



April 30, 2007

Ms. Linda Jekel
Director of Credit Unions
WA Department of Financial Institutions
PO Box 41200
Olympia, WA 98504-1200

RE: Comments on Revision 1 - Discussion Draft of Proposed Rules
Credit Union Alternative Share Insurance Programs

Dear Ms. Jekel:

Thank you for the opportunity to comment on the State of Washington, Department of Financial Institution's (DFI) above-referenced Revision 1 discussion draft of proposed rules dated April 12, 2007. American Share Insurance (ASI) management is pleased to provide its comments in an effort to assist in the DFI's rule making process, and to provide you with information about ASI's program features, its operations and governing statutes and rules under which it operates.

ASI is the only private share insurer for credit unions in the country authorized to provide alternative (private) primary share insurance. ASI currently operates in nine states. The company is domiciled in Ohio and has operated successfully for 33 years under very comprehensive and stringent laws passed by the Ohio legislature and regulations promulgated by its Ohio regulatory authorities. These laws and regulations address many matters relevant to the subject draft proposed rules in great detail, including: ASI's normal operating level; capitalization structure; accounting and reserving requirements; means of replenishing capital through reassessments, premiums and other methods; periodic financial and operational reporting; loss reserving; the form and content of its share guaranty contracts; and, others matters of regulatory significance. A copy of ASI's governing statute, Ohio Revised Code §1761, and Ohio Administrative Rules §1301:9-3 (1) through (16), are enclosed for your inspection.

Some of ASI's eight other states of operation have promulgated local statutes and regulations under which ASI must operate. However, such laws and rules generally emulate certain key reporting, operational and financial requirements already found in Ohio law. Therefore, as the DFI proceeds with its deliberations through this rulemaking process, we would request that consideration be given to the applicability of Ohio laws and rules governing ASI, and to reciprocity with Ohio's governing statute and regulatory environment.

Our specific comments as to the above-referenced Revision 1 of the draft proposed rules are presented below by section number for your consideration.

WAC 208-800-030 - Definitions.

- Item (2) “Adequate reserves” – This section refers to “...the balance of the provision for insured losses account...” A provision account is generally associated with an income statement expense account and not a balance sheet (reserve) account. Further, we believe that a more appropriate term for “provision” would be “liability” or “reserve.”

In addition, we would recommend that the determination of the amount to be recorded in the reserve account be supported by an annual independent actuarial opinion on the adequacy of the share insurer’s loss reserves. This would provide the director with an independent assessment of reserves and a foundation from which to determine if the reserves are at a level acceptable to the director. Independent actuaries would also be in a position to determine if loss reserves needed any adjustment to provide for macroeconomic trends, including systemic risk factors, such as increasing consumer debt levels, bankruptcies, loan defaults and mortgage delinquencies.

- Item (8) “Equity ratio” – We believe that the last phrase (“as established annually by the NCUA board as the normal operating level”) is not necessary and should be deleted. The equity ratio is simply the defined components of the numerator divided by the defined components of the denominator. What the NCUA establishes as their specific normal operating level is irrelevant in defining how the equity ratio is computed.
- Item (9) “Equivalent” – The definition of “equivalent” is rigid in that it states that an equivalent is “equal in value, measure,” among other descriptions. When used in the context of Item (10) in the definitions section (“Equivalent share insurance program”), the proposed rule appears to require that the alternative share insurer be of a size equal in value or measure to the NCUSIF; in other words, have total assets and reserves in an amount equivalent to the NCUSIF, etc. This is problematic, since only a government program would be of the size of the NCUSIF and language of this nature would preclude ASI, or any other company, from qualifying under the Washington rules. In addition, had the legislature wanted “equivalent” to mean “equal” they would have said so. Instead, lawmakers took great care to demonstrate that they realized nothing would be equal to federal insurance, but that a private insurer should be similarly structured and have the ability to protect depositors. If a definition of this word is needed, it should be broken down further to consider concepts such as relative size, proportionality, coverage limits provided, risk management and credit union monitoring programs, etc.
- Item (13) “National geographic diversity” – As a general comment, we note that the concept of diversity can encompass other areas besides geography; areas such as the membership served by credit unions in the insurance fund. Also, the concepts of diversity and concentration are not necessarily linked. An insurance fund can have insurance contracts spread over the majority of the eight economic regions designated by the Bureau of Economic Analysis (BEA) and be considered diverse; however, it may also have a dollar concentration within a region. For example, the NCUSIF has less than 10% of its credit unions in the Far West BEA Region but those credit unions account for over 20% of the NCUSIF’s insured asset base.

Further, the NCUSIF also has approximately 20% of its insured credit unions in the BEA's Southeast Region with approximately 24% of the assets of its insured credit unions in that region, which indicates a concentration of well over 40% of insured credit union assets in just two national regions.

A couple of minor but important changes that we would recommend are that the word "overconcentration," be changed to "concentration," and in the phrase "distribution of primary share insurance contracts," the words "the number of" after "distribution of" be inserted so that the phrase reads "distribution of the number of primary share insurance contracts."

- Item (19) "Reinsurance" – Authorized reinsurers are not normally required by their regulators to enter into collateralization arrangements with their insureds. This section applies collateralization requirements of "unauthorized" reinsurers to "authorized" reinsurers, which is not a standard practice in the reinsurance industry. Consideration should be given to correcting this by inserting the words "or if the reinsurer is not authorized," after the phrase "authorized or licensed to do business in Washington state under Title 48 RCW," and deleting the word "and" in the phrase "and requiring either." This would result in the lead in for Item (19) reading as follows:

"Reinsurance" means a contractual agreement between an alternative share insurer and a reinsurer authorized or licensed to do business in Washington state under Title 48 RCW, or if the reinsurer is not authorized requiring either:"

WAC 208-800-100 - Contents of application to do business in Washington State as an alternative share insurance program.

- Item (3) – We recommend that the word "year-end" be inserted after the words "five most recent." This will make Item (3) consistent with the wording in Item (4).
- Item (9) – We recommend that the phrase "for primary insurance" be inserted after the words "executed contract for reinsurance" in the second line.
- Item (13) – The ASI insurance contract is subject to review and approval of its Ohio regulator and the same primary insurance contract is used in all of its nine states of operations. In addition, the insuring contract is written to the credit union and not to individual members, and it is required to have certain wording to be in compliance with ASI's governing statute in its state of domicile. A number of this proposed rule's sub-parts in Item (13) would require that they be addressed in the insurer's contract; whereas, the more appropriate disclosures should be made by the insured credit unions. Our specific comments on Item (13) issues follow:

- Item (13)(a) – “Required minimum percent” is not defined. Also, ASI’s governing Ohio statute, and its approved insuring contract, already requires assessments, etc., if ASI’s operating level falls below 1.0% of total insured shares. This minimum operating level requirement is either accepted in other ASI states of operation, or if a higher equity ratio is required by a particular state, the state allows ASI to determine the most appropriate way to “restore” the equity ratio to such required level. We recommend that the Washington DFI consider this approach in promulgating its rules.
- Item (13)(b) – Section 505 of the Financial Services Regulatory Relief Act of 2006 (S.2856) imposes disclosure requirements upon privately insured credit unions, not share guaranty corporations. This 2006 amendment to FDICIA also empowered state credit union regulators to enforce compliance with consumer disclosures by privately insured credit unions, which raises the question of the need for this specific contract clause. Furthermore, under Ohio law, ASI is required to place a notice on all literature provided to participating credit unions that contains the following conspicuous statement: “MEMBERS’ ACCOUNTS ARE NOT INSURED OR GUARANTEED BY ANY GOVERNMENT OR GOVERNMENT-SPONSORED AGENCY.” [O.R.C. 1733.042(C)] We believe that this Ohio requirement may satisfy the intent of Item (13)(b), as it affects an alternative share insurer, without the need for a specific contract provision.
- Item (13)(c) – We recommend that the minimum federal coverage limits not be stated as \$100,000, given that federal share insurance coverage is currently \$250,000 on IRAs and federal coverage is required to be indexed for inflation for IRA and non-IRA accounts in future years.

Also, as previously noted, the wording of ASI’s insuring contract, including limits of coverage, is governed by Ohio statute and subject to review and approval by ASI’s Ohio regulator. Other states have accepted this contract without necessitating an amendment of this nature. We do not believe that the DFI’s rules need to require the coverage limit be made part of the insurer’s contract. Instead, the Washington rule could simply require that “the alternative share insurer’s account coverage be equal to or greater than federal coverage limits,” or state that “at no times shall it be less than that of the NCUSIF.”

- Item (13)(d) – The lack of a federal or state government guarantee of the deposits at a privately insured credit union should be part of a credit union’s disclosures to consumers as required under FDICIA -- compliance with which is subject to state credit union regulators or the Federal Trade Commission (FTC) -- not the alternative share insurer. In certain states, local law expands upon the FDICIA requirements by demanding privately insured credit unions also advise members of the absence of a state guarantee.

- Item (14)(d) – We suggest inserting the words “number of” before “contracts among geographic regions.”

WAC 208-800-200 - Process for approval of application.

- No comments.

WAC 208-800-300 - Post-approval requirements for alternative share insurance programs.

- Items (2) and (3) – This section is not clear as to what processes will be followed if there is a technical default by the alternative share insurer on a rule/statute requirement and such default can be cured within a reasonable amount of time. There is no remedy provision other than to hold a hearing, and then advise the privately insured credit unions to seek federal insurance. We believe that there should be alternative remedy provisions. For example, there should be a reasonable remedy provision if the alternative insurer’s equity ratio falls below the “minimum” equity ratio but the insurer has developed a sound plan for recapitalization that requires a timeline to complete. Instead of requiring the privately insured credit unions in Washington to seek federal insurance, the DFI could place a moratorium on the approval of additional credit unions seeking to be insured by the alternative insurer until the situation is remedied under the agreed-upon plan of action.

WAC 208-800-400 - General provisions.

- No comments.

We sincerely appreciate the opportunity to comment on the DFI’s proposed rules and hope that they prove helpful with the development of the final rules. We would be pleased to answer any questions you may have regarding our comments.

Respectfully submitted,



DENNIS R. ADAMS
President/CEO

Enclosures

CHAPTER 1761 CREDIT UNION GUARANTY CORPORATIONS

Section

1761.01. Definitions.

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1761.03. Purposes of corporation.

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1761.09. Guaranteed amounts of share accounts.

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1761.18. Cease-and-desist orders.

1761.19. Supervisory conference; agreement.

1761.20. Civil penalty.

1761.21. Confidentiality.

1761.22. [Repealed]

1761.23. Revocation of license.

1761.24. State not liable for deficiency.

1761.25-1761.34 Repealed.

1761.99. Penalties.

§ 1761.01. Definitions.

As used in this chapter:

(A) "Account" means the total of all amounts credited to a participating credit union for paid-in capital contribution, and other credits, net of any charges to that participating credit union. "Account" is an "advancement" as that term is used in section 3901.72 of the Revised Code, and is subject to the

requirements of such section.

(B) "Capital contribution" means the amount each participating credit union is required to maintain as a capital deposit in the credit union share guaranty corporation. "Capital contribution" is an "advancement" as that term is used in section 3901.72 of the Revised Code, and is subject to the requirements of that section. "Capital contribution" constitutes assets of the corporation up to the amount of the normal operating level otherwise described in this chapter.

(C) "Credit union," "state," and "member," unless otherwise specified or described in this chapter, have the meanings given such terms in Chapter 1733. of the Revised Code.

(D) "Credit union share accounts" means funds deposited in any shares, accounts, deposits, or certificates of a participating credit union.

(E) "Credit union share guaranty corporation" means a corporation described in section 1761.02 of the Revised Code and licensed by the superintendent of insurance under section 1761.04 of the Revised Code to guarantee payment of a credit union share account of an individual member or, as described in division (B)(2) of section 1761.02 of the Revised Code, a nonmember of a credit union or otherwise issue or effect credit union share guaranty insurance.

(F) "Credit union share guaranty insurance" means that insurance for the protection of share accounts of member credit unions described in and required by section 1733.041 [1733.04.1] of the Revised Code.

(G) "Credit union supervisory authority" means that official who regulates credit unions in another state.

(H) "Deficiency" means the difference between the guaranteed amount of an individual member's or, as described in division (B)(2) of section 1761.02 of the Revised Code, a nonmember's credit union share account and the proceeds of any liquidation of a participating credit union distributed or to be distributed to the individual member or nonmember.

(I) "National credit union administration" means the federal regulatory agency as established and defined by the "Federal Credit Union Act," 84 Stat. 994 (1970), 12 U.S.C. 1751, as amended, or any successor to the national credit union administration.

(J) "Participating credit union" means a credit union that has applied for and been admitted to participation in a credit union share guaranty corporation and whose participation has not been terminated.

(K) "Share capital" means the aggregate of all moneys in credit union share accounts, irrespective of how denominated, which show a balance due on the records of the participating credit union and are guaranteed by the guaranty corporation.

(L) "Superintendent of insurance" is the chief executive officer and director of the department of insurance as provided in Chapter 3901. of the Revised Code.

(M) "Superintendent of credit unions" means the superintendent of the division of financial institutions of this state.

HISTORY: 142 v H 796 (Eff 9-14-88); 146 v S 162 (Eff 10-29-95); 146 v H 374 (Eff 3-3-96); 149 v H 506. Eff 9-27-2002.

§ 1761.02. Organization of credit union share guaranty corporation; tax exemptions.

(A) A credit union share guaranty corporation may be established, licensed, and operated in compliance with this chapter.

(B) (1) A credit union share guaranty corporation may be organized as a corporation under this chapter. Chapter 1701. or 1702. of the Revised Code, to the extent either is applicable and not in conflict with this chapter and those chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code, applies to such corporation. A credit union share guaranty corporation shall only be authorized to do any of the following:

(a) Engage in the business of guaranteeing payment of a credit union share account of an individual member of a credit union;

(b) In accordance with division (B)(2) of this section, engage in the business of guaranteeing payment of a credit union share account of a nonmember of a credit union;

(c) Otherwise issue or effect credit union share guaranty insurance.

(2) For purposes of division (B) of this section, both of the following apply:

(a) Nonmember share accounts are subject to guaranty provided by the credit union share guaranty corporation not exceeding twenty per cent of the aggregate share accounts of the participating credit union.

(b) Nonmember share accounts are nonmember share accounts that are received by a participating credit union that has been designated by its supervisory authority as serving predominantly low-income members; share accounts of other credit unions; and, to the extent determined by the participating credit union's supervisory authority to be received by that credit union consistent with law, share accounts of public units or political subdivisions. For purposes of division (B)(2)(b) of this section, "supervisory authority" means, with respect to any credit union doing business in this state, the superintendent of financial institutions and, with respect to any credit union doing business in another state, the official who regulates credit unions in that state.

(C) A credit union share guaranty corporation shall have the word "insurance" in its name.

(D) Persons who receive from a credit union share guaranty corporation any commission, salary, or other emolument for services arising out of their association with the corporation shall not comprise a majority of the membership of the board of directors of the corporation. This division does not apply to persons who receive only an emolument consisting of fees or expense reimbursements for serving as a member of the board of directors of the corporation or of a committee of the board of directors.

(E) A credit union share guaranty corporation organized as a nonprofit corporation under this chapter is exempt from all taxes and fees imposed by this state or any county, municipal corporation, local authority, or other subdivision, except that any real property owned by the nonprofit corporation is subject to taxation to the same extent according to its value as other real property is taxed.

(F) Notwithstanding the provisions of section 5725.18 of the Revised Code, the capital deposits or contributions by participating credit unions shall not be included in the value of capital and surplus

subject to the annual franchise tax payable by a credit union share guaranty corporation organized under this chapter nor shall any capital contributions, assessments, or fees received from participating credit unions for primary coverage by such credit union share guaranty corporation be included in the gross amount subject to the annual franchise tax. Any payment otherwise made under this division shall be in addition to any taxes due as an insurer under Title LVII [57] of the Revised Code.

HISTORY: 142 v H 796 (Eff 9-14-88); 149 v H 506. Eff 9-27-2002.

§ 1761.03. Purposes of corporation.

The general purposes of a credit union share guaranty corporation are:

(A) To guarantee payment of all or a part of participating credit union share accounts of an individual member or, as described in division (B)(2) of section 1761.02 of the Revised Code, a nonmember of a participating credit union, subject to any express limitations as provided in this chapter;

(B) To aid and assist any participating credit union that is in liquidation or incurs financial difficulty in order that the credit union share accounts are protected or guaranteed against loss;

(C) To cooperate with participating credit unions, the superintendent of credit unions, the appropriate credit union supervisory authorities, and the national credit union administration for the purpose of advancing the general welfare of credit unions in this state and in other states where participating credit unions operate.

HISTORY: 142 v H 796 (Eff 9-14-88); 149 v H 506. Eff 9-27-2002.

§ 1761.04. Regulation by superintendent of insurance; annual fee; rules.

(A) The licensing and operation of a credit union share guaranty corporation is subject to the regulation of the superintendent of insurance pursuant to Chapters 3901., 3903., 3905., 3925., 3927., 3929., 3937., 3941., and 3999. of the Revised Code to the extent such laws are otherwise applicable and are not in conflict with this chapter.

(B) A credit union share guaranty corporation shall pay, by the fifteenth day of April of each year, to the superintendent of credit unions, an annual fee of one-half of one per cent of its guarantee fund as shown by the corporation's last annual financial report, but in no event shall such payment exceed five thousand dollars in any calendar year.

(C) In addition to the specific powers and duties given the superintendent of insurance and the superintendent of credit unions under this chapter, the superintendents may independently, pursuant to Chapter 119. of the Revised Code, adopt, amend, and rescind such rules as are necessary to implement the requirements of this chapter.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.05. License required; conditions for issuance; hearing on denial; appeal.

(A) No person shall guarantee to a credit union payment of a credit union share account of an individual member or, as described in division (B)(2) of section 1761.02 of the Revised Code, a nonmember of a credit union or otherwise issue or effect credit union share guaranty insurance until the superintendent of insurance has licensed it to do so as a credit union share guaranty corporation under this chapter. Such license shall not be issued or renewed unless an applicant for a license or a credit union share guaranty corporation satisfies the following conditions:

(1) The articles of incorporation of the applicant or corporation, and any amendments thereto, are filed with and approved by the secretary of state and the attorney general;

(2) The articles of incorporation and the bylaws of the applicant or corporation, and any amendments thereto, are consistent with the provisions of this chapter and those chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code, and are approved by the superintendent of insurance;

(3) The applicant holds bona fide applications for participation in the corporation from at least thirty credit unions which shall become effective immediately upon issuance of the license, or, in the case of a renewal of such license, the corporation has at least thirty participating credit unions;

(4) The applicant or corporation maintains a reserve for guarantee losses in compliance with section 1761.15 of the Revised Code;

(5) the applicant or corporation has capital deposits in a principal sum no less than five million dollars and such capital deposits are invested in compliance with section 1761.13 of the Revised Code;

(6) The applicant or corporation submits an audited financial statement verified by the oath of the president and secretary of the corporation, which demonstrates the corporation's compliance with generally accepted accounting principles, and the applicant or corporation submits an annual statement in accordance with sections 3929.30 and 3941.29 of the Revised Code that demonstrates the applicant's or corporation's solvency according to principles of statutory accounting;

(7) The superintendent of credit unions certifies in writing to the superintendent of insurance that the applicant or corporation is in compliance with this chapter;

(8) The applicant or corporation is in compliance with those chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code as determined by the superintendent of insurance.

(B) The superintendent shall issue, renew, refuse to renew, or deny the license required by this section by written order issued within thirty days after receipt of the application. The superintendent shall issue or renew the license if the conditions set forth in division (A) of this section are satisfied.

(C) In the event the superintendent determines to refuse to renew or deny the license, the superintendent shall specify all reasons for the refusal or denial in the superintendent's written order and shall set the matter for hearing under Chapter 119, of the Revised Code within thirty days after issuance of that written order. At such hearing, the applicant or credit union share guaranty corporation may present evidence to demonstrate its ability to satisfy the conditions required for the issuance or renewal of a license under division (A) of this section. Within twenty days after the conclusion of the hearing, the superintendent shall issue his final order either issuing, renewing, refusing to renew, or denying the

license. The final order shall comply with the requirements of an adjudication order under Chapter 119. of the Revised Code. The applicant or credit union share guaranty corporation aggrieved by the final order may appeal in accordance with Chapter 119. of the Revised Code.

(D) The license required by this section shall be renewable annually on the anniversary date of the issuance of the original license.

HISTORY: 142 v H 796 (Eff 9-14-88); 149 v H 506. Eff 9-27-2002.

§ 1761.06. Powers and duties of corporation.

(A) In carrying out its general purposes as set forth in section 1761.03 of the Revised Code, a credit union share guaranty corporation may do any of the following:

(1) Guarantee to participating credit unions the payment of any deficiency in the individual member's or, as described in division (B)(2) of section 1761.02 of the Revised Code, a nonmember's credit union share accounts caused by insolvency or any other reason;

(2) Issue credit union share guaranty insurance policies or otherwise effect credit union share guaranty insurance;

(3) Advance funds in accordance with agreed lending terms and conditions to aid participating credit unions to operate and to meet liquidity requirements;

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

(5) Assist in the merger, consolidation, or liquidation of credit unions;

(6) Purchase or otherwise acquire, lease as lessee, invest in, hold, use, lease as lessor, encumber, sell, exchange, transfer, and dispose of property of any description or any interest therein;

(7) Borrow money, and issue, sell, and pledge its notes, bonds, and other evidences of indebtedness, and secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property, and guarantee or secure obligations of participating credit unions, subject to section 3901.72 of the Revised Code;

(8) Enter into contracts of insurance or reinsurance, insuring in whole or in part its contractual guarantees to participating credit unions and any other insurance or bonding company contracts necessary or advisable in the conduct of its business, provided a credit union share guaranty corporation shall not assume as reinsurer any risks from another insurer;

(9) Receive money or other property from its participating credit unions, or any person;

(10) Invest its funds as provided in section 1761.13 of the Revised Code;

(11) Receive by assignment, mortgage, or purchase any asset or interest therein owned or held by a

participating credit union;

(12) Sell, assign, mortgage, encumber, or transfer property of any nature;

(13) Conduct investigations, examinations, and audits of any applicant or participating credit union in order to determine the financial condition and operations of the applicant or participating credit union;

(14) Become a member or shareholder in any organization, domestic or foreign, regional or national, organized and operated for the purpose of assisting the corporation in carrying out its purposes and, subject to the approval of the superintendent of credit unions, delegate to such organization any one or more of the functions for which it is responsible under this chapter;

(15) Conduct its affairs in and outside of this state, provided it shall maintain its offices, books, and records in the location stated in its articles of incorporation as its principal place of business.

(B) The corporation may obtain, and continuously maintain in effect, reinsurance and a line of credit, each from one or more insurance companies or financial institutions and in such amount as determined by its board of directors. The superintendent of credit unions or the superintendent of insurance may require the corporation to obtain and maintain reinsurance or a line of credit but only in the event the superintendent of credit unions or the superintendent of insurance first finds that such reinsurance or line of credit is actuarially or financially necessary. Such determination shall be made on a year-to-year basis.

In the event of lapse of either reinsurance or the line of credit of the corporation, the corporation shall immediately notify the superintendent of credit unions, the superintendent of insurance, the president of the senate, and the speaker of the house of representatives, and shall confirm this communication in writing.

(C) All written communication with regulatory significance from a credit union supervisory authority of another state to the corporation shall be copied and such copy shall be sent by the corporation to the superintendent of credit unions and the superintendent of insurance within three days of receipt.

(D) The corporation shall not publicly represent in any manner that it is an agency of the state or federal government. Any public representations of the corporation's status or legal existence are further subject to rules adopted by the superintendent of credit unions and the superintendent of insurance.

(E) The corporation shall submit its standard contract of share guaranty, and any amendments thereto, to the superintendent of credit unions and the superintendent of insurance annually. The contract of share guaranty shall reflect all terms governing the guarantee of payment of a credit union share account and shall constitute the policy of credit union share guaranty insurance.

HISTORY: 142 v H 796 (Eff 9-14-88); 146 v H 374 (Eff 3-3-96); 149 v H 506. Eff 9-27-2002.

§ 1761.07. Conditions for participation of credit union in corporation; voting.

(A) Any credit union chartered by this state or any credit union chartered by a state that, as described in division (B) of this section, allows its credit unions to be eligible for participation in a credit union share guaranty corporation or any credit union chartered by the federal government that, as described in division (C) of this section, allows federally chartered credit unions to be eligible for participation in a

credit union share guaranty corporation is eligible to participate in a credit union share guaranty corporation under this chapter, subject to the following conditions:

- (1) The board of directors of the credit union and the board of directors of the credit union share guaranty corporation approve the participation;
- (2) The credit union satisfies the risk eligibility standards established by the credit union share guaranty corporation and applicable to all applying and participating credit unions;
- (3) The credit union agrees to furnish financial statements, delinquent loan reports, and other information considered necessary by the credit union share guaranty corporation to assess the financial condition and performance of the credit union;
- (4) The credit union agrees to be bound by the provisions of this chapter and the articles of incorporation and bylaws of the credit union share guaranty corporation;
- (5) Participation by the credit union would not result in a violation by the credit union share guaranty corporation of any provision of this chapter or other applicable state or federal law.

(B) Credit unions chartered by other states qualify for participation in the corporation, provided the following conditions are satisfied:

- (1) Such participation is lawful under the laws of both this state and the domicile state of the credit union applying for participation in the corporation;
- (2) The credit union share guaranty corporation by agreement or law has sufficient authority to require the credit union applying for participation in the corporation to comply with the articles of incorporation and bylaws of the corporation, and with this chapter;
- (3) The credit union supervisory authority of such state agrees to furnish to the credit union share guaranty corporation copies of all financial and examination reports and other information regarding participating credit unions as is necessary to effect the corporation's purposes. If the credit union supervisory authority is prohibited by law from disclosing this information, the participating credit unions shall provide the information to the corporation.

(C) Credit unions chartered by the federal government may participate in the corporation, provided the following conditions are satisfied:

- (1) The national credit union administration does not restrict such participation;
- (2) Such participation is lawful under the laws of both this state, the domicile state of the credit union applying for participation in the corporation, and the federal government;
- (3) The credit union share guaranty corporation by agreement or law has sufficient authority to require the credit union applying for participation in the corporation to comply with the articles of incorporation and bylaws of the corporation, and with this chapter;
- (4) To the extent permitted by federal law or regulation, participating credit unions insured by the national credit union administration agree to furnish to the corporation copies of all financial and examination reports and other information regarding the participating credit unions as is necessary to effect the corporation's purposes.

(D) Any credit union that has been admitted to participation in the credit union share guaranty

corporation in accordance with the qualifications of this section shall have referenced in their contract with the corporation all of the appropriate conditions for participation and the manner in which these conditions were satisfied.

(E) Any credit union that has been admitted to participation in the corporation in accordance with the qualifications of division (B) or (C) of this section shall have the same privileges, benefits, and obligations of participation as those participating credit unions chartered under the laws of this state.

(F) No credit union shall be admitted to participation in the corporation unless it has paid in full its capital contribution or any applicable premiums, fees, and assessments.

(G) Notwithstanding any other provision of law to the contrary, each participating credit union, which is otherwise entitled to vote on any matters or action of the corporation under this chapter, Chapter 1701, or 1702. of the Revised Code, or the articles or bylaws of the corporation, shall be entitled to cast no more than one vote.

(H) The right to participate issued by the corporation shall be nontransferrable and shall be exempt from the securities laws of this state.

HISTORY: 142 v H 796 (Eff 9-14-88); 149 v H 506. Eff 9-27-2002.

§ 1761.08. Assessment of financial condition of credit union; audits; investigations; confidentiality of information.

(A) (1) In order to permit the credit union share guaranty corporation to assess the financial condition and performance of a credit union, upon the written request of the corporation, the superintendent of credit unions or other credit union supervisory authority or the national credit union administration may furnish to the corporation a copy of unaudited financial statements filed by a participating credit union or a credit union making application to participate in the corporation pursuant to divisions (B) and (C) of section 1733.32 of the Revised Code or a comparable state or federal statute or of any examination reports of the superintendent or other credit union supervisory authority which were prepared pursuant to division (A) of section 1733.32 of the Revised Code or a comparable state or federal statute.

(2) There shall be no liability on the part of, and no cause of action of any nature shall arise against this state or any state, the superintendent of credit unions or other credit union supervisory authority, or the national credit union administration for the release of any information furnished to the corporation pursuant to this division.

(3) Financial statements and analyses furnished to the corporation pursuant to division (A) of this section are not public documents, and the information contained therein is privileged and confidential to the corporation for its sole use in carrying out its statutory functions.

(B) (1) Each participating credit union shall submit to the credit union share guaranty corporation quarterly, or more frequently as considered necessary by the corporation, a copy of its financial statements, delinquent loan report, and any other information considered necessary by the credit union share guaranty corporation in order to assess the financial performance of the participating credit union. The corporation may require that participating credit unions submit financial information in the format required by the corporation.

(2) Financial statements submitted to the corporation by participating credit unions pursuant to division

(B)(1) of this section are public documents.

(C) Each participating credit union shall submit to the credit union share guaranty corporation upon written request of the corporation any other information as is necessary to effect the corporation's purposes.

(D) (1) In addition to other powers conferred in this chapter a credit union share guaranty corporation may do the following:

(a) Appoint an independent certified public accountant or public accountant to prepare an audit report containing audited financial statements together with such other information as the corporation, in good faith, requires regarding the financial condition of any participating credit union;

(b) Upon notification to its participating credit union and after notice to the superintendent of credit unions, or other credit union supervisory authority, or the national credit union administration, send a specialized employee to investigate the operations of a participating credit union.

(2) Costs and expenses for an audit report or special investigation report under division (D)(1)(a) of this section shall be paid by the corporation.

(E) (1) Upon determination by the superintendent of credit unions or the credit union share guaranty corporation that a participating credit union is operating in an unsafe or unsound manner, or that financial statements, delinquent loan reports, and other data received or examined by the corporation is unreliable or the participating credit union investment in the corporation is in excess of five per cent of the corporation's fund, the corporation shall require that an audit of the books and records of the participating credit union be conducted. The audit shall be completed in accordance with generally accepted auditing standards, and include such testing of the records necessary to render an opinion of an independent certified public accountant.

(2) If the report, certificate, or opinion of the independent accountant, as described in division (E)(1) of this section, is in any way qualified, the corporation shall require the credit union to take such action as the corporation considers necessary to permit an independent accountant to remove such qualification from the report, certificate, or opinion. If such qualification is not remedied within the time period designated, the corporation shall report such qualification in writing to the superintendent within three days thereof.

(3) In addition to other action described in this division, the corporation may do the following:

(a) Recommend appropriate corrective measures to the operational policies and procedures of the participating credit unions;

(b) Make appropriate recommendations to the superintendent or appropriate credit union supervisory authority or the national credit union administration including the recommendation that the participating credit union be liquidated or consolidated;

(c) Submit reports and make recommendations to the superintendent of credit unions, other credit union supervisory authority, or the national credit union administration regarding the financial condition of any participating credit union. Such reports and recommendations are not public documents.

(4) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the corporation or its participating credit unions, directors, officers, employees, or agents, or the superintendent or other credit union supervisory authority or the national credit union administration, for any statements made by them in any reports or recommendations made in accordance with division (E)

of this section.

(F) When an examination or investigation of any participating credit union is considered necessary for good cause shown by the superintendent of credit unions under this chapter, the corporation shall pay to the superintendent of credit unions the cost thereof, including the salary or other compensation paid to the persons making the examination or rendering special services and overhead cost incurred in connection with the examination or investigation as fixed by the superintendent. In determining the costs of services or examinations, the superintendent may use the estimated hourly cost for all persons performing services for, or examinations of, the corporation for the fiscal year. Travel expenses shall be paid by the division of financial institutions.

(G) Neither the corporation nor any participating credit union, as an agent of the corporation or of its participating credit unions, or any other person shall use information obtained under division (A), (B), (C), (D), or (E) of this section for any purpose not authorized by this section. The conviction for violation of this division by any person located outside this state shall be reported to the appropriate credit union supervisory authority or the national credit union administration for prosecution under the laws of that jurisdiction.

HISTORY: 142 v H 796 (Eff 9-14-88); 149 v H 506. Eff 9-27-2002.

§ 1761.09. Guaranteed amounts of share accounts.

(A) Each credit union share account of an individual member or, as described in division (B)(2) of section 1761.02 of the Revised Code, a nonmember of a participating credit union shall be guaranteed in amounts established from time to time by the credit union share guaranty corporation. Such primary guaranteed amount shall not be less than the amount of the credit union share account but, in no event, shall exceed two hundred fifty thousand dollars.

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

(C) The guarantees provided pursuant to this chapter do not apply to credit union share accounts until the credit union has applied for and been admitted as a participating credit union, and cease to apply to the share accounts of any credit union upon the later of any of the following:

- (1) The termination of the credit union's participation in the corporation pursuant to section 1761.12 of the Revised Code;
- (2) The completion of the liquidation of the credit union;
- (3) The withdrawal of the credit union from participation in the corporation.

HISTORY: 142 v H 796 (Eff 9-14-88); 149 v H 506. Eff 9-27-2002.

§ 1761.10. Guarantee fund; capital contributions by credit unions; special assessments; distribution of assets.

(A) (1) A credit union share guaranty corporation shall establish and maintain a guarantee fund. The fund shall be maintained at a normal operating level as defined by the board of directors of the corporation and approved by the superintendent of insurance, except that the normal operating level shall at all times be no less than one per cent of the aggregate share capital of participating credit unions, irrespective of how denominated. The fund of the corporation shall be comprised of the following:

- (a) The account for each participating credit union;
- (b) Retained and undivided earnings;
- (c) Any reserves required by statute or order of the superintendent of credit unions;
- (d) Borrowings made in accordance with section 3901.72 of the Revised Code.

(2) (a) Each participating credit union shall contribute to and maintain with the corporation a capital contribution to be credited to its account, in an amount equal to at least one per cent of its aggregate share capital as is established as the normal operating level of the fund by the board of directors pursuant to division (A)(1) of this section and approved by the superintendent of insurance. Each participating credit union's account shall be adjusted annually to reflect changes in the participating credit union's aggregate share capital in accordance with procedures adopted by the board of directors and may be adjusted more frequently if an increase in the aggregate share capital or a change in the financial condition of the participating credit union warrants such adjustment. Those credit unions participating in excess coverage shall pay a premium as prescribed by the board of directors of the corporation and as filed and approved under Chapter 3937. of the Revised Code.

(b) The approval of the superintendent of insurance concerning the normal operating level of the guarantee fund expires upon written determination by the superintendent of insurance that there is cause for additions to the guarantee fund. This determination is not subject to any hearing requirement under Chapter 119. of the Revised Code, provided a credit union guaranty corporation may request a supervisory conference under section 1761.19 of the Revised Code.

(3) If, at the close of a fiscal year, the guarantee fund exceeds the normal operating level determined by the board of directors of a credit union share guaranty corporation, the board of directors may make a distribution of the excess to participating credit unions. Any distribution shall be made to each participating credit union in the proportion that each participating credit union's account bears to the total aggregate participating credit union accounts of the corporation. No determination by the board of directors is effective until approved by the superintendent of insurance. No distribution shall be made, nor shall it confer any rights, until approved by the superintendent of insurance.

(4) The amount of the account of each participating credit union shall be carried on the books of the individual participant as a deposit with the corporation.

(5) Notwithstanding any other provision of this chapter, the corporation shall require the participating credit unions to make capital contributions to maintain the normal operating level set by division (A)(1) of this section during any calendar year in which the fund has been reduced below the minimum operating level as a result of payment of any deficiencies in credit union share accounts.

(B) (1) The corporation may annually or more frequently levy and collect additions to the capital contribution as the board of directors of the corporation considers appropriate. The corporation shall notify the superintendent of credit unions and the superintendent of insurance of such additions. Whenever the superintendent of credit unions or the superintendent of insurance considers it necessary for the maintenance of the normal operating level of the fund, the superintendent shall order the

corporation to levy and collect additions to the capital contributions. Such order shall specify the amount of the addition and the reasons upon which the order is based.

(2) The corporation shall send a written notice of capital contributions required pursuant to division (B) (1) of this section to each participating credit union within ten days after the levy of any capital contributions. Capital contributions shall be paid to the corporation by each participating credit union not later than thirty days following mailing of written notice of any required capital contribution.

(C) (1) In the event of potential impairment of the fund, a special assessment of the fund may be levied by the corporation with the approval of the superintendent of credit unions or the superintendent of insurance. Impairment for this purpose is deemed to exist when the corporation's liabilities and share capital exceed its assets. Whenever the superintendent of credit unions or the superintendent of insurance considers it necessary to avoid an impairment of the fund, the superintendent shall order the corporation to levy a special assessment. Such order shall specify the amount of the assessment and the reasons upon which the order is based.

(2) The corporation shall send a written notice of the special assessment required pursuant to division (C)(1) of this section to each participating credit union within ten days after the levy thereof. Special assessments shall be paid to the corporation by each participating credit union not later than thirty days following mailing of written notice of any special assessment unless for good cause shown the time period is extended.

(D) A report of each capital contribution that may be required pursuant to division (B) of this section shall be made to the superintendent of credit unions and the superintendent of insurance within ninety days of the special assessment levy. A report of each special assessment that is required pursuant to division (C) of this section shall be made to the superintendent of credit unions and the superintendent of insurance within ten days after mailing the written notice thereof to participating credit unions.

(E) (1) In the event any participating credit union fails to pay an annual capital contribution when due, the corporation shall report such default in writing to the superintendent of credit unions and the superintendent of insurance and the appropriate credit union supervisory authority or the national credit union administration within twenty-four hours of such default, and shall revoke after thirty days' notice the participating credit union's participation in the corporation, unless good cause is shown for the delay.

(2) In the event any participating credit union fails to pay any additional capital contribution, premium, fee, or assessment when due, the corporation shall report such default in writing to the superintendent of credit unions and the superintendent of insurance and the appropriate credit union supervisory authority or the national credit union administration within twenty-four hours of such default, and shall revoke after thirty days' notice the participating credit union's participation in the corporation, unless good cause is shown for the delay.

(3) The thirty-day notice of revocation required under divisions (E)(1) and (2) of this section does not apply to the revocation of excess coverage.

(F) Any participating credit union that is voluntarily liquidated or any participating credit union that withdraws from participation in the corporation and obtains a different form of share guaranty or insurance pursuant to section 1733.041 [1733.04.1] of the Revised Code or similar state statute, or any participating credit union that merges with another credit union that becomes the surviving credit union whose shares are guaranteed or insured by a different form of guaranty or insurance may be refunded in an amount equal to the balance of its capital contribution account. Such reimbursement of a participating credit union's capital contribution account balance shall be paid only if and when the guarantee fund

exceeds its normal operating level as calculated without the account of the withdrawing credit union.

(G) In the event of a merger of two or more participating credit unions where the surviving credit union is to be insured by the corporation, the funds in the capital contribution account of each credit union shall be transferred to the account of the surviving credit union.

(H) If a credit union share guaranty corporation is dissolved, the net assets after settling any recorded, contingent, and contractual liabilities, and all costs of dissolution shall be distributed to the participating credit unions in accordance with their share balances, less any outstanding debts owed to the corporation.

HISTORY: 142 v H 796 (Eff 9-14-88); 149 v H 506. Eff 9-27-2002.

§ 1761.11. Notice of taking possession or liquidation of credit union; payment of deficiency; subrogation.

(A) The superintendent of credit unions shall give prompt notice to the applicable credit union share guaranty corporation whenever he takes possession of the property and assets of a participating credit union. The superintendent shall give further prompt notice whenever he determines to liquidate the property and assets of such participating credit union.

(B) When the property and business of a participating credit union has been liquidated or is in the process of liquidation and the proceeds of liquidation distributed are insufficient to pay the full guaranteed amount of each credit union share account, the corporation shall pay each such deficiency up to the guaranteed amount within thirty days from the date the credit union share account balance is verified. When such guaranteed amounts are paid, and after charging the amount thereof to undivided or retained earnings, each participating credit union's account shall be reduced ratably based on the account balance for the total amount paid.

(C) When any member's credit union share account is paid, the corporation shall be subrogated to all rights of the member, up to the amount paid by the corporation to such member.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.12. Termination of participation of credit union.

(A) A credit union share guaranty corporation may terminate the participation in the corporation of a participating credit union for any of the following reasons:

(1) The participating credit union fails to satisfy the risk eligibility standards established by the corporation and applicable to all applying and participating credit unions;

(2) The participating credit union otherwise operates in an unsafe and unsound manner as determined by the corporation;

(3) The participating credit union fails to furnish financial statements, delinquent loan reports, or other information considered necessary by the corporation under division (B) or (C) of section 1761.08 of

the Revised Code;

(4) The participating credit union fails to remedy in a timely manner a qualification arising from an audit under division (E) of section 1761.08 of the Revised Code;

(5) The participating credit union fails to pay when due a capital contribution or applicable premium, fee, or assessment under section 1761.10 of the Revised Code;

(6) The participating credit union fails to comply with any provision of this chapter or the articles of incorporation or bylaws of the corporation;

(7) Continued participation would result in a violation of this chapter or other applicable state or federal law by the corporation.

(B) (1) The credit union share guaranty corporation shall, at least thirty days prior to the effective date of any termination, notify in writing the participating credit union to be terminated and the superintendent of credit unions, any other credit union supervisory authority, or the national credit union administration of the pending termination and the reasons for such termination.

(2) The thirty-day notice of termination required under division (B)(1) of this section does not apply to the termination of excess coverage.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.13. Investment or deposit of funds; fidelity bonds.

(A) A credit union share guaranty corporation shall invest or deposit its funds in the following manner:

(1) In banks incorporated under the laws of this or any other state, or the United States;

(2) In negotiable certificates of deposit and bankers acceptances;

(3) In share certificates deposited in or any form of evidence of interest or indebtedness of any credit union organized under Chapter 1733 of the Revised Code or comparable state law if insured, or whose member accounts are insured as provided for by Title II of the "Federal Credit Union Act," 84 Stat. 994, (1970), 12 U.S.C. 1781, as amended, or by comparable insurance. No investment under division (A)(3) of this section shall be in a participating credit union.

(4) In accounts with, investment certificates or withdrawable shares of, any savings and loan association that is an insured institution as defined by Title IV of the "National Housing Act," 48 Stat. 1255 (1934), 12 U.S.C. 1724, as amended.

(5) In United States government securities or United States government agency obligations;

(6) In bonds or other evidence of indebtedness rated in the three highest ratings of Standard and Poor's or Moody's service, not in default as to principal or interest, that are valid obligations issued, assumed, or guaranteed by any state, county, or municipal corporation of the United States;

(7) In bonds or other evidence of indebtedness rated in the three highest ratings by Standard and Poor's or Moody's service, not in default as to principal or interest, that are valid obligations issued, assumed,

or guaranteed by any corporation incorporated under the laws of the United States or a state and described in division (D)(1) of section 3925.08 of the Revised Code. However, a credit union share guaranty corporation shall not invest in any such corporate security containing any provision of optionality, including, but not limited to, any derivative security.

(8) In any other investments that are expressly approved by the superintendent of credit unions and the superintendent of insurance or are permitted by rules adopted by the superintendents pursuant to division (C) of section 1761.04 of the Revised Code, but such other investments shall not exceed twenty per cent of the sum of the capital contributions, retained and undivided earnings, and any borrowings made in accordance with section 3901.72 of the Revised Code of the corporation. The superintendents shall not permit the corporation to make any investment in any unrelated corporation or unrelated subsidiary without the prior written approval of the superintendent of credit unions and the superintendent of insurance.

(B) The maximum investment in securities of any one corporation shall not exceed ten percent of the guarantee fund at the time the investment is made.

(C) The corporation's directors, officers, committee members, and employees, and immediate family members of such individuals, are prohibited from receiving pecuniary or any other type of consideration in connection with the making of an investment or deposit by the corporation.

(D) Within thirty days of appointment, each officer, agent, or employee having control or access to funds or securities owned by or pledged with a credit union share guaranty corporation shall be provided with fidelity bond coverage by the corporation in an amount commensurate with the risk involved.

(E) The corporation shall not take a position in any corporate stock without the express written approval of the board of directors and the superintendent of credit unions and the superintendent of insurance.

HISTORY: 142 v H 796 (Eff 9-14-88); 149 v H 506. Eff 9-27-2002.

§ 1761.14. Recording and use of income; charging of expenses.

(A) A credit union share guaranty corporation shall record income from investments in an income account, and may use such income to defray expenses of operations. Income from all sources that exceeds an amount determined by the board of directors to be adequate to provide for current expenses may be credited to participating credit unions' accounts.

(B) Expenses of operations that exceed income from all sources at year end shall be charged, first to undivided or retained earnings, and then to participating credit unions' accounts. Each participating credit union's accounts shall be charged ratably based on the account balance for the amount of the excess.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.15. Reserve for guaranty losses.

A credit union share guaranty corporation shall establish a reserve for guaranty losses on an incurred

basis in accordance with generally accepted accounting principles during the period in which such losses become evident. Such reserve shall provide for losses reported to the corporation, losses incurred but not reported, and estimated losses on the collection of notes and other guarantees to member credit unions. Estimates of loss frequency and loss severity for incurred but not reported losses shall be made based on historical data, trends, economic factors, and other statistical information related to member credit unions. Such reserve shall be reported in its annual statement to the superintendent of insurance according to the principles of statutory accounting. All determinations of the superintendent of insurance shall be made on the basis of principles of statutory accounting.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.16. Reports; audited financial statements; examinations; accounting procedures.

(A) A credit union share guaranty corporation shall file with the superintendent of credit unions an annual report containing audited financial statements, prepared in accordance with generally accepted accounting principles or such other accounting requirements determined by the superintendent of credit unions, covering the fiscal year within one hundred days after the close of such fiscal year in accordance with division (E) of this section and in the form and with such other relevant information as the superintendent of credit unions may require by rules adopted under division (C) of section 1761.04 of the Revised Code. The audited financial statements shall include at least a balance sheet and a statement of income for the year ended on the balance sheet date. The report and audited financial statements shall be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant. Every such report shall be certified by the oath of the president and secretary of the corporation, and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it.

(B) If the report, certificate, or opinion of the certified public accountant or independent accountant referred to in division (A) of this section is qualified pursuant to generally accepted auditing standards, the superintendent of credit unions shall require the corporation to take such action as he considers appropriate to permit an independent accountant to remove such qualification from the report, certificate, or opinion. The superintendent may reject any financial statement, report, certificate, or opinion filed pursuant to division (A) of this section by notifying the corporation of its rejection and the cause thereof. Within thirty days after receipt of such notice, the corporation shall correct such qualification, and the failure to do so is deemed a violation of this division. The superintendent shall retain a copy of all filings so rejected.

(C) The superintendent of credit unions shall conduct or cause to be conducted, not more often than annually and not less than every three years, an audit examination of the credit union share guaranty corporation. The audit examination shall include an actuarial study of the capital adequacy of the corporation. The corporation shall be assessed the costs of such audit examination, which assessment shall not exceed one per cent of the capital contributions and surplus of the corporation.

(D) The superintendent of credit unions may require a special examination of the corporation in the event the superintendent determines that there is or will be an impairment of the guarantee fund as defined in division (C)(1) of section 1761.10 of the Revised Code. The corporation shall be assessed the cost of such special examination.

(E) The accounting of the corporation shall be on a calendar year basis or as otherwise prescribed by the corporation with the prior written approval of the superintendent of credit unions. The books of the

corporation shall be maintained in accordance with generally accepted accounting principles.

(F) The corporation shall make any other special report to the superintendent of credit unions as he may from time to time require. Such a report shall be in the form and filed at such date as prescribed by the superintendent, and shall, if required by the superintendent, be verified in such manner as prescribed.

(G) Each credit union share guaranty corporation shall be subject to examination by the superintendent of insurance in accordance with section 3901.07 of the Revised Code. Section 3901.07 of the Revised Code shall govern every aspect of the examination, including the circumstances under and frequency with which it is conducted, the authority of the superintendent and any examiner or other person appointed by the superintendent, the liability for the assessment of expenses incurred in conducting the examination, and the remittance of the assessment to the superintendent's examination fund.

(H) All of the provisions of this section are in addition to those chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code.

HISTORY: 142 v H 796 (Eff 9-14-88); 144 v S 137. Eff 8-8-91.

§ 1761.17. Superintendents may take possession of property and business of corporation.

(A) The superintendent of credit unions or the superintendent of insurance may forthwith take possession of the property and business of the credit union share guaranty corporation and retain possession until the corporation satisfies the superintendent that it will operate in conformity with this chapter whenever it appears to the superintendent that the corporation has done any of the following:

(1) Failed to pay the annual fee required by division (B) of section 1761.04 of the Revised Code;

(2) Not paid deficiencies up to the maximum guaranteed amount within the time frame set forth in section 1761.11 of the Revised Code;

(3) Invested its funds in violation of section 1761.13 of the Revised Code;

(4) Not collected required capital contributions or special assessments in accordance with section 1761.10 of the Revised Code;

(5) Knowingly violated any cease-and-desist order;

(6) Neglected or refused to submit any item specifically required by the superintendent under this chapter to the inspection of any examiner or other agent of the superintendent.

(B) During the time the superintendent of credit unions retains possession of the property and business of the corporation pursuant to division (A) of this section, he shall perform the duties and carry out the obligations of the corporation.

(C) Whenever the superintendent has taken possession of the property and business of the corporation, if it considers itself aggrieved thereby, the corporation may, within ten days after such taking, apply to the common pleas court of Franklin county to enjoin further proceedings. The court, after citing the superintendent to show cause why further proceedings should not be enjoined, and after a hearing and a determination of the facts upon the merits, may dismiss such application or enjoin the superintendent

from further proceedings and direct him to surrender the property and business to the corporation, or make such further order as may be just.

(D) An appeal may be taken from the judgment of the court by the superintendent or by the corporation in the manner provided by law for appeals from the judgment of a court of common pleas. An appeal from the judgment of the court shall not operate as a stay of the judgment unless the court, on good cause, so orders.

(E) Any action by the superintendent of insurance to take possession of the property and business of a credit union share guaranty corporation shall be under Chapter 3903. of the Revised Code.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.18. Cease-and-desist orders.

(A) (1) If, in the opinion of the superintendent of credit unions, a credit union share guaranty corporation or a director, officer, or employee of the corporation is engaged in any unsafe or unsound practice in conducting the business of the corporation, has knowingly participated in or consented to a violation of this chapter or rules adopted thereunder, or has failed to comply with a supervisory agreement, he may serve upon such corporation, director, officer, or employee notice that he is considering issuing an order against the corporation, director, officer, or employee pursuant to division (A)(2) or (3) of this section.

If, in the opinion of the superintendent of insurance, a credit union share guaranty corporation or a director, officer, or employee of the corporation is engaged in any unsafe or unsound practice in conducting the business of the corporation, has knowingly participated in or consented to a violation of those chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code or rules adopted thereunder, or has failed to comply with a supervisory agreement, he may serve upon such corporation, director, officer, or employee notice that he is considering issuing an order against the corporation, director, officer, or employee pursuant to division (A)(2) or (3) of this section.

(2) A notice served under division (A)(1) of this section that relates to matters other than an alleged violation of a supervisory agreement shall contain a statement of the alleged facts constituting the basis for an order and fix a time and place for a hearing. The hearing shall be conducted in accordance with section 119.09 of the Revised Code, except that, notwithstanding division (E) of section 119.01 of the Revised Code, the hearing shall not be a public hearing. The date for the hearing shall be not less than thirty nor more than forty-five days after such notice has been given by the superintendent of credit unions or the superintendent of insurance to the corporation, director, officer, or employee.

If, after conducting such hearing, the superintendent of credit unions determines that the corporation, director, officer, or employee is or has knowingly participated in or consented to a violation of this chapter, or engaged in an unsafe or unsound practice, he may issue a final cease-and-desist order. Such final cease-and-desist order may direct the corporation, director, officer, or employee to remedy the violation of this chapter, the unsafe or unsound practice, or the failure to comply, in addition to refraining from such violations or unsafe or unsound practices in the future.

If, after conducting such hearing, the superintendent of insurance determines that the corporation, director, officer, or employee is or has knowingly participated in or consented to a violation of those

chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code, or engaged in an unsafe or unsound practice, he may issue a final cease-and-desist order. Such final cease-and-desist order may direct the corporation, director, officer, or employee to remedy the violation of such chapters of Title XXXIX [39] of the Revised Code, the unsafe or unsound practice, or the failure to comply, in addition to refraining from such violations or unsafe or unsound practices in the future.

Such final order of the superintendent of credit unions or the superintendent of insurance becomes effective upon service on the corporation, director, officer, or employee and remains effective and enforceable as its terms provide, except to such extent as it is stayed, modified, terminated, or set aside by action of the superintendent or a reviewing court.

(3) If the superintendent of credit unions or the superintendent of insurance proposes to issue a cease-and-desist order based on the violation of a supervisory agreement, he shall serve the corporation, director, officer, or employee with a notice of noncompliance. Such notice shall specify the actions that are alleged to be in violation of the supervisory agreement. The notice shall also set a time and place for a hearing, which shall occur not less than thirty nor more than forty-five days after the notice has been served on the corporation, director, officer, or employee. The hearing shall be conducted in the manner prescribed in section 119.09 of the Revised Code, except that, notwithstanding division (E) of section 119.01 of the Revised Code, such hearing shall not be a public hearing.

If, after such hearing, the superintendent of credit unions or the superintendent of insurance determines that the corporation, director, officer, or employee has knowingly violated the supervisory agreement, he may issue a final cease-and-desist order.

If, after such hearing, the superintendent of credit unions or the superintendent of insurance determines that the corporation, director, officer, or employee has violated the supervisory agreement but that the conduct in question does not constitute a knowing violation, the superintendent shall give the corporation, director, officer, or employee an opportunity to remedy the violation. The superintendent shall issue a statement of specific actions that must be taken by the corporation, director, officer, or employee, and establish a time frame in which the corporation, director, officer, or employee must take such corrective action to comply with the supervisory agreement. If, by the end of such time frame, the corporation, director, officer, or employee has failed to implement the corrective actions required by the superintendent, the superintendent may issue a final cease-and-desist order.

Nothing in this division shall be construed to prevent the superintendent of credit unions from issuing a cease-and-desist order pursuant to divisions (A)(1) and (2) of this section or division (B) of this section based on the violation of this chapter, or on an unsafe or unsound practice of the corporation, director, officer, or employee, even though such violation or practice may also constitute a violation of an outstanding supervisory agreement.

Nothing in this division shall be construed to prevent the superintendent of insurance from issuing a cease-and-desist order pursuant to divisions (A)(1) and (2) of this section or division (B) of this section based on the violation of those chapters of Titles XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code, or on an unsafe or unsound practice of the corporation, director, officer, or employee, even though such violation or practice may also constitute a violation of an outstanding supervisory agreement.

(B) If, in the opinion of the superintendent of credit unions, the corporation, director, officer, or employee is or has engaged in any unsafe or unsound practice, or has participated in or consented to a violation of this chapter or rules adopted thereunder, he may issue a summary order requiring the corporation, director, officer, or employee to cease and desist from such violation or practice.

If, in the opinion of the superintendent of insurance, the corporation, director, officer, or employee is or has engaged in any unsafe or unsound practice, or has participated in or consented to a violation of those chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code or rules adopted thereunder, he may issue a summary order requiring the corporation, director, officer, or employee to cease and desist from such violation or practice.

The summary cease-and-desist order, which shall contain a statement of the facts allegedly constituting grounds for the order, shall be served upon the corporation, director, officer, or employee and becomes effective upon receipt. The summary order shall include notification of the time and place of a hearing, which shall be held in accordance with division (A)(2) of this section. Unless the superintendent of credit unions or the superintendent of insurance issues a final cease-and-desist order within ten days after conclusion of the hearing, the summary order issued pursuant to this division is void. Otherwise, the summary order remains effective and enforceable until it is replaced by the final order, except to such extent as it is stayed, modified, terminated, or set aside by action of the superintendent.

(C) The corporation, director, officer, or employee who is adversely affected by a final cease-and-desist order may appeal from the order to the court of common pleas in accordance with section 119.12 of the Revised Code.

(D) In lieu of a hearing pursuant to division (A) or (B) of this section, the corporation, director, officer, or employee may consent to the issuance of an order requiring such corporation, director, officer, or employee to cease and desist from engaging in any activity or practice as specified in such order. A consent cease-and-desist order has the full force and effect of a final cease-and-desist order issued pursuant to division (A)(2) of this section and is enforceable in accordance with division (E) of this section. Any corporation, director, officer, or employee that fails to attend a hearing set pursuant to division (A) or (B) of this section is deemed to have consented to the issuance of a final cease-and-desist order.

(E) If the superintendent of credit unions or the superintendent of insurance has reasonable cause to believe that a lawful final or summary cease-and-desist order issued pursuant to this section has been violated, he may request the attorney general to commence and prosecute any appropriate action or proceeding. A court of competent jurisdiction shall enforce a lawful final order issued pursuant to this section and may grant such other relief as the facts warrant.

(F) Service on the corporation, director, officer, or employee as provided for in this section shall be by actual written notice or certified mail to the director, officer, or employee or, in the case of the corporation, to the managing officer of such corporation.

(G) When any proceeding or action is begun under this section, the superintendent of credit unions and the superintendent of insurance shall provide the other with notice of the proceeding or action and shall provide an opportunity to the other to join and participate in the proceeding or action.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.19. Supervisory conference; agreement.

(A) If, at any time, the superintendent of credit unions or the superintendent of insurance has cause to believe that the actions or practices of a credit union share guaranty corporation or its officers, directors, or employees may cause harm to the corporation, its members, or creditors, the superintendent may set a supervisory conference. The superintendent shall inform each director of the corporation of the date, time, and place of the supervisory conference. The directors of the corporation shall attend supervisory conferences set by the superintendent. Unless a director has a reasonable excuse for his refusal or failure to attend a supervisory conference, such refusal or failure shall be grounds for removal. Such removal shall be in accordance with procedures applicable to the removal of a director of a credit union under section 1733.181 [1733.18.1] of the Revised Code.

(B) At the supervisory conference, the superintendent shall inquire into the actions or practices at issue. If it appears to the superintendent that such actions or practices are likely to cause harm to the corporation, its members, or creditors, the superintendent may negotiate and conclude an agreement with the corporation, its officers, or directors as to action that is to be taken by the corporation, its officers, or directors to correct or prevent the actions or practices which are the subject of the supervisory conference. Such an agreement shall be reduced to writing as soon as possible after it is concluded, and may be modified or terminated by a subsequent agreement.

(C) This section shall not be construed to mean that the superintendent cannot request a meeting with the management, board of directors, or agent of the corporation other than for the purpose of concluding a supervisory agreement.

(D) When any supervisory conference is set under this section, the superintendent of credit unions and the superintendent of insurance shall provide the other with notice of the supervisory conference and shall provide an opportunity to the other to join and participate in the supervisory conference.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.20. Civil penalty.

(A) (1) If a credit union share guaranty corporation or a director, officer, or employee of the corporation fails to comply with any agreement concluded with the superintendent of credit unions under section 1761.19 of the Revised Code, or any final or summary cease-and-desist order issued by the superintendent under section 1761.18 of the Revised Code, the superintendent of credit unions may order the corporation, director, officer, or employee to forfeit and pay a civil penalty in an amount fixed by the superintendent.

(2) If a credit union share guaranty corporation or a director, officer, or employee of the corporation fails to comply with any agreement concluded with the superintendent of insurance under section 1761.19 of the Revised Code, or any final or summary cease-and-desist order issued by the superintendent under section 1761.18 of the Revised Code, the superintendent of insurance may order the corporation, director, officer, or employee to forfeit and pay a civil penalty in an amount fixed by the superintendent.

(B) The amount of the penalty under division (A) of this section shall be not more than ten thousand dollars for each day the noncompliance continues. In fixing the amount of a civil penalty, the superintendent shall consider all of the following factors:

(1) The seriousness of the noncompliance and the gravity of the risk occasioned by the noncompliance;

(2) The good faith efforts made by the corporation, director, officer, or employee to perform his or its obligations under or otherwise to comply with the order;

(3) The history of previous violations or unsafe or unsound practices by the corporation, director, officer, or employee that resulted in the service of a notice under division (A)(1) of section 1761.18 of the Revised Code;

(4) The financial resources of the corporation, director, officer, or employee against whom the penalty is being assessed;

(5) Any other matters as justice may require.

(C) If the corporation, director, officer, or employee fails to pay a forfeiture assessed under this section, the superintendent shall bring a civil action to collect the forfeiture.

(D) A director, officer, or employee is personally liable for the payment of any civil penalty that is assessed against him under this section. No corporation shall pay, or cause to be paid, on behalf of the director, officer, or employee, or indemnify or otherwise reimburse the director, officer, or employee for paying, any civil penalty that has been assessed against that director, officer, or employee.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.21. Confidentiality.

(A) All conferences and administrative proceedings under sections 1761.18 and 1761.19 of the Revised Code, the fact of their actual or anticipated occurrence, and all notices, agreements, hearings, orders, records, evidence, transcripts, and other writings, happenings, or things pertaining to those conferences or proceedings shall be kept confidential as among the superintendent of insurance, the superintendent of credit unions, the director of commerce, the deputy director of financial institutions, the governor, a credit union share guaranty corporation or a director, officer, or employee of the corporation who is party to the conference or proceedings, witnesses in the conference or proceedings, and other persons specifically designated by the superintendent of credit unions for those conferences and proceedings set by him or the superintendent of insurance for those conferences and proceedings set by him. In designating specific persons who may be present or acquire knowledge of matters made confidential by this division, the superintendent shall not exclude attorneys or other suitable representatives of the corporation, director, officer, or employee who is party to the conference or proceedings. If the conference or proceedings apply to a director, officer, or employee, the superintendent shall not exclude suitable representatives of the credit union of which such regulated individual is an officer, director, or employee.

(B) Division (A) of this section ceases to apply upon the occurrence of any of the following:

(1) An action is brought to recover a forfeiture for the violation of an agreement concluded, or a final or summary cease-and-desist order issued, under section 1761.18 or 1761.19 of the Revised Code. A forfeiture, in the absence of such an action for recovery, does not waive division (A) of this section except insofar as the forfeiture must be reflected or reported in the financial records or reports of the credit union or regulated individual.

(2) Information made confidential by division (A) of this section is needed as evidence in a criminal proceeding or in the work of a committee of the general assembly;

(3) The superintendent of credit unions or the superintendent of insurance furnishes information made confidential by division (A) of this section to the applicable insurer recognized under section 1733.041 [1733.04.1] of the Revised Code.

(C) No officer or employee of the division of credit unions, of the department of commerce or any of its other divisions, or of the governor's office shall violate division (A) of this section.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.22. Repealed.

Repealed, 146 v S 293 [142 v H 796]. Eff 9-26-96.

§ 1761.23. Revocation of license.

(A) The superintendent of insurance may revoke the license of any credit union share guaranty corporation that fails to comply with a final cease-and-desist order issued under section 1761.18 of the Revised Code or for any violation of this chapter or the insurance laws of this state.

(B) No license shall be revoked under this section or any other section of this chapter or the insurance laws of this state until after a hearing has been held in accordance with Chapter 119. of the Revised Code.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.24. State not liable for deficiency.

Nothing in this chapter creates any liability upon this state for the payment of any funds to any participating credit union by reason of the acts or omissions of the credit union share guaranty corporation, nor shall the state pay any deficiency of any participating credit union in the event the corporation is unable to pay such deficiency.

HISTORY: 142 v H 796. Eff 9-14-88.

§ 1761.25. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 138 v H 610]. Eff 9-14-88.

§ 1761.26. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 138 v H 610]. Eff 9-14-88.

§ 1761.27. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 138 v H 610]. Eff 9-14-88.

§ 1761.28. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

§ 1761.29. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

§ 1761.30. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

§ 1761.31. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

§ 1761.32. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

§ 1761.33. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

§ 1761.34. Repealed.

Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

§ 1761.99. Penalties.

(A) Whoever violates section 1761.05 or division (G) of section 1761.08 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates division (C) of section 1761.21 of the Revised Code is guilty of a misdemeanor of the first degree. A person who is convicted of violating such division is also subject to disciplinary action, including dismissal or removal from office.

HISTORY: 142 v H 796. Eff 9-14-88.

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Chapter 1301:9-3 Credit Union Share Guaranty Corporation

1301:9-3-01 Advancement and withdrawal of capital contribution by participating credit unions.

(A) The credit union share guaranty corporation shall obtain the written approval of the superintendent of insurance as to the percentage amount of the aggregate share capital of a participating credit union, which each participating credit union must contribute and maintain with the credit union share guaranty corporation as a capital contribution, prior to requiring each participating credit union to contribute and maintain such a capital contribution.

(B)(1) The credit union share guaranty corporation shall provide the superintendent of insurance and the superintendent of credit unions with written notification at least thirty days prior to the repayment of any capital contribution, in connection with:

(a) The liquidation of any participating credit union;

(b) The withdrawal of any participating credit union from the credit union share guaranty corporation after such credit union obtains a different form of share guaranty or insurance pursuant to section 1733.041 of the Revised Code or similar state statute; or

(c) The merger of a participating credit union with another credit union, if the shares of the surviving credit union are guaranteed or insured by a different form of guaranty or insurance.

(2) Such written notification shall include:

(a) The name and address of the withdrawing credit union and its state of domicile;

(b) The reason for the withdrawal of the credit union;

(c) Whether or not the guarantee fund will exceed its normal operating level without the account of the withdrawing credit union; and

(d) Any other information which the superintendent of insurance may request.

(C) The credit union share guaranty corporation shall provide the superintendent of credit unions with copies of all written approvals or denials of the superintendent of insurance obtained pursuant to paragraphs (A) and (B) of this rule.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.01(B), 1761.04(A), 1761.10, 3941.13

1301:9-3-02 Documents filed with the superintendent of insurance.

In addition to the applicable requirements set forth in Chapter 1761, and Title XXXIX of the Revised Code, the credit union share guaranty corporation shall simultaneously furnish any documents it is required to file with the superintendent of insurance thereof to the superintendent of credit unions.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.04(A), 1761.16(F)

1301:9-3-03 Issuance and renewal of certificate of compliance.

(A) The credit union share guaranty corporation shall apply to the superintendent of credit unions for a certificate of compliance with Chapter 1761. of the Revised Code prior to obtaining a license from the superintendent of insurance.

(B) The superintendent of credit unions shall determine whether the credit union share guaranty corporation is in compliance with Chapter 1761. of the Revised Code. The superintendent of credit unions shall notify the credit union share guaranty corporation and the superintendent of insurance of his determination.

(1) If the superintendent of credit unions finds that the credit union share guaranty corporation is in compliance with Chapter 1761. of the Revised Code, the superintendent of credit unions shall issue a certificate of compliance.

(2) If the superintendent of credit unions finds that the credit union share guaranty corporation is not in compliance with Chapter 1761. of the Revised Code, the superintendent of credit unions shall issue a denial with supporting evaluation.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.05(A)(7)

1301:9-3-04 Credit union share guaranty corporation activity.

The credit union share guaranty corporation shall notify the superintendent of credit unions and the superintendent of insurance, in writing, at least five business days prior to taking any action to aid or assist, by an amount which exceeds one hundred thousand dollars, any participating credit union which is in liquidation or incurs financial difficulty. In the event of an emergency, such action may be taken in less than five business days, after notifying the superintendent of insurance and the superintendent of credit unions. As soon as practical the credit union share guaranty corporation must provide documentation to the superintendent of credit unions and the superintendent of insurance stating the reasons for such an emergency and why action must be taken in less than five days. Such actions requiring notice shall include, but are not limited to:

(A) Purchasing an asset from any participating credit union;

(B) Assuming control of the property and business of any participating credit union;

(C) Assisting in the merger, consolidation or liquidation of any participating credit union;

(D) Paying out on behalf of a participating credit union all or a part of any participating credit union's individual member share accounts; or

(E) Otherwise advancing funds to a participating credit union.

HISTORY: Replaces part of rule 1301:9-3-01; Eff 1-1-78; 9-1-79; 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.08, 1761.16(F)

1301:9-3-05 Necessity of reinsurance or line of credit.

The superintendent of credit unions may consider the following criteria, among others, in determining if it is actuarially or financially necessary for a credit union share guaranty corporation to obtain reinsurance or a line of credit from one or more insurance companies or financial institutions:

(A) The operating level of the credit union share guaranty corporation's guarantee fund has not been maintained at a level of one and three-tenths per cent of the aggregate share capital of the participating

credit unions.

(B) The capital contribution contributed by any participating credit union exceeds more than one per cent of the guarantee fund.

(C) Reinsurance is obtained from an insurance company which is not licensed to do business in the state of Ohio pursuant to Title XXXIX of the Revised Code.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.06(B)

1301:9-3-06 Notice of termination, nonrenewal or any other lapse of reinsurance or line of credit.

In the event of the termination, nonrenewal or any other lapse of either the credit union share guaranty corporation's reinsurance or line of credit, the credit union share guaranty corporation shall immediately notify the superintendent of credit unions, the superintendent of insurance, the president of the senate and the speaker of the house. Oral notification shall be followed immediately by written notification. Such written notification, delivered certified mail, return receipt requested, shall include:

(A) An assessment of the financial and actuarial impact and significance of the termination, nonrenewal or other lapse of the reinsurance or line of credit on the credit union share guaranty corporation;

(B) A determination of whether the termination, nonrenewal or other lapse of the reinsurance or line of credit is material or in the ordinary course of business;

(C) The proposed response of the credit union share guaranty corporation to the termination, nonrenewal or other lapse of the reinsurance or line of credit; and

(D) Any other information which may be requested by the superintendent of credit unions, the superintendent of insurance, the president of the senate or the speaker of the house.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.06(B)

1301:9-3-07 Communication with regulatory significance.

Written communication with regulatory significance from a credit union supervisory authority of another state to the credit union share guaranty corporation, as set forth in division (C) of section 1761.06 of the Revised Code, shall mean any correspondence, examination reports, supervisory agreements, or orders or any other document received by a credit union share guaranty corporation from a credit union supervisory authority pertaining to:

(A) A participating credit union with a capital, assets, management, earnings and liquidity (CAMEL) rating, or its equivalent, of four or below;

(B) A participating credit union placed under a supervisory agreement or under any order; or

(C) A participating credit union considered substandard by the credit union share guaranty corporation or the state regulatory authority.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.06(C)

1301:9-3-08 Public representation of credit union share guaranty corporation's status or legal existence.

(A) The credit union share guaranty corporation shall not publicly represent in any manner that it is an agency of the state or federal government or that it is guaranteed in any way by a governmental agency.

(B) The credit union share guaranty corporation shall not publicly represent in any manner that it is licensed under Chapter 3941. of the Revised Code.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.06(D)

1301:9-3-09 Participating credit union financial information.

The financial statements, examination reports, analyses and other information submitted by the superintendent of credit unions or other credit union supervisory authority, the National Credit Union Administration or by participating credit unions to the credit union share guaranty corporation, pursuant to section 1761.08 of the Revised Code, are and shall remain privileged and confidential while in the custody of the credit union share guaranty corporation and as shared with credit union supervisory authorities.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.08(A), (B), (C), (G)

1301:9-3-10 Qualified audit report of a participating credit union.

The credit union share guaranty corporation shall notify the superintendent of credit unions immediately whenever the credit union share guaranty corporation shall require that an audit be conducted of the books and records of a participating credit union. In the event that the audit report, certificate or opinion of the independent certified public accountant is in any way qualified and such qualification is not remedied within three months of the date the participating credit union becomes aware of the qualification, or such shorter period as required by the credit union share guaranty corporation, the credit union share guaranty corporation shall immediately report such qualification in writing to the superintendent of credit unions and the superintendent of insurance.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.08(E)

1301:9-3-11 Normal operating level of guarantee fund.

(A) The credit union share guaranty corporation shall notify the superintendent of credit unions and the superintendent of insurance of the normal operating level of the guarantee fund, as approved by its board of directors, and of any change in the normal operating level of the guarantee fund.

(B) The credit union share guaranty corporation shall request, in writing, the written approval of the superintendent of insurance of any change in such normal operation level as approved by its board of directors.

(C) The credit union share guaranty corporation shall notify the superintendent of credit unions of the approval or disapproval of such normal operating level of the guarantee fund by the superintendent of insurance.

(D) The credit union share guaranty corporation shall notify the superintendent of insurance and the superintendent of credit unions, in writing, within twenty-four hours after the guarantee fund is reduced below the normal operating level approved by the superintendent of insurance.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.10

1301:9-3-12 Credit union share guaranty corporation payout on shares.

When the property and business of a participating credit union have been liquidated or are in the process of liquidation and the proceeds of liquidation are insufficient to pay the full guaranteed amount of each credit union share account, the credit union share guaranty corporation shall notify the superintendent of credit unions and the superintendent of insurance of the amount of the share deficiency upon verification of the share account balances and the date on which such deficiency has been paid.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.11

1301:9-3-13 Approval of investments.

(A) Except as provided in divisions (A)(1) to (A)(6) of section 1761.13 of the Revised Code, a credit union share guaranty corporation shall not invest or deposit its funds in any manner or make any investment in any company, related or unrelated, without obtaining the prior written approval of the superintendent of credit unions.

(B) As used in paragraph (A) of this rule:

(1) "Company" means any corporation, partnership, association, joint stock company or unincorporated organization.

(2) "Investment" means any equity interest, including, general partnership interests, limited partnership interests in which liability is limited to the amount of the investment, and any bonds, notes, debentures or other evidence of indebtedness of any company.

(3) "Related" means the business or activities of the company are similar to the business and activities of the credit union share guaranty corporation with respect to business, trade, products or services.

(4) "Unrelated" means the business or activities of the company are not similar to the business and activities of the credit union share guaranty corporation with respect to business, trade, products or services.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.13(A)(7)

1301:9-3-14 Credit union share guaranty corporation annual report.

(A) The credit union share guaranty corporation shall submit its annual report to the superintendent of credit unions, department of commerce, within one hundred days after the close of the fiscal year. The annual report shall be certified by the oath of the president and secretary of the credit union share guaranty corporation which shall state that the annual report is true and correct in all respects to the best of the knowledge and belief of the signatories. The annual report shall include:

(1) Audited financial statements, prepared in accordance with generally accepted accounting principles, for the fiscal year. Audited financial statements shall include, but not be limited to, a balance sheet and an income statement for the year ended on the balance sheet date. The audited financial statements shall be accompanied by an opinion of an independent certified public accountant. If the opinion of the independent certified public accountant is qualified pursuant to generally accepted auditing standards, the superintendent of credit unions shall require the credit union share guaranty corporation to take such action as he considers appropriate to effect removal of such qualification from the opinion.

(2) Special reports addressing the following areas:

(a) Guarantee fund;

(b) Capital deposits;

(c) Reserves;

(d) Additions; and

(e) Excess premiums.

(3) A report on the standard contract used by the credit union share guaranty corporation. In addition to any standard contract of share guaranty and any amendments thereto not previously submitted, the report shall address the following issues:

(a) The terms of the standard contract and any amendments thereto;

(b) State by state variations in the contract, including any amendments thereto made in the previous calendar year; and

(c) Marketing material and any and all other membership documents and publications used in each state for primary and excess coverage including any changes thereto made in the previous calendar year.

(4) A report on reinsurance and lines of credit in effect for the credit union share guaranty corporation. This report shall include the following items:

(a) Description of the coverage which shall include sources, amount and exceptions;

(b) Credit union share guaranty corporation evaluation of financial need to support the coverage amount; and

(c) Credit union share guaranty corporation evaluation of actuarial need to support the coverage amount.

(5) A report on the risk eligibility standards for participating credit unions.

(6) A crisis contingency plan providing for an event in which the credit union share guaranty corporation is unable to restore its guarantee fund to its normal operating level following the payment of any deficiencies in credit union share accounts or it is otherwise in financially hazardous condition.

(7) A reconciliation of generally accepted accounting principles to statutory accounting principles, including a written description of such difference. Such reconciliation shall include, but not be limited to, the normal operating level of the guarantee fund, as defined in section 1761.10 of the Revised Code.

(B) The annual report shall be in such format and include such additional items as the superintendent

of credit unions may from time to time require. The superintendent of credit unions may reject any report or financial statement contained in the annual report or filed pursuant to division (A) of section 1761.16 of the Revised Code, and the superintendent of credit unions shall notify the credit union share guaranty corporation of such rejection and the reasons therefor. Within thirty days after receipt of the rejection notice the credit union share guaranty corporation shall correct any report or financial statement so rejected. Failure to timely correct any report or financial statement is a violation of division (B) of section 1761.16 of the Revised Code.

(C) The credit union share guaranty corporation shall furnish a copy of the annual report to the superintendent of insurance within one hundred days after the close of the fiscal year.

HISTORY: Replaces part of rule 1301:9-3-03; Eff 1-1-78; 9-1-79; 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.16(B)

119.032 Review Date: 11-15-99; 11-15-04

1301:9-3-15 Actuarial study of capital adequacy and disclosure of examination reports.

(A) The audit examination of the credit union share guaranty corporation by the superintendent of credit unions, conducted not less than every three years, shall include an actuarial study of the capital adequacy of the credit union share guaranty corporation. The credit union share guaranty corporation will be assessed the costs of the actuarial study.

(B) The superintendent of credit unions shall determine when an actuarial study of the capital adequacy of the credit union share guaranty corporation shall be conducted in accordance with division (C) of section 1761.16 of the Revised Code and shall approve in advance any proposal submitted by the share guaranty corporation concerning the scope of, and the company to perform, such study.

(C) The credit union share guaranty corporation shall provide the superintendent of insurance with a copy of the audit examination report upon completion of such examination.

(D) The credit union share guaranty corporation shall provide the superintendent of credit unions with a copy of the examination report prepared by the superintendent of insurance.

(E) The officers, employees, and agents of a credit union share guaranty corporation shall not disclose the contents of the audit examination report and any other special examination report prepared by the superintendent of credit unions to any person other than to the superintendent of insurance and to those officers, employees or agents of the credit union share guaranty corporation and other state regulatory agencies who have a need for such records in the performance of their duties, unless such disclosure has been approved in advance by the superintendent of credit unions.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.16(C), (D)

1301:9-3-16 Quarterly reporting.

The credit union share guaranty corporation shall submit a quarterly report to the superintendent of credit unions within thirty days after the close of the calendar quarter. The quarterly report shall include a financial statement, a guarantee fund report and any other information considered necessary by the superintendent of credit unions in order to assess the financial condition of the credit union share guaranty corporation.

HISTORY: Eff 1-1-91

Rule promulgated under: RC 119.03

Rule authorized by: RC 1761.04

Rule amplifies: RC 1761.16(F)

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