General Authority:** NDCC 6-01-04

28 **Law Implemented:** NDCC 6-06-06

29 **13-03-24-03. Acceptable bond forms.**

30 At a minimum, the bond coverage must:

- 31 1. Be purchased in an individual policy from a company holding a certificate of authority from the
32 secretary of the treasury.
- 33 2. Include fidelity bonds that cover fraud and dishonesty by all employees, directors, officers,
34 supervisory committee members, and credit committee members. Fidelity bond coverage may
35 also cover activities of a credit union service organization provided the credit union owns more
36 than 50% of the credit union service organization or the CUSO or it is organized by the credit
37 union for the exclusive benefit of the credit union's employees.
- 38 3. Include an option for the liquidating agent to purchase coverage in the event of an involuntary
39 liquidation that extends the discovery period for a covered loss for at least one year after
40 liquidation.
- 41 4. In the case of a voluntary liquidation, remain in effect, or provide that the discovery period is
42 extended, for at least four months after the final distribution of assets.
- 43 5. Be a bond form that has been approved by the national credit union administration board. ~~The~~
44 ~~following basic bonds have been approved:~~

1

| Credit Union Form No. | Carrier |
|--|--|
| Credit Union Blanket Bond Standard Form 23 of the Surety Association of America (revised May 1950) | Various |
| Extended Form 23 | USFG |
| 100 | CUMIS (only approved for corporate credit union use) |
| 200 | CUMIS |
| 300 | CUMIS |
| Credit Union Form No. | Carrier |
| 400 | CUMIS |
| AIG 23 | National Union Fire Insurance Co. of Pittsburgh, PA |
| Reliance Preferred 23 | Reliance Insurance Company |
| Form 31 | ITT Hartford |
| Form 24 with Credit Union Endorsement | Continental (only approved for corporate credit union use) |
| Form 40325 | St. Paul Fire and Marine |
| Form F2350 | Fidelity & Deposit Co. of Maryland |
| Form 9933 (6/97) | Progressive Casualty Insurance Co. |
| Credit Union Blanket Bond (1/96) | Cooperativas de Seguros Múltiples de Puerto Rico |

2

3 ~~6. Be approved by the national credit union administration board if not in the table above.~~

4 **History:** Effective January 1, 2007.

5 **General Authority:** NDCC 6-01-04

6 **Law Implemented:** NDCC 6-06-06

7 **13-03-24-04. Required minimum amount of coverage.**

- 8 1. The minimum required amount of fidelity bond coverage for any single loss is computed based
 9 upon a credit union's total assets.

10

| Assets | Minimum Bond |
|-------------------------------|--|
| \$0 to \$10,000 | Coverage equal to the credit union's assets |
| \$10,001 to \$1,000,000 | \$10,000 for each \$100,000 or fraction thereof |
| \$1,000,001 to \$50,000,000 | \$100,000 plus \$50,000 for each million or fraction over \$1,000,000 |
| \$50,000,001 to \$295,000,000 | \$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000 |
| Over \$295,000,000 | \$5,000,000 |

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| <u>Assets</u> | <u>Minimum bond</u> |
|--------------------------------------|---|
| <u>\$0 to \$4,000,000</u> | <u>Lesser of total assets or \$250,000.</u> |
| <u>\$4,000,001 to \$50,000,000</u> | <u>\$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000.</u> |
| <u>\$50,000,000 to \$500,000,000</u> | <u>\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000, to a maximum of \$5,000,000.</u> |
| <u>Over \$500,000,000</u> | <u>One percent of assets, rounded to the nearest hundred million, to a maximum of \$9,000,000.</u> |

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2. This is the minimum coverage required, but a credit union's board of directors should purchase additional coverage when circumstances warrant, ~~such as cash on hand or cash in transit.~~ In making this determination, a board of directors should consider its own internal risk assessment, its fraud trends and loss experience, and factors such as its cash on hand, cash in transit, and the nature and risks inherent in any expanded services it offers such as wire transfer and remittance services.

13
14
15

3. While the above is the minimum amount of bond coverage, credit unions should maintain increased coverage equal to the greater of either of the following amounts within thirty days of discovery of the need for such increase:

16
17

a. The amount of the daily cash fund, i.e., daily cash plus anticipated daily money receipts on the credit union's premises; or

18

b. The total amount of the credit union's money in transit in any one shipment.

19
20
21

c. Increased coverage is not required pursuant to this subsection when the credit union temporarily increases its cash fund because of unusual events which cannot reasonably be expected to recur.

22
23

4. Any aggregate limit of liability provided for in a fidelity bond policy must be at least twice the single loss limit of liability. This requirement does not apply to optional insurance coverage.

24
25

5. Any proposal to reduce the required bond coverage must be approved in writing by the state credit union board at least twenty days in advance of the effective date of the reduction.

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28

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

29

13-03-24-05. Maximum allowable deductibles.

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31
32

1. The maximum amount of allowable deductibles is computed based on a credit union's asset size, as follows:

| Assets | Maximum Deductible |
|-----------------------|------------------------|
| \$0 - \$100,000 | No deductibles allowed |
| \$100,001 - \$250,000 | \$1,000 |

| | |
|-------------------------|--|
| \$250,001 - \$1,000,000 | \$2,000 |
| Over \$1,000,000 | \$2,000 plus 1/1000 of total assets up to a maximum deductible of \$200,000; <u>for credit unions that have received a composite CAMELS rating of "1" or "2" for the last two (2) full examinations and maintained a net worth classification of well capitalized for the six (6) immediately preceding quarters, the maximum deductible is \$1,000,000.</u> |

2. The deductibles may apply to one or more insurance clauses in a policy. Any deductibles in excess of the above amounts must receive the prior written permission of the state credit union board.
3. A deductible may not exceed ten percent of a credit union's net worth.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

CHAPTER 13-03-25 SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS

Section

- 13-03-25-01 Definitions
- 13-03-25-02 General Responsibilities of the Supervisory Committee
- 13-03-25-03 Audit Responsibility of the Supervisory Committee
- 13-03-25-04 Requirements for Verification of Accounts
- 13-03-25-05 Assistance From Outside, Compensated Person
- 13-03-25-06 Audit Report and Working Paper Maintenance and Access
- 13-03-25-07 Sanctions for Failure to Comply With This Chapter
- 13-03-25-08 Statutory Audit Remedies for Credit Unions

13-03-25-01. Definitions.

- ~~1. "Balance sheet audit" means the examination of a credit union's assets, liabilities, and equity under generally accepted auditing standards by an independent public accountant for the purpose of opining on the fairness of the presentation on the balance sheet. Credit unions required to file call reports consistent with GAAP should ensure the audited balance sheet is likewise prepared on a GAAP basis. The opinion under this type of engagement would not address the fairness of the presentation of the credit union's income statement, statement of changes in equity (including comprehensive income), or statement of cashflows.~~
1. "Compensated person" means any accounting or auditing professional, excluding a credit union employee, who is compensated for performing more than one supervisory committee audit or verification of members' accounts per calendar year, or both.
2. "Confirm" or "confirmation" refers to a written verification with a third-party (person or organization) pertaining to an account balance or condition. Examples of confirmation letters are bank/corporate credit union account confirmation, investment account confirmation, borrowing or line of credit confirmation, attorney letter confirmation, and member share/loan account confirmation.
3. "Financial statement audit" or "opinion audit" means an audit of the financial statements of a credit union performed in accordance with GAAS by an independent person who is licensed by the state. The objective of a financial statement audit is to express an opinion as to whether

1 those financial statements of the credit union present fairly, in all material respects, the financial
2 position and the results of its operations and its cashflows in conformity with GAAP, as defined
3 herein.

4 4. "GAAP" means generally accepted accounting principles, which refers to the conventions, rules,
5 and procedures which define accepted accounting practice. GAAP includes both broad general
6 guidelines and detailed practices and procedures, provides a standard by which to measure
7 financial statement presentations, and encompasses not only accounting principles and
8 practices but also the methods of applying them.

9 5. "GAAS" means generally accepted auditing standards, which refers to the standards approved
10 and adopted by the American institute of certified public accountants which apply when an
11 independent, licensed certified public accountant audits financial statements. Auditing
12 standards differ from auditing procedures in that "procedures" address acts to be performed,
13 whereas "standards" measure the quality of the performance of those acts and the objectives
14 to be achieved by use of the procedures undertaken. In addition, auditing standards address
15 the auditor's professional judgment exercised in performing the audit and in preparing the report
16 of the audit.

17 6. "Independent" means the impartiality necessary for the dependability of the compensated
18 auditor's findings. Independence requires the exercise of fairness toward credit union officials,
19 members, creditors, and others who may rely upon the report of a supervisory committee
20 audit report.

21 7. "Internal control" means the process, established by the credit union's board of directors,
22 officers, and employees designed to provide reasonable assurance of reliable financial reporting
23 and safeguarding of assets against unauthorized acquisition, use, or disposition.

24 8. "Materiality" refers to a statement, fact or item, which, giving full consideration to the surrounding
25 circumstances as they exist at the time, it is of such a nature that its disclosure, or the method
26 of treating it, would be likely to influence or to make a difference in the judgment and conduct of
27 a reasonable person. Materiality should take into account ending balances as well as the volume
28 of transactions in an account. Typically, balances or transaction volume greater than 5 percent
29 of the credit union's net worth should be considered material.

30 9. "Reportable conditions" means a matter coming to the attention of the independent,
31 compensated auditor which in the auditor's judgment represents a significant deficiency in the
32 design or operation of the internal control structure of the credit union which could adversely
33 affect its ability to record, process, summarize, and report financial data consistent with the
34 representations of management in the financial statements.

35 10. "Review" refers to the examination of Board minutes, policies and procedures, and a review of
36 a sample portion of activities, rather than all of the activities.

37 11. "State-licensed person" means a certified public accountant or public accountant who is
38 licensed by the state to perform accounting or auditing services for that credit union.

39 12. "Test" refers to procedures applied to the individual items that compose an account balance or
40 class of transactions. The tests involve confirmation, inspection, or observation procedures to
41 provide evidence about the recorded amount.

42 **History:** Effective January 1, 2007.

43 **General Authority:** NDCC 6-01-04

44 **Law Implemented:** NDCC 6-06-06

45 **History:** Effective January 1, 2007.

46 **General Authority:** NDCC 6-01-04

47 **Law Implemented:** NDCC 6-06-06

48 **13-03-25-03. Audit responsibility of the supervisory committee.**

- 1 1. **Annual audit requirement.** A credit union is required to obtain an annual supervisory
2 committee audit or financial statement audit that occurs at least once every calendar year
3 (period of performance) and must cover the period elapsed since the last audit period (period
4 effectively covered).

- 5 2. **Financial statement audit.** Any credit union with assets greater than twenty-five million dollars
6 as of its previous year-end call report must obtain an annual audit of its financial statements
7 performed in accordance with GAAS by an independent person who is licensed to do so in this
8 state. Any credit union with assets less than twenty-five million dollars may also choose this
9 option. Prior to obtaining a financial statement audit, the credit union will make a good-faith
10 attempt to obtain a copy of the peer review report of the auditing firm directly from the auditing
11 firm to ensure the firm's auditing practices and procedures are in conformance with GAAS.

- 12 3. **Supervisory committee alternative to financial statement audit.** Any credit union with assets
13 less than twenty-five million dollars, ~~if not obtaining a financial statement audit,~~ must obtain or
14 ~~perform either of the following options to a financial statement audit~~ a supervisory committee
15 audit. This audit:
 - 16 a. ~~Balance sheet audit. A balance sheet audit performed by a person who is licensed to do~~
17 ~~so by this state~~ Will be completed by a qualified independent party such as a supervisory
18 committee, board of directors, internal auditor, accounting professional or others who can
19 demonstrate qualifications and independence.

 - 20 b. ~~Audit per supervisory committee guide. An audit performed by the supervisory committee,~~
21 ~~its internal auditor, or any other qualified person (such as a certified public accountant,~~
22 ~~public accountant, league auditor, credit union auditor consultant, former financial~~
23 ~~institutions examiner, etc.) in accordance with the procedures prescribed in the national~~
24 ~~credit union administration's supervisory committee guide. Qualified persons who are~~
25 ~~not state licensed may not provide assurance services under this subsection. Must at a~~
26 ~~minimum document a review of:~~
 - 27 1) Board of Director minutes to determine whether there are any material changes to
28 the credit union's activities or condition that are relevant to the areas to be reviewed
29 in the audit

 - 30 2) Test and confirm material asset and liability accounts including:
 - 31 i. Loans
 - 32 ii. Cash on deposit
 - 33 iii. Investments
 - 34 iv. Shares
 - 35 v. Borrowings

 - 36 3) Test material equity, income, and expense accounts
 - 37 4) Test for unrecorded liabilities
 - 38 5) Review key internal controls including:
 - 39 i. Bank reconciliation procedures
 - 40 ii. Cash controls
 - 41 iii. Dormant account controls
 - 42 iv. Wire and ACH transfer controls

- 1 v. Loan approval and disbursement procedures
- 2 vi. Controls over accounts of employees and officials
- 3 vii. Other real estate owned
- 4 viii. Foreclosed and repossessed assets
- 5 6) Test the mathematical accuracy of the allowance for loan and lease losses account
- 6 and ensure the methodology is properly applied
- 7 7) Test loan delinquency and charge-offs

8 **History:** Effective January 1, 2007.
 9 **General Authority:** NDCC 6-01-04
 10 **Law Implemented:** NDCC 6-06-06

11 **History:** Effective January 1, 2007.
 12 **General Authority:** NDCC 6-01-04
 13 **Law Implemented:** NDCC 6-06-06

14 **13-03-25-05. Assistance from outside, compensated person.**

- 15 1. **Unrelated to officials.** A compensated auditor who performs a supervisory committee audit
- 16 on behalf of a credit union may not be related by blood or marriage to any management
- 17 employee, member of either the board of directors, the supervisory committee, or the credit
- 18 committee, or loan officer of that credit union.

- 19 2. **Engagement letter.** The engagement of a compensated auditor to perform all or a portion of
- 20 the scope of a financial statement audit or supervisory committee audit shall be evidenced by
- 21 an engagement letter. In all cases, the engagement must be contracted directly with the
- 22 supervisory committee. The engagement letter must be signed by the compensated auditor and
- 23 acknowledged therein by the supervisory committee prior to commencement of the
- 24 engagement.

- 25 3. **Contents of letter.** The engagement letter shall:
- 26 a. Specify the terms, conditions, and objections of the engagement;
- 27 b. Identify the basis of accounting to be used;
- 28 c. If a supervisory committee guide audit, include an appendix setting forth the procedures to
- 29 be performed;
- 30 d. Specify the rate of, or total, compensation to be paid for the audit;
- 31 e. Provide that upon completion of the engagement letter, the auditor shall deliver to the
- 32 supervisory committee a written report of the audit and notice in writing, either within the
- 33 report or communicated separately, of any internal control reportable conditions or
- 34 irregularities or illegal acts, if any, which come to the auditor's attention during the normal
- 35 course of the audit, i.e., no notice required if none noted;
- 36 f. Specify a target date of delivery of the written reports, ~~such target date not to exceed one~~
- 37 ~~hundred twenty days from date of calendar or fiscal yearend under audit (period covered),~~
- 38 ~~unless the supervisory committee obtains a waiver from the commissioner of the~~
- 39 ~~department of financial institutions~~ with such delivery date enabling the credit union to meet
- 40 its annual audit requirements;
- 41 g. Certify that department of financial institution staff or national credit union administration
- 42 staff, or both, will be provided unconditional access to the complete set of original working

1 papers, either at the offices of the credit union or at a mutually agreed-upon location, for
2 purposes of inspections; and

3 h. Acknowledge that working papers shall be retained for a minimum of three years from
4 the date of the written report.

5 4. **Complete scope.** If the engagement is to perform a supervisory committee guide audit intended
6 to fully meet the requirements of subdivision b of subsection 3 of section 13-03-25-03, the
7 engagement letter shall certify that the audit will address the complete scope of that
8 engagement.

9 5. **Exclusions from scope.** If the engagement is to perform a supervisory committee guide audit
10 which will exclude any item required by the applicable section, the engagement letter shall:

11 a. Identify the excluded items;

12 b. State that, because of the exclusions, the resulting audit will not, by itself, fulfill the scope
13 of the supervisory committee audit; and

14 c. Caution that the supervisory committee will remain responsible for fulfilling the scope of a
15 supervisory committee audit with respect to the excluded items.

16 **History:** Effective January 1, 2007.

17 **General Authority:** NDCC 6-01-04

18 **Law Implemented:** NDCC 6-06-06

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CHAPTER 13-03-28

LOAN WORKOUTS, LOAN MODIFICATIONS, AND NONACCRUAL POLICY

Section

13-03-28-01 Definitions

13-03-28-02 Loan Workout Policy and Monitoring Requirements

13-03-28-03 Past Due Status Workout Loans Including Troubled Debt Restructure Past Due Status

13-03-28-04 ~~Loan Nonaccrual~~ Nonaccrual Policy and Procedures

27

28

13-03-28-02. Loan workout policy and monitoring requirements.

29 1. The board and management shall adopt and adhere to an explicit written policy and standards
30 that control the use of loan workouts, and establish controls to ensure the policy is consistently
31 applied. These policies must:

32 a. Be commensurate with the size and complexity of the credit union;

33 b. Define eligibility requirements, under what conditions the credit union will consider a loan
34 workout, including establishing limits on the number of times an individual loan may be
35 modified;

36 c. Ensure credit union makes loan workout decisions based on the borrower's renewed
37 willingness and ability to repay the loan;

38 d. Establish sound controls to ensure loan workout actions are appropriately structured;

39 e. Prohibit additional advances to finance ~~unpaid interest or credit union fees or commissions.~~
40 ~~This is also known as capitalizing interest, and must be prohibited by policy.~~ Advances to
41 cover third party fees such as appraisals or property taxes are permissible;

42 f. Either prohibit the financing of accrued interest into the loan principle also referred to as
43 capitalizing interest or require a policy allowing for the capitalization of interest only if it is

1 in the best interest of both the borrower and the credit union. If capitalizing of interest is
2 allowed, the policy will require:

3 i. Compliance with all consumer compliance laws and regulations;

4 ii. Documentation showing the borrower's ability to repay the debt.

5 iii. Provide written and accurate disclosures consistent with consumer compliance laws.

6 iv. Appropriate accounting and reporting of the loans accrual and delinquency status.

7 v. Consideration on how to apply modifications consistently

8 vi. Consideration for options to allow missed payments to be made at the end of a loan
9 to limit delinquency.

10 vii. Safeguards such as additional board reporting to avoid masking risk in the loan
11 portfolio.

12 viii. Procedures to avoid delaying loss recognition resulting in an inaccurate allowance
13 for loan and lease losses account or loan valuations.

14 ix. Procedures to avoid overstating income or credit union net worth.

15 x. Effective internal controls.

16 g. Require documentation that demonstrates the borrower is willing and able to repay the
17 loan; and

18 h. Require workout loans to be accurately classified; for commercial loans be risk rated with
19 the credit union's credit grading system; be consistent with accepted industry and
20 regulatory guidance, including federal financial institutions examination council's uniform
21 retail classification and account management policy; and accurately identify loans for
22 impairment testing consistent with generally accepted accounting principles.

23 2. Loan policy must require documented workout arrangements that consider and balance the best
24 interests of both the borrower and the credit union.

25 3. Management and the board of directors shall implement comprehensive and effective risk
26 management and internal controls. This must include:

27 a. Thresholds based on aggregate volume of loan workout activity which trigger enhanced
28 reporting to the board of directors;

29 b. Monitoring of total loan classifications in relation to the credit union's total reserves;

30 c. A written charge-off policy that it is consistently applied and consistent with industry
31 standards; and

32 d. A process capable of identifying, documenting, and aggregating any loan that is re-aged,
33 extended, deferred, renewed, or rewritten, including the frequency and extent such action
34 has been taken, and aggregate these loans by loan type.

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36 **History:** Effective January 1, 2019.

37 **General Authority:** NDCC 6-01-04

38 **Law Implemented:** NDCC 6-06-06

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