

**Article 13-03
Credit Unions**

Chapter

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Section 13-03-02-02 is amended as follows:

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

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

1. The mortgage has been properly signed and recorded in the office of the county recorder where the real property is located.
2. The credit union must verify that the mortgagor is the owner of the real property in fee simple and the credit union must determine the order of priority of the lien established by the mortgage.
3. ~~For real estate loans equaling two hundred fifty thousand dollars or more, a written appraisal must be obtained from the credit union's designated appraiser. The credit union's designated appraiser must be independent of the transaction and be state certified or licensed, or if the loan is one million dollars or more, be state certified. The written appraisal must comply with the uniform standards of professional appraisal practices and be filed with the loan documents. For real estate loans less than two hundred fifty thousand dollars, an evaluation of the property value must be well documented, reasonably support the value assigned, and be included with the loan documents; the person performing the evaluation must be qualified to perform the evaluation and be independent of the transaction. However, this subsection does not apply to real estate loans subject to title 12, Code of Federal Regulations, part 722, promulgated by the national credit union administration board. For these loans, the credit union must comply with the federal requirements for transactions requiring a state certified or licensed appraiser. For real estate loans equal to or more than two hundred fifty thousand dollars, an appraisal must be conducted by a licensed or certified appraiser if required under 12 Code of Federal Regulations part 722.~~
4. For real estate loans that do not meet the requirements of subsection 3, a credit union must obtain an appropriate evaluation of real property collateral for transactions if an appraisal by a licensed or certified appraiser is not obtained.
5. Regardless of the value of a real estate loan, the commissioner may issue an order requiring an appraisal by a licensed or certified appraiser when necessary to address safety and soundness concerns.
64. Adequate casualty, fire, and tornado insurance has been obtained and is maintained throughout the life of the loan with a mortgage clause for the benefit of the credit union.
75. A note for the amount of the loan has been signed by the mortgagor or mortgagors consistent with the terms of the mortgage.
86. The credit union may make exceptions to subsections 2, 3, and 6 of this section if the mortgage is taken as an abundance of caution as set forth in

12 CFR 722.3, and the value of the real property security is not used as part of the analysis of the borrower's credit worthiness.

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

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-04-01 is amended as follows:

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

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

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

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-05-01 is amended as follows:

13-03-05-01. Procedure.

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

1. The board of directors of each state-chartered credit union shall pass a resolution by a majority of the directors, in favor of the merger, stating specific terms, if any.
2. The resolution shall be submitted to the entire membership of the affected credit unions at the time of and accompanying the notice of a regular or special meeting, and must be approved by a majority of the membership of each affected credit union present at the meeting. The state credit union board, in the exercise of the board's discretion, may suspend this subsection when such suspension is in the best interests of the affected credit unions and their members. Alternatively, the Commissioner, in the exercise of the Commissioner's discretion, may temporarily suspend this subsection until after approval is obtained from the State Credit Union Board, if the merging credit union is federally chartered.
3. An application to merge must be filed with the state credit union board to approve the merger by the proper officials of each of the credit unions.

4. ~~Prior to action on the proposed merger by the board~~ At least thirty days prior to the date of consideration of the application by the state credit union board, the secretary ~~or of the board~~ shall notify all credit unions ~~in the field of membership, or within a fifty mile [80.47 kilometers] radius of a closed field of membership credit union's office, of the merging credit union of the proposed merger~~ within a 75 mile radius of the continuing credit union's home office and each county in which the merging credit union maintains its principal office or a branch. The notice must specify the names and locations of both the merging credit union and the continuing credit union, and the time and place of the board meeting at which the proposed merger will be considered. Interested credit unions will be given an opportunity to comment on the proposed merger in writing and at the meeting at which the proposal is considered. The board may, when it believes it to be in the public interest, request a hearing be held. Notice of hearing on an application will, if requested, be at least thirty days prior to the hearing. Notice of the proposed merger does not have to be given or a hearing held when the continuing credit union is to receive assistance from the national credit union administration.
5. All laws and regulations of the national credit union share insurance fund applicable to merging insured credit unions must be complied with before the merger is consummated.
6. Upon approval of the merger, the continuing credit union may apply to assume the field of membership of the merging credit union, pursuant to the requirements of chapter 13-03-14.

History: Amended effective February 1, 1981; August 1, 1993;_____.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-36, 6-06-37

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

Section

13-03-06-01 Definitions

13-03-06-02 Maintaining an Allowance for Loan and Lease Loss Account

13-03-06-03 Calculation

13-03-06-04 Prompt Corrective Action

13-03-06-05 Requirements

Section 13-03-06-01 is amended as follows:

13-03-06-01. Definitions.

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

5. "Net worth" means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. Net worth does not include the allowance for loan and lease loss account or other comprehensive income/loss account. Additionally:

- a. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the national credit union share insurance fund. ~~For any credit union, net worth does not include the allowance for loan and lease loss account.~~
- b. For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero; the acquired retained earnings must be determined at the point of acquisition under generally accepted accounting principles; and a mutual combination is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union; and
- c. The term "net worth" also includes loans to and accounts in an insured credit union established under section 208 of the Federal Credit Union Act (73 Stat. 628, 84 Stat. 944, 12 U.S.C. 1788), provided such loans and accounts,
 - (1) Have a remaining maturity of more than five years,
 - (2) Are subordinate to all other claims including those of shareholders, creditors and the national credit union share insurance fund,
 - (3) Are not pledged as security on a loan to, or other obligation of, any party;
 - (4) Are not insured by the national credit union share insurance fund;
 - (5) Have non-cumulative dividends;

(6) Are transferable; and

(7) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

26. "Net worth ratio" means the ratio of net worth of the credit union to the total assets of the credit union.

37. "Net worth restoration plan" means a plan submitted by the credit union and approved by the commissioner outlining the actions the credit union will take and timeframes for improving the credit union's capital position and becoming well-capitalized. The plan must comply with part 702 of the national credit union administration's rules and regulations.

48. "Quarterly reserve requirement" means a transfer from current quarter earnings into the regular reserve account equal to one-tenth of one percent of assets.

59. "Risk-based net worth requirement" means the level of net worth necessary given the risk level of the credit union as defined in part 702 of the national credit union administration's rules and regulations.

610. "Total assets" means quarter end asset balance, average daily balance over the calendar quarter, average month-end balances over the three calendar months in the calendar quarter, or the average of quarter end balances of the current and preceding calendar quarters.

11. "Total reserves" means, for the purpose of this chapter, the sum of the following:

- a. the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles;
- b. the allowance for loan and lease loss account;
- c. other comprehensive income or loss;
- d. unrealized gain or loss on available for sale securities; and
- e. secondary capital.

12. "Retained earnings" means undivided earnings, regular reserves, and any other appropriations designated by regulatory authorities.

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

General Authority: NDCC 6-01-04

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

Section 13-03-06-02 is amended as follows:

13-03-06-02. Maintaining an allowance for loan and lease loss account.

1. ~~All credit unions operating under a charter issued by the state of North Dakota shall be required to maintain an allowance for loan and lease loss account in accordance with generally accepted accounting principles and rules of the national credit union administration. When the amounts calculated under section 13-03-06-03 exceed those required pursuant to North Dakota Century Code section 6-06-21, the allowance for loan and lease loss account will be considered inadequate, and the excess will be transferred to the allowance for loan and lease loss account through the provision for loan and lease loss expense account within thirty days as directed by the commissioner.~~

2. ~~Upon application by a credit union to the state credit union board, and upon the showing of extraordinary hardship, the state credit union board may alter the allowance for loan and lease loss requirements as set forth in this chapter when in its opinion, such an alteration is necessary or desirable.~~

History: Amended effective June 1, 1979; January 1, 1981; January 1, 2007; January 1, 2013; _____.

General Authority: NDCC 6-01-04

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

Section 13-03-06-03 is amended as follows:

13-03-06-03. Calculation.

The adequacy of the allowance for loan and lease loss account as required under North Dakota Century Code section 6-06-21 will be based upon ~~an individual loan classification at each examination of the credit union performed by the commissioner under authority granted the commissioner under North Dakota Century Code section 6-06-08~~generally accepted accounting principles and incorporate the credit union's credit risk rating system as outlined in section 13-03-06-05. The commissioner may require a credit union to put aside additional reserves ~~on loans according to the following classification formula:~~

1. ~~Substandard loans up to ten percent of the loan balance.~~

2. ~~Doubtful loans the net exposure to loss after collateral values are considered.~~

3. ~~Loss loans — the net exposure to loss after collateral values are considered when funding levels are deemed to be unsafe or unsound as set forth in North Dakota Century Code section 6-06-08.4.~~

History: Effective January 1, 1981; amended effective June 1, 2002; January 1, 2007; January 1, 2013; _____.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-08.4, 6-06-21

Section 13-03-06-04 is amended as follows:

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

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

History: Effective January 1, 1981; amended effective May 1, 1981; January 1, 2007; January 1, 2013; _____.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-08.4, 6-06-21

Section 13-03-06-05 is created as follows:

13-03-06-05. Requirements

The Board of Directors must develop a policy requiring risk monitoring and a credit grading system, and management must establish a process to implement a credit grading system and monitoring to effectively measure and monitor the level of risk in relation to total reserves. The system must:

1. Assign credit risk ratings to commercial loans at inception and reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies:
2. Ensure adequate allowance for loan and lease loss funding as required by generally accepted accounting principles (GAAP);

3. Include the loan classification categories of watch or special mention, Substandard, Doubtful, and Loss;
4. Accurately identify loan risk ratings and classifications in accordance with accepted industry and regulatory guidance and as assigned during examinations;
5. Establish a process for the Board of Directors to oversee the performance of the loan portfolio, including periodic reporting to the Board of Directors aggregate loan portfolio credit risk rating levels, trends, loan classifications as a percentage of the credit union's total reserves or net worth, and loan concentration levels to net worth in relation to established policy limits.
6. Include Board of Director review of the need for independent review and validation of the accuracy of the commercial loan credit risk rating system and frequency of such action; and,
7. Assess the impact of current market conditions and the potential impact of changing market conditions in a stressed environment to include:
 - a. For commercial loans, the impact of the changes on the borrower, associated borrowers, and credit union's earnings and net worth.
 - b. Portfolio concentrations greater than 100% of credit union net worth in consumer loans with similar characteristics, assess the impact of changes on credit union's earnings and net worth
 - c. Portfolio concentrations greater than 100% of credit union net worth in investments with similar characteristics, assess the impact of changes on credit union's earnings and net worth.

History: Effective

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-08-03 is amended as follows:

13-03-08-03. Credit applications and overdrafts.

Consistent with policies established by the board of directors, the credit committee or loan officer shall ensure that a credit application is kept on file for each borrower supporting the decision to make a loan or establish a line of credit. A credit union may advance money to a member to cover an account deficit without having a

credit application from the borrower on file if the credit union has a written overdraft policy. The policy must set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses, establish a time limit not to exceed ~~forty-five~~sixty calendar days for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft, limit the dollar amount of overdrafts the credit union will honor per member, and establish the fee ~~and interest rate~~, if any, that the credit union will charge members for honoring overdrafts. All overdrafts will be reported on the credit union's financial statements in accordance with generally accepted accounting principles, and will be treated as a loan in determining compliance with subdivision g of subsection 1 of North Dakota Century Code section 6-06-12 and North Dakota Administrative Code chapter 13-03-06.

History: Effective January 1, 2013; amended effective _____.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-14-03 is amended as follows:

13-03-14-03. Application to expand field of membership.

A credit union wishing to expand its field of membership shall comply with the following:

1. Approval to expand the field of membership must be given by the board of directors of the credit union by a majority of that board;
2. After approval by the credit union's board of directors, application must be made to the state credit union board to expand its field of membership. The necessary forms for "application for field of membership expansion", including the business plan and the financial impact to the credit union and as required in subsection 3, may be secured from the department of financial institutions;
3. The application to expand the field of membership must be accompanied by the necessary documents for amendment of bylaws as required by North Dakota Century Code section 6-06-04;
4. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of an open charter application, cause a notice of the proposed field of membership expansion to be published in the official newspaper of the county ~~or counties affected by the~~ of the credit union's home office and each county which is proposed charter expansion to be included in the expanded field of membership. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of a closed charter application, cause a notice of the proposed field of membership expansion to be published in the eight

major newspapers in the state set forth in subdivisions a through h of subsection 1 of section 13-01.1-04-01. However, if a closed charter credit union intends to limit its expansion into specified geographical areas within the state, the notice must only be published in the official newspaper of the county or counties affected by the proposed expansion; and

5. The notice must specify the time and place of the meeting of the state credit union board at which the application for the charter expansion will be acted upon. Comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

History: Effective April 1, 1988; amended effective October 1, 1997; June 1, 2002;_____.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-07

Section 13-03-15-04 is amended as follows:

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

1. A credit union wishing to establish a branch shall comply with the following:
 - a. Approval to establish the branch must be given by the board of directors of the credit union by a majority of that board;
 - b. After approval by the credit union's board of directors, application must be made to the state credit union board to establish the branch. The necessary forms for "application to establish a branch", including the business plan and the financial impact to the credit union, may be secured from the department of financial institutions;
 - c. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board, cause to be published a notice in the official newspaper of the county ~~or counties affected by of the credit union's home office and the county in which~~ the proposed branch is to be located. The notice must specify the field of membership, and, if an open charter, the geographical boundaries; and
 - d. The notice must specify the time and place of the meeting of the state credit union board at which the application for establishing the branch will be acted upon. Written comments may be submitted to the board concerning the application, or a written request for an

opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

2. The state credit union board, when considering the branching of a credit union, shall consider the following:
 - a. If the branch is for an open charter, and if the application to establish the branch is accompanied by an application to expand the field of membership, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the branch office, must be clearly spelled out;
 - b. Whether serious injury would result to any other state or federally chartered credit union in North Dakota;
 - c. Whether the credit union has demonstrated the ability to succeed with the branch; and
 - d. Any other factor that the state credit union board deems pertinent.

History: Effective April 1, 1988; amended effective June 1, 2002; January 1, 2007; January 1, 2013;_____.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

Chapter 13-03-16 is repealed:

CHAPTER 13-03-16
MEMBER BUSINESS LOAN LIMITS
[Repealed effective _____ 2017]

Section

- ~~13-03-16-01 Definitions~~
- ~~13-03-16-02 Requirements~~
- ~~13-03-16-03 Loan Limits~~
- ~~13-03-16-04 Allowance for Loan Losses~~
- ~~13-03-16-05 Construction and Development Lending~~
- ~~13-03-16-06 Prohibitions~~
- ~~13-03-16-07 Recordkeeping~~
- ~~13-03-16-08 Aggregate Loan Limit~~
- ~~13-03-16-09 Exceptions to the Aggregate Loan Limit~~

~~**13-03-16-01. Definitions.**~~

1. ~~"Associated member" means any member with a shared ownership, investment or other pecuniary interest in a business or commercial endeavor with the borrower.~~
2. ~~"Construction or development loan" means a financing arrangement for the purpose of acquisition of property or rights to property including land or structures with the intent of conversion into income-producing property including residential housing for rental or sale, commercial, or industrial use, or a similar use.~~
3. ~~"Immediate family member" means a spouse or other family member living in the same household.~~
4. ~~"Loan to value (LTV)" ratio means the quotient of the aggregate amount of all sums borrowed from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.~~
5. ~~"Member business loans" means any loan, participation loan interest, line of credit, or letter of credit (including unfunded commitments), the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, except that the following may not be considered member business loans for the purposes of this section:~~
 - a. ~~A loan or loans fully secured by a lien on a one to four family dwelling that is the member's primary residence.~~
 - b. ~~A loan that is fully secured by shares in the credit union or deposits in other financial institutions.~~
 - c. ~~A loan meeting the general definition of member business loans under this subsection and, made to a borrower or an associated member as defined in subsection 1, which, when added to other such loans to the borrower or associated member, is less than fifty thousand dollars.~~
 - d. ~~A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the federal government or of a state or any of its political subdivisions.~~
 - e. ~~A loan granted by a corporate credit union operating under the provisions of part 704 of the national credit union administration rules and regulations to another credit union.~~
6. ~~"Net worth" means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. For low income designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the national credit union share insurance fund. For any credit union, net worth does not include the allowance for loan and lease loss account.~~

~~History: Effective December 1, 1992; amended effective October 1, 1994; January 1, 2001; January 1, 2013.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

~~**13-03-16-02. Requirements.**~~

- ~~1. **Written loan policies.** The board of directors shall adopt specific business loan policies and review them at least annually. The policies must, at a minimum, address the following:~~
 - ~~a. Types of business loans that will be made;~~
 - ~~b. The credit union's trade area for business loans;~~
 - ~~c. Maximum amount of credit union assets, in relation to net worth, that will be invested in business loans;~~
 - ~~d. Maximum amount of credit union assets, in relation to net worth, that will be invested in a given category or type of business loan;~~
 - ~~e. Maximum amount of credit union assets, in relation to net worth, that will be loaned to any one member or group of associated members, subject to subsection 1 of section 13-03-16-03;~~
 - ~~f. Qualifications and experience of personnel involved in making and administering business loans with a minimum of two years direct experience with this type of lending;~~
 - ~~g. Analysis of the ability of the borrower to repay the loan;~~
 - ~~h. Documentation supporting each request for an extension of credit or an increase in an existing loan or line of credit shall, except where the board of directors finds that such documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the credit union's written policies, include balance sheet, cash flow analysis, income statement, tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation; including tax returns;~~
 - ~~i. Collateral requirements, including loan-to-value ratios; determination of value, title search, and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated;~~
 - ~~j. Appropriate interest rates and maturities of business loans;~~
 - ~~k. Loan monitoring, servicing, and followup procedures, including collection procedures;~~
 - ~~l. Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans; and~~
 - ~~m. Identification, by position, of those senior management employees prohibited by subsection 1 of section 13-03-16-06 from receiving member business loans.~~

2. ~~**Other policies.** The following minimum limits and policies must also be established in writing and reviewed at least annually for loans granted under this section:~~
- a. ~~Loans offered to nonnatural person members which are limited to routine purposes made available under such programs, must be granted on a fully secured basis by collateral as follows:~~
 - (1) ~~Agricultural operating crop and livestock production loans with loan to value ratios up to eighty percent of projected crop production and livestock sales using current crop and livestock prices. This limitation does not apply if the agricultural operating loan is cross collateralized with chattel or real estate if such loans do not exceed the loan to value ratios on chattel or real estate loans.~~
 - (2) ~~Liens, including chattel, real estate, and all commercial loans, for loan to value ratios of up to eighty percent.~~
 - (3) ~~The maximum loan to value ratio for all liens must not exceed eighty percent unless the value in excess of eighty percent is covered through private mortgage insurance, or equivalent type of insurance or, insured, guaranteed, or subject to advance commitment to purchase by, an agency of the federal government or of a state or any of its political subdivisions, and in no event may the loan to value ratio exceed ninety five percent.~~
 - b. ~~Loans may not be granted without the personal liability and guarantees of the principals (natural person members) except:~~
 - (1) ~~The borrower is a not for profit organization as defined by the Internal Revenue Service Code [26 U.S.C. 501];~~
 - (2) ~~The borrower is a political subdivision or governmental agency or instrumentality; or~~
 - (3) ~~The credit union has applied for, and has been granted, a waiver from the commissioner for the subject loan or loans.~~
 - c. ~~Business loans secured by a vehicle are not subject to the loan to value restrictions outlined in this rule, provided the vehicle is a car, van, pickup truck, or sport utility vehicle and not part of a fleet of vehicles.~~
 - d. ~~Unsecured loans, including credit card line of credit programs (including unfunded commitments), are authorized. The aggregate of the unsecured outstanding member business loans to any one member or group of associated members may not exceed the lesser of one hundred thousand dollars or two and one half percent of the credit union's net worth. The aggregate of all unsecured outstanding member business loans may not exceed ten percent of the credit union's net worth. A credit union shall have the right to apply to the state credit union board for an exemption under this subsection.~~

History: ~~Effective December 1, 1992; amended effective January 1, 2001; January 1, 2013.~~

General Authority: ~~NDCC 6-01-04~~

Law Implemented: ~~NDCC 6-06-06~~

~~13-03-16-03. Loan limits.~~

- ~~1. **Loans to one borrower.** Unless a greater amount is approved by the state credit union board, the aggregate amount of outstanding member business loans to any one member or group of associated members may not exceed fifteen percent of the credit union's net worth, or one hundred thousand dollars, whichever is higher. A credit union may lend an additional ten percent of the credit union's net worth to any one member or group of associated members if such credit is extended for seasonal advances associated with operating purposes for the production of farm products and repayment of which is required to be made within a normal business cycle not to exceed twelve months. In no event can the credit union lend, or the state credit union board approve an exception for a credit union resulting in a loan to any one member in excess of the limitation specified in subsection 7 of North Dakota Century Code section 6-06-12. If any portion of a member business loan is secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion may not be calculated in determining the fifteen percent limit.~~
- ~~2. **Exceptions.** Credit unions seeking an exception from the limits of subsection 1 or section 13-03-16-05 must present the state credit union board with, at a minimum the higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; and analysis of the credit union's prior experience making member business loans; and a copy of its business-lending policy. The analysis of credit union experience in making member business loans shall document the history of loan losses, loan delinquency, volume and cyclical or seasonal patterns, diversification, concentrations of credit to one borrower or group of associated borrowers in excess of fifteen percent of net worth, underwriting standards and practices, types of loans grouped by purpose and collateral and qualifications of personnel responsible for underwriting and administering member business loans. The state credit union board shall consider, in addition to the information submitted by the credit union, the historical CAMEL ratings. If the credit union does not receive notification of the action taken within ninety calendar days of the date the request was received by the state credit union board, the credit union may assume approval of the request to exceed the limit.~~
- ~~3. **Maturity.** Member business loans must be granted for periods consistent with the purpose, security, creditworthiness of the borrower and sound lending policies.~~

~~History: Effective December 1, 1992; amended effective January 1, 2001; January 1, 2013.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

~~**13-03-16-04. Allowance for loan losses.**~~

~~A credit union will calculate and fund its allowance for loan loss account as outlined in chapter 13-03-06. Credit unions will establish and maintain an adequate credit grading system to evaluate both the loan portfolio and the allowance for loan loss account.~~

~~History: Effective December 1, 1992; amended effective January 1, 2013.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

~~**13-03-16-05. Construction and development lending.**~~

~~Loans granted under this section to finance the construction or development of commercial or residential property are subject to the following additional provisions:~~

- ~~1. The aggregate of all such loans, excluding any portion of a loan secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, may not exceed fifteen percent of net worth. In determining the aggregate balances for purposes of this limitation, a credit union may exclude any loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and may also exclude a loan to finance the construction of one single-family residence per member-borrower or group of associated member-borrowers, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property. However, excluded loans will still be included in determining compliance with the limits outlined in section 13-03-16-08;~~
- ~~2. The borrower shall have a minimum of twenty-five percent equity interest in the project being financed, the value of which is determined by the market value of the project at the time the loan is made. In determining the aggregate balances for purposes of this limitation, a credit union may exclude the first loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and in the case of one loan to a member-borrower or group of associated member-borrowers to finance the construction of a single-family residence, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property. The loan-to-value limits of section 13-03-16-02 will apply to the exclusions provided in this subsection; and~~

3. Funds for such projects must be released following onsite inspections by independent, qualified personnel in accordance with a preapproved draw schedule.

History: ~~Effective December 1, 1992; amended effective January 1, 2001; October 1, 2008; January 1, 2013.~~

General Authority: ~~NDCC 6-01-04~~

Law Implemented: ~~NDCC 6-06-06~~

~~13-03-16-06. Prohibitions.~~

1. **~~Senior management employees.~~** A credit union may not make member business loans to the following:
 - a. ~~A compensated director unless the board of directors approved granting the loan and the compensated director is recused from the decisionmaking process;~~
 - b. ~~The credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager);~~
 - c. ~~Any assistant chief executive officers (e.g., assistant president, vice president, or assistant treasurer/manager);~~
 - d. ~~The chief financial officer (comptroller); or~~
 - e. ~~Any associated member or immediate family member of the senior management employees listed in subdivisions a through d.~~
2. **~~Equity kickers or joint ventures.~~** A credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit or sale of business or commercial endeavor for which the loan is made.

History: ~~Effective December 1, 1992; amended effective January 1, 2013.~~

General Authority: ~~NDCC 6-01-04~~

Law Implemented: ~~NDCC 6-06-06~~

~~13-03-16-07. Recordkeeping.~~

~~All loans, lines of credit, or letters of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, must be separately identified in the records of the credit union and reported as such in financial and statistical reports required by the national credit union administration and commissioner.~~

History: ~~Effective December 1, 1992.~~

General Authority: ~~NDCC 6-01-04~~

Law Implemented: ~~NDCC 6-06-06~~

~~13-03-16-08. Aggregate loan limit.~~

~~A credit union's aggregate limit for all outstanding member business loans, including any unfunded commitments, is the lesser of one hundred seventy five percent of the~~

~~credit union's net worth or twelve and one-quarter percent of the credit union's total assets, unless an exception has been granted under section 13-03-16-09.~~

~~History: Effective January 1, 2001; amended effective January 1, 2013.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

~~**13-03-16-09. Exceptions to the aggregate loan limit.**~~

~~The state credit union board may exclude a credit union from the aggregate loan limit under section 13-03-16-08 for any one of the following conditions:~~

- ~~1. Credit unions that have a low-income designation as provided for in 12 CFR 701.34 or participate in the community development financial institutions program as provided for in the Riegle Community Development and Regulatory Improvement Act of 1994 [12 U.S.C. 4703].~~
- ~~2. Credit unions that were chartered for the purpose of making member business loans under any of the following:
 - ~~a. Original bylaws listing the field of membership to include a farm cooperative or agricultural-related association.~~
 - ~~b. Charter application including a narrative identifying lending focus to be business loans of any amount, including loans made for agricultural purposes.~~~~
- ~~3. Credit unions that have a history of primarily making member business loans, meaning that either member business loans comprise at least twenty-five percent of the credit union's outstanding loans as evidenced in a recent call report from 1996 or later or member business loans comprise the largest portion of the credit union's loan portfolio.~~

~~History: Effective January 1, 2001.~~

~~General Authority: NDCC 6-01-04~~

~~Law Implemented: NDCC 6-06-06~~

Chapter 13-03-20 is amended as follows:

CHAPTER 13-03-20
PARTICIPATION LOANS

Section

13-03-20-01 Definitions

13-03-20-02 Authorization

13-03-20-03 Waivers

Section 13-03-20-01 is amended as follows:

13-03-20-01. Definitions.

For purposes of this section:

1. "Associated borrower" means any other person or entity with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower. This means any person or entity named as a borrower or debtor in a loan or extension of credit, or any other person or entity, such as a drawer, endorser, or guarantor, engaged in a common enterprise with the borrower, or deriving a direct benefit from the loan to the borrower. Exceptions to this definition for partnerships, joint ventures and associations are as follows:
 - a. If the borrower is a partnership, joint venture or association, and the other person with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower, is a member or partner of the borrower, and neither a direct benefit nor a common enterprise exists, such other person is not an associated borrower.
 - b. If the borrower is a member or partner of a partnership, joint venture, or association, and the other entity with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower is the partnership, joint venture, or association and the borrower is a limited partner of that other entity, and by the terms of a partnership or membership agreement valid under applicable law, the borrower is not held generally liable for the debts or actions of that other entity, such other entity is not an associated borrower.
 - c. If the borrower is a member or partner of a partnership, joint venture, or association, and the other person with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower is another member or partner of the partnership, joint venture, or association, and neither a direct benefit nor a common enterprise exists, such other person is not an associated borrower.
2. "Common enterprise" means:
 - a. The expected source of repayment for each loan or extension of credit is the same for each borrower and no individual borrower has another source of income from which the loan, together with the borrower's other obligations, may be fully repaid. An employer will not be treated as a source of repayment because of wages and salaries paid to an employee, unless the standards described in paragraph (b) of this definition are met;
 - b. Loans or extensions of credit are made:

- (1) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and
 - (2) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence means 50 percent or more of one borrower's gross receipts or gross expenditures, on an annual basis, are derived from transactions with another borrower. Gross receipts and expenditures include gross revenues or expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments; or
 - (3) Separate borrowers obtain loans or extensions of credit to acquire a business enterprise of which those borrowers will own more than fifty percent of the voting securities or voting interests.
3. "Control" means a person or entity directly or indirectly, or acting through or together with one or more persons or entities:
- a. Owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of another person or entity;
 - b. Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person or entity; or
 - c. Has the power to exercise a controlling influence over the management or policies of another person or entity.
4. "Credit union" means any state-chartered or federal-chartered credit union.
- 2-5. "Credit union organization" means any organization as determined by the state credit union board established primarily to serve the daily operational needs of its member credit unions. The term does not include trade associations, membership organizations principally composed of credit unions, or corporations, or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operations of credit unions.
6. "Direct benefit" means the proceeds of a loan or extension of credit to a borrower, or assets purchased with those proceeds, that are transferred to

another person or entity, other than in a bona fide arm's-length transaction where the proceeds are used to acquire property, goods, or services.

- ~~3-7.~~ "Eligible organization" means a credit union, credit union organization, or financial organization.
- ~~4-8.~~ "Financial organization" means any federally chartered or federally insured financial institution ~~and~~; and state or federal government agency, its subdivisions, including the Bank of North Dakota.
- ~~9.~~ "Loan participation" means a loan where one or more eligible organizations participate pursuant to a written agreement with the originating lender, and the written agreement requires the originating lender's continuing participation throughout the life of the loan. It does not include a loan interest into a pool of loans.
- ~~5-10.~~ "Originating lender" means the participant with which the ~~member~~ borrower initially or originally contracts for a loan and who, thereafter or concurrently with the funding of the loan, sells participations to other lenders.
- ~~6.~~ "Participation loan" means a loan in which one or more eligible organizations participate pursuant to a written agreement with the originating lender.

History: Effective January 1, 2007; amended effective _____.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-20-02 is amended as follows:

13-03-20-02. Authorization.

1. Subject to the provisions of this section, any state-chartered credit union may participate in making loans with eligible organizations within the limitations of the board of directors' written participation loan policies, provided: it meets the requirements of this subsection.
 - a. The purchase complies with all regulatory requirements to the same extent as if the purchasing credit union had originated the loan, including the loans to one borrower provisions in 12 CFR 723.
 - b. A written master participation agreement shall be properly executed, acted upon by the state-chartered credit union's board of directors, or if the board has so delegated in its policy, the

investment committee, loan committee, or senior management officials and retained in the state-chartered credit union's office. The master agreement shall include provisions for identifying, either through a document which is incorporated by reference into the master agreement, or directly in the master agreement, the participation loan or loans prior to their sale.;

(1) Be properly executed by authorized representatives of all parties under applicable law;

(2) Be properly authorized by the credit union's board of directors or, if the board has so delegated in its policy, a designated committee or senior management official, under the federally insured credit union's bylaws and applicable law;

(3) The original and copies be retained in the credit union's office; and

(4) Include provisions which, at a minimum, address the following:

c. Prior to purchase, the identification of the specific loan participation being purchased, either directly in the agreement or through a document which is incorporated by reference into the agreement, shall state:

(1) The interest that the originating lender will retain in the loan to be participated. The retained interest must be at least ten percent of the outstanding balance of the loan through the life of the loan;

(2) The location and custodian for original loan documents;

(3) An explanation of the conditions under which parties to the agreement can gain access to financial and other performance information about a loan, the borrower, and the servicer so the parties can monitor the loan;

(4) An explanation of the duties and responsibilities of the originating lender, servicer, and participants with respect to all aspects of the participation, including servicing, default, foreclosure, collection, and other matters involving the ongoing administration of the loan; and

- (5) Circumstances and conditions under which participants may replace the servicer.
- d. The board establishes a limit on the aggregate amount of loan participations that may be purchased from any one originating lender.
- e. The board establishes limits on the amount of loan participations that may be purchased by each loan type, not to exceed a specified percentage of the credit union's net worth; and
- f. The board establish a limit on the aggregate amount of loan participations that may be purchased with respect to a single borrower, or group of associated borrowers, not to exceed fifteen percent of the credit union's net worth, unless this amount is waived by the state credit union board and the national credit union administration.
- b-g. A state-chartered credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.
2. An originating lender which is a state-chartered credit union shall:
- a. Originate loans only to its members;
- b. Retain an interest of at least ten percent of the face amount of each loan;
- c. Retain the original or copies of the loan documents; and
- d. Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. If a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from nonparticipation loan underwriting standards.
3. A participant state-chartered credit union that is not an originating lender shall:
- a. Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;

- b. Participate in participation loans only if made to its own members or members of another participating credit union, or loans made to persons located within the purchasing credit union's field of membership by eligible organizations, or financial organizations;
- c. Retain the original or a copy of the written participation loan agreement and a schedule of loans covered by the agreement; and
- d. Obtain the approval of the board of directors or investment committee, loan committee, or credit manager of the disbursement of proceeds to the originating lender.

History: Effective January 1, 2007; amended effective January 1, 2013;_____.
 General Authority: NDCC 6-01-04
 Law Implemented: NDCC 6-06-06

Section 13-03-20-03 is created as follows:

13-03-20-03. Waivers.

A credit union may seek a waiver from any of the limitations in subdivision f of subsection (1) of section 13-03-20-02. A credit union must submit a written request to the commissioner containing an explanation for the purpose of the waiver. The commissioner may request the credit union provide documentation in support of its request. Upon receipt of the written request and all supporting documentation the request will be brought before the state credit union board for consideration. The board will consider all relevant information related to the request including the safety and soundness of the credit union. If approved, the waiver application will be forwarded to the national credit union administration for consideration. Approval by the state credit union board is contingent on approval by the national credit union administration.

History: Effective
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

Chapter 13-03-23 is amended as follows:

CHAPTER 13-03-23
 CREDIT UNION SERVICE ORGANIZATIONS

- Section
 13-03-23-01 Authority to Invest in Credit Union Service Organizations or Subsidiary Credit Union Service Organizations
 13-03-23-02 Definitions

- 13-03-23-03 Application
- 13-03-23-04 Hearing
- 13-03-23-05 Permissible Services and Activities
- 13-03-23-06 Limitations on Investments in and Loans to Credit Union Service Organizations or Subsidiary Credit Union Service Organizations
- 13-03-23-07 Conflict of Interest
- 13-03-23-08 Examinations
- 13-03-23-09 Structure of a Credit Union Service Organization and Subsidiary Credit Union Service Organization

Section 13-03-23-01 is amended as follows:

13-03-23-01. Authority to invest in credit union service organizations or subsidiary credit union service organizations.

State credit unions may invest in credit union service organizations or subsidiary credit union service organizations, subject to the limitation provided for in this chapter and subject to approval by order of the board.

History: Effective January 1, 2007; amended effective _____.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-23-02 is amended as follows:

13-03-23-02. Definitions.

Unless the context otherwise requires, terms in this chapter have the following meanings:

1. "Affiliated" means those credit unions that have either invested in or made loans to a credit union service organization.
2. "Credit union service organization" means a financial service organization created by a credit union or group of credit unions or a league service organization to provide services not available from credit unions themselves.
3. "Immediate family member" means a spouse or other family member living in the same household.
4. "Net worth" means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and

subordinate to all other claims, including claims of creditors, shareholders, and the national credit union share insurance fund. For any credit union, net worth does not include the allowance for loan and lease loss account.

5. "Officials or senior management employees" means members of the board of directors, supervisory committee, or credit committee; chief executive officer (typically this individual holds the title of president or treasurer or manager); any assistant chief executive officers, e.g., assistant president, vice president, or assistant treasurer or manager; and the chief financial officer or comptroller.
6. "Subsidiary credit union service organization" means any entity in which a credit union service organization has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members or credit union service organizations.

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

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-23-05 is amended as follows:

13-03-23-05. Permissible services and activities.

1. A state credit union, upon being granted authority under section 13-03-23-03, and complying with all applicable state licensing requirements, may invest in those credit union service organizations or subsidiary credit union service organizations that provide one or more of the following services and activities:
 - a. Checking and currency services:
 - (1) Check cashing;
 - (2) Coin and currency services;
 - (3) Money order, savings bonds, travelers checks; and purchase and sale of United States mint commemorative coins services; and
 - (4) Stored value products;
 - b. Clerical, professional, and management services:
 - (1) Accounting services;
 - (2) Courier services;

- (3) Credit analysis;
 - (4) Facsimile transmissions and copying services;
 - (5) Internal audits for credit unions;
 - (6) Locator services;
 - (7) Management and personnel training and support;
 - (8) Marketing services;
 - (9) Research services;
 - (10) Supervisory committee audits; and
 - (11) Employee leasing services;
- c. Business loan origination, including the authority to buy and sell participation interests in such loans;
 - d. Consumer mortgage loan origination, including the authority to buy and sell participation interests in such loans;
 - e. Electronic transaction services:
 - (1) Automated teller machine services;
 - (2) Credit card and debit card services;
 - (3) Data processing;
 - (4) Electronic fund transfer services;
 - (5) Electronic income tax filing;
 - (6) Payment item processing;
 - (7) Wire transfer services; and
 - (8) Cyber financial services;
 - f. Financial counseling services:

- (1) Developing and administering individual retirement accounts and Keogh, deferred compensation, and other personnel benefit plans;
 - (2) Estate planning;
 - (3) Financial planning and counseling;
 - (4) Income tax preparation;
 - (5) Investment counseling;
 - (6) Retirement counseling; and
 - (7) Business counseling and consultant services;
- g. Fixed asset services:
- (1) Management, development, sale, or lease of fixed assets; and
 - (2) Sale, lease, or servicing of computer hardware or software;
- h. Insurance brokerage or agency:
- (1) Agency for sale of insurance;
 - (2) Provision of vehicle warranty programs;
 - (3) Provision of group purchasing programs; and
 - (4) Real estate settlement services;
- i. Leasing:
- (1) Personal property; and
 - (2) Real estate leasing of excess credit union service organizations property;
- j. Loan support services:
- (1) Debt collection services;
 - (2) Loan processing, servicing, and sales;

- (3) Sale of repossessed collateral;
 - (4) Real estate settlement services;
 - (5) Purchase and servicing of nonperforming loans; and
 - (6) Referral and processing of loan applications for members whose loan applications have been denied by the credit union;
- k. Record retention, security, and disaster recovery services:
- (1) Alarm-monitoring and other security services;
 - (2) Disaster recovery services;
 - (3) Microfilm, microfiche, optical and electronic imaging, and CD-ROM data storage and retrieval services;
 - (4) Provision of forms and supplies; and
 - (5) Record retention and storage;
- l. Securities brokerage services;
- m. Shared credit union branch (service center) operations;
- n. Student loan origination, including the authority to buy and sell participation interests in such loans;
- o. Travel agency services;
- p. Trust and trust-related services:
- (1) Acting as administrator for prepaid legal service plans;
 - (2) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and
 - (3) Trust services;
- q. Real estate brokerage services;
- r. Credit union service organization investments in noncredit union service organization service providers: in connection with providing a permissible service, a credit union service organization or

subsidiary credit union service organization may invest in a noncredit union service organization service provider. The amount of the credit union service organization's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods and services;

- s. Credit card loan origination; and
- t. Payroll processing services.

If a credit union service organization or subsidiary credit union service organization intends on offering any services and activities not previously authorized under an application submitted in accordance with section 13-03-23-03, the credit union shall notify the commissioner at least twenty days prior to any change of operations.

- 2. The board may issue an order approving any service or activity which is not expressly authorized in subsection 1.
- 3. Based upon supervisory, legal, or safety and soundness reasons, the board or commissioner may at any time limit any of the credit union service organization or subsidiary credit union service organizations activities expressly listed in subsection 1 or adopted by the board under subsection 2.
- 4. The board in granting approval for a service or activity shall consider all relevant factors, including:
 - a. Whether the credit union service organization or subsidiary credit union service organizations management or staff possesses adequate expertise or skills to perform the service or activity; and
 - b. Whether the proposed activity or service is reasonably expected to be profitable.

History: Effective January 1, 2007; amended effective January 1, 2013; _____.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

Section 13-03-23-06 is amended as follows:

13-03-23-06. Limitations on investments in and loans to credit union service organizations or subsidiary credit union service organizations.

The following limitations apply to state credit unions for investments in credit union service organizations or subsidiary credit union service organizations:

1. A credit union may not invest in shares, stocks, or obligations of credit union service organizations or subsidiary credit union service organizations in an amount exceeding ten percent of its net worth. ~~The board may waive this limitation for a credit union investment in a credit union service organization existing before December 1, 1992.~~
2. Credit unions may not make loans to a credit union service organization or subsidiary credit union service organizations in which it is affiliated in an amount exceeding ten percent of its net worth.

History: Effective January 1, 2007; amended effective January 1, 2013; _____.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

Section 13-03-23-07 is amended as follows:

13-03-23-07. Conflict of interest.

Individuals who serve as officials or senior management employees of an affiliated state credit union, and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization, or subsidiary credit union organization, either directly or indirectly, or from any person being served through the credit union service organization or subsidiary credit union service organization. This provision does not prohibit an official or senior management employee of a state credit union from assisting in the operation of a credit union service organization or subsidiary credit union organization, provided the individual is not compensated by the credit union service organization or subsidiary credit union service organization. Further, the credit union service organization or subsidiary credit union service organization may reimburse the state credit union for the services provided by the individual.

History: Effective January 1, 2007; amended effective _____.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

Section 13-03-23-08 is amended as follows:

13-03-23-08. Examinations.

A credit union shall allow the commissioner or the commissioner's examiner, at the commissioner's discretion, to inspect or examine all the books or records of the credit union service organization and subsidiary credit union service organization for the purpose of determining compliance with this chapter and to determine the value of the credit union's investment or loans. In order to accomplish the forgoing, each credit union must have a written agreement in place with the credit union service organization and any subsidiary credit union service organization, prior to investing in or lending to the

credit union service organization or subsidiary credit union organization, and prior to the credit union service organization investing in or lending to the subsidiary credit union service organization, providing that the credit union service organization and subsidiary credit union service organization will:

1. Provide the department with the right to inspect or examine all records of the credit union service organization;
2. Account for all its transactions in accordance with generally accepted accounting principles;
3. Prepare quarterly financial statements and provide the credit union with a copy of these statements within forty-five days of the quarter end; ~~and~~
4. Obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing standards. A wholly owned credit union service organization is not required to obtain a separate annual financial statement audit if that wholly owned credit union service organization is included in the annual consolidated financial statement audit of the investing credit union; and
5. Comply with applicable federal, state, and local laws.

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

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-01-04, 6-01-09, 6-06-06, 6-06-08

Section 13-03-23-09 is created as follows:

13-03-23-09. Structure of a credit union service organization and subsidiary credit union service organization.

1. A credit union and a credit union service organization or subsidiary credit union service organization must be operated in a manner that demonstrates to the public the separate corporate existence of the credit union and the credit union service organization or subsidiary credit union service organization. Good business practices dictate that each must operate so that:
 - a. Its respective business transactions, accounts, and records are not intermingled
 - b. Each observes the formalities of its separate corporate procedures;

- c. Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;
 - d. Each is held out to the public as a separate enterprise;
 - e. The credit union does not dominate the credit union service organization or subsidiary credit union service organization to the extent that the credit union service organization or subsidiary credit union service organization is treated as a department of the credit union; and
 - f. Unless the credit union has guaranteed a loan obtained by the credit union service organization or subsidiary credit union service organization, all borrowings by the credit union service organization or subsidiary credit union service organization indicate that the credit union is not liable.
2. Prior to a credit union investing in a credit union service organization or subsidiary credit union service organization, the credit union must obtain written legal advice as to whether the credit union service organization or subsidiary credit union service organization is established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in, or loaned to, the credit union service organization or subsidiary credit union service organization. In addition, if a credit union invests in, or makes a loan to, a credit union service organization or subsidiary credit union service organization, and that credit union service organization or subsidiary credit union service organization plans to change its structure, the FICU must also obtain prior written legal advice that the credit union service organization or subsidiary credit union service organization will remain established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in, or loaned to, the credit union service organization or subsidiary credit union service organization. The written legal advice must address factors that have led courts to "pierce the corporate veil," such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The written legal advice must be provided by independent legal counsel of the investing credit union or the credit union service organization or subsidiary credit union service organization.

History: Effective _____.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

Chapter 13-03-26 is created as follows:

CHAPTER 13-03-26
Interest Rate Risk

Section

13-03-26-01 Definitions

13-03-26-02 Interest Rate Risk Policy and Program Requirements

13-03-26-01. Definitions.

1. “GAP analysis” is a simple IRR measurement method that reports the mismatch between rate sensitive assets and rate sensitive liabilities over a given time period. GAP can only suffice for simple balance sheets that primarily consist of short-term bullet type investments and non-mortgage related assets.

2. “Income simulation” is an IRR measurement method used to estimate earnings exposure to changes in interest rates. An income simulation analysis projects interest cash flows of all assets, liabilities, and off-balance sheet instruments in a credit union's portfolio to estimate future net interest income over a chosen timeframe. Simulations typically include evaluations under a base-case scenario, and instantaneous parallel rate shocks, and may include alternate interest-rate scenarios.

3. “Interest rate risk” and “IRR” means the risk that changes in market rates will adversely affect a credit union's net economic value earnings or both. Interest rate risk generally arises from a mismatch between the timing of cash flows from fixed rate instruments, and interest rate resets of variable rate instruments, on either side of the balance sheet. As interest rates change, earnings or net economic value may decline.

4. “Net economic value” measures the effect of interest rates on the market value of net worth by calculating the present value of assets minus the present value of liabilities. This calculation measures the long-term interest rate risk in a credit union's balance sheet at a fixed point in time. By capturing the impact of interest rate changes on the value of all future cash flows, net economic value provides a comprehensive measurement of interest rate risk. Net economic value computations demonstrate the economic value of net worth under current interest rates and shocked interest rate scenarios.

History: Effective _____.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-26-02. Interest Rate Risk Policy and Program Requirements.

1. Any credit union that has assets of less than fifty million dollars must maintain a basic written policy that provides a credit union board-approved framework for managing IRR.
2. Any credit union that has assets of fifty million dollars or more is required to have an IRR policy and program that incorporates the following elements into their IRR program:
 - a. Board-approved IRR policy.
 - b. Oversight by the board of directors and implementation by management.
 - c. Risk measurement systems assessing the IRR sensitivity of earnings and asset and liability values.
 - d. Internal controls to monitor adherence to IRR limits.
 - e. Decision making that is informed and guided by IRR measures.
3. The board of directors will establish adequacy of an IRR policy and its limits. This will be either a separate policy or part of other written policies. The policy will be consistent with the credit union's business strategies and reflect the board's risk tolerance, taking into account the credit union's financial condition and risk measurement systems and methods commensurate with the balance sheet structure. The policy will state actions and authorities required for exceptions to policy, limits, and authorizations.
4. The policy established to address IRR will identify responsibilities and procedures for identifying, measuring, monitoring, controlling, and reporting IRR, and establish risk limits. A written policy will:
 - a. Identify committees, persons or other parties responsible for review of the credit union's IRR exposure;
 - b. Direct appropriate actions to ensure management takes steps to manage IRR so that IRR exposures are identified, measured, monitored, and controlled;
 - c. State the frequency with which management will report on measurement results to the board to ensure routine review of

information that is current and at least quarterly and in sufficient detail to assess the credit union's IRR profile;

- d. Set risk limits for IRR exposures based on selected measures, such as limits for changes in re-pricing or duration gaps, income simulation, asset valuation, or net economic value;
- e. Choose tests, such as interest rate shocks, that the credit union will perform using the selected measures;
- f. Provide for periodic review of material changes in IRR exposures and compliance with board approved policy and risk limits;
- g. Provide for assessment of the IRR impact of any new business activities prior to implementation such as evaluating the IRR profile of a new product or service; and
- h. Provide for at least an annual evaluation of policy to determine whether it is still commensurate with the size, complexity, and risk profile of the credit union.

5. IRR policy limits will maintain risk exposures within prudent levels.

6. To implement the board's IRR policy, management will:

- a. Develop and maintain adequate IRR measurement systems;
- b. Evaluate and understand IRR risk exposures;
- c. Establish an appropriate system of internal controls, such as establishing separation between the risk taker and IRR measurement staff;
- d. Allocate sufficient resources for an effective IRR program. For example, a complex credit union with an elevated IRR risk profile will likely necessitate a greater allocation of resources to identify and focus on IRR exposures;
- e. Develop and support competent staff with technical expertise commensurate with the IRR program;
- f. Identify the procedures and assumptions involved in implementing the IRR measurement systems; and
- g. Establish clear lines of authority and responsibility for managing IRR; and

- h. Provide a sufficient set of reports to ensure compliance with board approved policies.
7. Credit unions will have IRR measurement systems that capture and measure all material and identified sources of IRR. An IRR measurement system quantifies the risk contained in the credit union's balance sheet and integrates the important sources of IRR faced by a credit union in order to facilitate management of its risk exposures. This will include:
- a. Model and analysis assumptions that are reasonable and supportable;
 - b. Documentation of any changes to assumptions based on observed information;
 - c. Monitoring of positions with uncertain maturities, rates and cash flows, such as non-maturity shares, fixed rate mortgages where prepayments may vary, adjustable rate mortgages, and instruments with embedded options, such as calls; and
 - d. IRR calculation techniques, measures and tests to be sufficiently rigorous to capture risk. Some options to calculate this risk include:
 - (1) GAP analysis for non-complex or low risk balance sheets
 - (2) Income simulation
 - (3) Net economic value (NEV)
8. Prudent Internal controls must be established as permitted by the size, structure and risk profile of the credit union.
9. Credit unions with large or complex balance sheets must establish prudent risk mitigation processes which include:
- a. A policy which provides for the use of outside parties to validate the tests and limits commensurate with the risk exposure and complexity of the credit union;
 - b. IRR measurement systems that report compliance with policy limits as shown both by risks to earnings and net economic value of equity under a variety of defined and reasonable interest rate scenarios;

- c. The effect of changes in assumptions on IRR exposure results such as the impact of slower or faster prepayments on earnings and economic value; and,
- d. Enhanced levels of separation between risk taking and risk assessment such as assignment of resources to separate the investments function from IRR measurement, and IRR monitoring and oversight.

History: Effective
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

Chapter 13-03-27 is created as follows:

CHAPTER 13-03-27
LIQUIDITY AND CONTINGENCY FUNDING PLANS

Section

13-03-27-01 Policy Requirements

13-03-27-01. Policy Requirements.

- 1. Any credit union that has assets of less than fifty million dollars must maintain a basic written policy that provides a credit union board-approved framework for managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances.
- 2. Any credit union that has assets of fifty million dollars or more must establish and document a contingency funding plan that meets the requirements of subsection 4 of this section.
- 3. In addition to the requirement specified in subsection 2 of this section to establish and maintain a contingency funding plan, any credit union that has assets of two hundred fifty million dollars or more must establish and document access to at least one contingent federal liquidity source for use in times of financial emergency and distressed economic circumstances. These credit unions must conduct advance planning and periodic testing to ensure that contingent funding sources are readily available when needed. A credit union subject to this paragraph may demonstrate access to a contingent federal liquidity source by:

- a. Maintaining regular membership in the central liquidity facility, as described in the 12 CFR part 725;
 - b. Maintaining membership in the central liquidity facility through an agent, as described in the 12 CFR part 725 or
 - c. Establishing borrowing access at the federal reserve discount window by filing the necessary lending agreements and corporate resolutions to obtain credit from a federal reserve bank pursuant to 12 CFR part 201.
4. A credit union must have a written contingency funding plan commensurate with its complexity, risk profile, and scope of operations that sets out strategies for addressing liquidity shortfalls in emergency situations. The contingency funding plan may be a separate policy or may be incorporated into an existing policy such as an asset/liability policy, a funds management policy, or a business continuity policy. The contingency funding plan must address, at a minimum, the following:
- a. The sufficiency of the institution's liquidity sources to meet normal operating requirements as well as contingent events;
 - b. The identification of contingent liquidity sources;
 - c. Policies to manage a range of stress environments, identification of some possible stress events, and identification of likely liquidity responses to such events;
 - d. Lines of responsibility within the institution to respond to liquidity events;
 - e. Management processes that include clear implementation and escalation procedures for liquidity events; and
 - f. The frequency that the institution will test and update the plan.
5. A credit union is subject to the requirements of subsections 2 or 3 of this section when two consecutive NCUA call reports show its assets to be at least fifty million dollars or two hundred fifty million dollars, respectively. A credit union then has one hundred twenty days from the effective date of that second call report to meet the greater requirements.

History: Effective _____.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

Chapter 13-03-28 is created as follows

CHAPTER 13-03-28
LOAN WORKOUTS, LOAN MODIFICATIONS,
AND NONACCRUAL POLICY

Section

13-03-28-01 Definitions

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

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

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

13-03-28-01. Definitions.

1. “Cash basis” method of income recognition is set forth in generally accepted accounting principles and means while a loan is in nonaccrual status, some or all of the cash interest payments received may be treated as interest income on a cash basis as long as the remaining recorded investment in the loan, after charge-off of identified losses, if any, is deemed to be fully collectible.
2. “Charge-off” means a direct reduction (credit) to the carrying amount of a loan carried at amortized cost resulting from un-collectability with a corresponding reduction (debit) of the allowance for loan and lease loss account. Recoveries of loans previously charged off should be recorded when received.
3. “Cost recovery” method of income recognition means equal amounts of revenue and expense are recognized as collections are made until all costs have been recovered, postponing any recognition of profit until that time.
4. “Credit grading system” means a formal process that identifies and assigns a relative credit score to each commercial loan as set forth under chapter 13-03-06.
5. “Deferral” means deferring a contractually due payment on a closed-end loan without affecting the other terms, including maturity, of the loan. The account is shown current upon granting the deferral.
6. “Extension” means extending monthly payments on a closed-end loan and rolling back the maturity by the number of months extended. The account is shown current upon granting the extension. If extension fees are assessed, they should be collected at the time of the extension and not added to the balance of the loan.

7. “In the process of collection” means collection of the loan is proceeding in due course either: (a) Through legal action, including judgment enforcement procedures, or (b) in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future, generally within the next ninety days.
8. “Loan classifications” means all loans meeting the definition of substandard, doubtful, or loss in accordance with accepted industry and regulatory guidance and as assigned during examinations.
9. “New loan” means the terms of the revised loan are at least as favorable to the credit union, having terms are market-based, and profit driven, as the terms for comparable loans to other customers with similar collection risks who are not refinancing or restructuring a loan with the credit union, and the revisions to the original debt are more than minor.
10. “Past due” means a loan is determined to be delinquent in relation to its contractual repayment terms including formal restructures, and must consider the time value of money. Credit unions may use the following method to recognize partial payments on “consumer credit,” which includes credit extended to individuals for household, family, and other personal expenditures, including credit cards, and loans to individuals secured by their personal residence, including home equity and home improvement loans. A payment equivalent to ninety percent or more of the contractual payment may be considered a full payment in computing past due status.
11. “Re-age” means returning a past due account to current status without collecting the total amount of principal, interest, and fees that are contractually due.
12. “Recorded investment in a loan” means the loan balance adjusted for any unamortized premium or discount and unamortized loan fees or costs, less any amount previously charged off, plus recorded accrued interest.
13. “Renewal” means underwriting a matured, closed-end loan generally at its outstanding principal amount and on similar terms.
14. “Rewrite” means significantly changing the terms of an existing loan, including payment amounts, interest rates, amortization schedules, or its final maturity.
15. “Total reserves” means, for the purpose of this section, net worth as defined in chapter 13-03-06 plus the allowance for loan and lease loss account.

16. “Troubled debt restructure” loans are as defined in generally accepted accounting principles
17. “Well secured” means the loan is collateralized by: (a) A perfected security interest in, or pledges of, real or personal property, including securities with an estimable value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount, or (b) by the guarantee of a financially responsible party who has demonstrated support of the credit by making loan payments or injecting cash or otherwise improving the financial position of the business to allow it to make loan payments.
18. “Workout loans” include types of workout loans to borrowers in financial difficulties include re-agings, extensions, deferrals, renewals, or rewrites. Borrower retention programs, new loans unless used to restructure or pay existing loans, skip-a-pay programs or like loans are not encompassed within this definition.

History: Effective _____.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

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

1. The board and management must adopt and adhere to an explicit written policy and standards that control the use of loan workouts, and establish controls to ensure the policy is consistently applied. These policies will:
 - a. Be commensurate with the size and complexity of the credit union;
 - b. Define eligibility requirements, under what conditions the credit union will consider a loan workout, including establishing limits on the number of times an individual loan may be modified;
 - c. Ensure credit union makes loan workout decisions based on the borrower's renewed willingness and ability to repay the loan;
 - d. Will establish sound controls to ensure loan workout actions are appropriately structured;
 - e. Prohibit additional advances to finance unpaid interest or credit union fees. This is also known as capitalizing interest, and must be prohibited by policy. Advances to cover third party fees such as appraisals or property taxes are permissible;

- f. Require documentation that demonstrates the borrower is willing and able to repay the loan; and
 - g. Require workout loans: to be accurately classified; for commercial loans be risk rated with the credit union's credit grading system; be consistent with accepted industry and regulatory guidance including FFIEC's uniform retail classification and account management policy; and accurately identify loans for impairment testing consistent with generally accepted accounting principles.
2. Loan policy must require documented workout arrangements that consider and balance the best interests of both the borrower and the credit union.
3. Management and the board of directors will implement comprehensive and effective risk management and internal controls. This will include:
- a. Thresholds based on aggregate volume of loan workout activity that trigger enhanced reporting to the board of directors;
 - b. Monitoring of total loan classifications in relation to the credit union's total reserves;
 - c. A written charge-off policy that it is consistently applied and consistent with industry standards; and
 - d. A process capable of identifying, documenting, and aggregating any loan that is re-aged, extended, deferred, renewed, or rewritten, including the frequency and extent such action has been taken, and aggregate these loans by loan type.

History: Effective _____.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-28-03. Past due status workout loans including troubled debt restructure past due status.

- 1. The past due status of all loans will be calculated consistent with loan contract terms, including amendments made to loan terms through a formal restructure. Credit unions will report delinquency on the call report consistent with this policy.
- 2. Troubled debt restructure (TDR) status will be determined and reported without the application of materiality threshold exclusions.

History: Effective
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

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

1. Policy or procedure must prohibit the accrual of interest or fees on any loan upon which principal or interest has been in default for a period of ninety days or more.
2. Policy or procedure will require loans will be placed in nonaccrual status if maintained on a cash or cost recovery basis under generally accepted accounting principles because of deterioration in the financial condition of the borrower, or for which payment in full of principal or interest is not expected.
3. Policy or procedure will allow nonaccrual non-commercial loan to be restored to accrual status when:
 - a. Its past due status is less than ninety days, generally accepted accounting principles does not require it to be maintained on the cash or cost recovery basis, and the credit union is plausibly assured of repayment of the remaining contractual principal and interest within a reasonable period;
 - b. When it otherwise becomes both well secured and in the process of collection; or
 - c. The asset is a purchased impaired loan and it meets the criteria under generally accepted accounting principles for accrual of income under the interest method specified therein.
4. Policy or procedure will allow nonaccrual commercial loans to be restored to accrual status provided the following conditions are satisfied:
 - a. The restructuring and any charge-off taken on the loan are supported by a current, well documented credit evaluation of the borrower's financial condition and prospects for repayment under the revised terms.
 - b. Repayment performance is demonstrated and would involve timely payments under the restructured loan's terms of principal and interest in cash or cash equivalents. In returning the member business workout loan to accrual status, sustained historical repayment performance for a reasonable time prior to the

restructuring may be taken into account. Such a restructuring must improve the collectability of the loan in accordance with a reasonable repayment schedule and does not relieve the credit union from the responsibility to promptly charge off all identified losses.

5. After a formal restructure of a member business loan, if the restructured loan has been returned to accrual status, the loan otherwise remains subject to the nonaccrual standards of this rule. If any interest payments received while the member business loan was in nonaccrual status were applied to reduce the recorded investment in the loan the application of these payments to the loan's recorded investment must not be reversed and interest income must not be credited. Likewise, accrued but uncollected interest reversed or charged-off at the point the member business workout loan was placed on nonaccrual status cannot be restored to accrual; it can only be recognized as income if collected in cash or cash equivalents from the member.

History: Effective _____.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06