

**Proposed Administrative Rule Amendments
North Dakota Department of Financial Institutions**

Section 13-03-01.1-02 is amended as follows:

13-03-01.1-02. Communications. All correspondence and filings forwarded to the board must be addressed to:

State Credit Union Board
2000 Schafer Street, Suite G
Bismarck, ND 58501-1204

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

Fax number: 701-328-0290

Email address: dfi@nd.gov

History: Effective October 1, 1994; amended effective May 1, 1996; December 1, 1997; _____, 2012.

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

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

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

Section

- 13-03-02-01 Aggregate Limited to Percent of Paid-In Shares and Deposits - Type of Lien [Repealed]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- 13-03-02-04 Limitation on Amount Loaned to One Member [Repealed]
- 13-03-02-05 Second Mortgages - Approval of Credit Union Board [Repealed]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

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, ~~except corporate central 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 ~~that exceed one~~ equaling two hundred fifty thousand dollars or more, a written appraisal must be obtained by 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 ~~one~~ 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 county's annual tax statement is acceptable for this~~ person performing the evaluation provided the loan officer indicates, in writing, agreement with the value 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.
4. Adequate fire and tornado insurance has been obtained with a mortgage clause for the benefit of the credit union ~~in an amount equal to the amount of the outstanding liens.~~
5. A note for the amount of the loan has been signed by the mortgagor or mortgagors consistent with the terms of the mortgage.
6. ~~For real estate loans that exceed two hundred fifty thousand dollars, an abstract of title of the real property must be furnished to the credit union, at the expense of the borrower, unless an abstract of title is not prepared and, in that case, a title insurance policy is required. Within forty five days after the advancement of funds, the abstract of title, if prepared, must be updated to include the mortgage.~~

History: Amended effective May 1, 1982; November 1, 1985; October 1, 1994; August 1, 1998; December 1, 2002; _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-02-04 is repealed:

13-03-02-04. Limitation on amount loaned to one member. ~~The maximum amount that any credit union organized and operating under the laws of North Dakota, except any corporate or corporate central credit union, which is specifically exempted from the provisions of this section, shall loan on real estate security to any one member shall not exceed the amounts based on the total assets of the credit union making the loan that are provided in subsection 7 of North Dakota Century Code section 6-06-12.~~ Repealed effective _____, 2012.

History: Amended effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-12(1)(g)

Section 13-03-02-07 is amended as follows:

13-03-02-07. Exceptions. A credit union may make an exception to the loan-to-value limits under section 13-03-02-03 for loans from creditworthy borrowers. However, a credit union may not make such an exception if the loan would exceed one hundred fifty percent of the credit union's ~~total equity capital and reserves~~ net worth when the loan is aggregated with all other loans in excess of the loan-to-value limits.

History: Effective October 1, 1997; amended effective _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

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

13-03-03-01. Individual investment limitation - Total investment limitation. No credit union organized and operating under the laws of North Dakota, ~~except any corporate or corporate central credit union, which is specifically exempted from the provisions of this section,~~ shall invest more than ten percent, in the aggregate, of the total paid in shares and deposits of the credit union in first lien, public utility, industrial, corporation, or association bonds, or notes issued by corporations located in the United States of America, unless an exemption is granted by the commissioner or board.

History: Amended effective December 1, 1978; January 1, 2007; _____, 2012.

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, ~~except any corporate or corporate central credit union, which is specifically exempted from the provisions of this section,~~ shall invest more than six 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; _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-05-04 is amended as follows:

13-03-05-04. Considerations for approval. In considering the application for merger, the board shall examine and consider all relevant factors including:

1. Whether proper notification has been given to all members, unless the membership meeting has been waived by the board.
2. The comments of the members of each credit union to be merged.
3. ~~If there is more than one potential merger partner, consideration may be given to the credit union with a more similar field of membership or in closer proximity to the merging credit union.~~
4. The financial condition of the continuing credit union.

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

History: Effective August 1, 1993; amended effective _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-36, 6-06-37, 6-06-08.2

CHAPTER 13-03-06

CREDIT UNION RESERVE FUNDS AND PROMPT CORRECTIVE ACTION

Section

13-03-06-01 ~~Definition~~ 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

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

13-03-06-01. Definition Definitions.

1. "Net worth" means the retained earnings balance of the credit union at quarter end as determined under Generally Accepted Accounting Principles. Retained earnings consists 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 NCUSIF. For any credit union, net worth does not include the allowance for loan and lease losses account.
2. "Net worth ratio" means the sum of the undivided earnings, the regular reserve, and other reserves, excluding the allowance for loan and lease loss account and excluding the investment valuation reserve account, divided by the total assets of the credit union ratio of net worth of the credit union to the total assets of the credit union.
3. "Net Worth Restoration Plan" means a plan submitted by the credit union and approved by the commissioner outlining the actions the credit union will take and time frames for improving the credit union's capital position and becoming Well Capitalized. The plan must comply with part 702 of NCUA's Rules and Regulations.
4. "Quarterly reserve requirement" means a transfer from current quarter earnings into the regular reserve account equal to one-tenth of one percent of assets.
5. "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 NCUA's Rules and Regulations.
6. "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.

History: Amended effective January 1, 1981; August 1, 1984; June 1, 2002; January 1, 2007; _____, 2012.

General Authority: NDCC 6-01-04, ~~6-06-21.1~~

Law Implemented: NDCC ~~6-06-21.1~~ 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, 2012.

General Authority: NDCC 6-01-04, ~~6-06-21.4~~

Law Implemented: NDCC ~~6-06-21.4~~ 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. The commissioner of ~~banking and financial institutions~~ 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.

History: Effective January 1, 1981; amended effective June 1, 2002; January 1, 2007, _____ 2012.

General Authority: NDCC 6-01-04, ~~6-06-21.4~~

Law Implemented: NDCC ~~6-06-21.4~~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, 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, _____ 2012.

General Authority: NDCC 6-01-04, ~~6-06-21.4~~

Law Implemented: NDCC ~~6-06-21.4~~6-06-08.4, 6-06-21

**CHAPTER 13-03-08
ADMINISTRATION OF NEGOTIABLE OR TRANSFERABLE INSTRUMENTS
OF ACCOUNT**

Section

13-03-08-01 Definitions

13-03-08-02 Issuance of Negotiable or Transferable Instruments

13-03-08-03 Credit applications and overdrafts

Section 13-03-08-03 is created 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 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 North Dakota Century Code section 6-06-12(1)(g) and North Dakota Administrative Code chapter 13-03-16.

History: Effective _____, 2012.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

**CHAPTER 13-03-15
BRANCHING**

Section

- 13-03-15-01 Definitions
- 13-03-15-02 Establishment of a Branch
- 13-03-15-03 Location of Branch
- 13-03-15-04 Application to Establish a Branch
- 13-03-15-05 Waiver
- 13-03-15-06 Notice regarding closing of a Branch

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 the proposed branch expansion. 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. ~~The negative impact~~ Whether serious injury would result to any other state or federally chartered credit union in North Dakota;
 - c. ~~Any expressed opposition to the branch by any other credit union in North Dakota;~~
 - d. ~~If the branch is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union;~~
 - e. ~~The~~ Whether the credit union must demonstrate ~~has demonstrated~~ the ability to succeed with the branch; and
 - f. 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; _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-15-06 is created as follows:

13-03-15-06. Notice regarding closing of a branch. Any credit union intending to close a branch shall provide its membership and the commissioner with notice of the closing at least thirty days prior to the closing date.

History: Effective _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-16-01 is amended as follows:

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.
 - f. A loan made by a state chartered credit union to another state chartered credit union or credit union service organization as long as the state chartered credit union making the loan has the authority to make such loans.

6. "Net worth" means all the credit union's undivided retained earnings balance of the credit union at quarter end as determined under Generally Accepted Accounting Principles. Retained earnings consists of undivided earnings, regular reserves, and any other reserves 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 losses account.

History: Effective December 1, 1992; amended effective October 1, 1994; January 1, 2001; _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-16-02 is amended as follows:

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 follow-up 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, except with respect to credit card line of credit programs~~ 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) ~~First and second liens~~ Liens, including chattel, real estate, and all commercial loans, for loan-to-value ratios of up to eighty percent.
 - (3) ~~First lien with a~~ The maximum loan-to-value ratio ~~in excess of for all liens must not exceed~~ eighty percent ~~shall be granted only where~~ unless the value in excess of eighty percent is covered through ~~acquisition of private mortgage insurance, or equivalent type, of insurance provided by an insurer acceptable to the credit union or insurance or guarantees by, 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) ~~where~~ Where the borrower is a not-for-profit organization as defined by the Internal Revenue Service Code [26 U.S.C. 501];
 - (2) Where the borrower is a political subdivision or governmental agency or instrumentality; or
 - (3) Where 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 regulation, 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 \$100,000 or 2.5% of the credit union's net worth. The aggregate of all unsecured outstanding member business loans may not exceed 10% 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; _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-16-03 is amended as follows:

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 (~~less the allowance for loan losses account~~), 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 (~~less the allowance for loan losses account~~), 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.
4. ~~**Monitoring requirement.** Credit unions with member business loans in excess of one hundred percent of net worth (less the allowance for loan losses account) shall submit the following information regarding member business loans to the national credit union administration regional director on a quarterly basis: the aggregate total of loans outstanding; the amount of loans delinquent in excess of thirty days; the balance of the allowance for member business loan losses; the aggregate total of all concentrations of credit to one borrower or group of associated borrowers in excess of fifteen percent of net worth (less the allowance for loan losses account); the total number and amount of all construction, development, or speculative loans; and any other information pertinent to the safe and sound condition of the member business loan portfolio.~~

History: Effective December 1, 1992; amended effective January 1, 2001; _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-16-04 is amended as follows:

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

1. ~~The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including the adequacy of analysis and documentation.~~
2. ~~Loans classified must be reserved as follows:~~
 - a. ~~Loss loans at one hundred percent of outstanding amount;~~
 - b. ~~Doubtful loans at fifty percent of outstanding amounts; and~~
 - c. ~~Substandard loans at ten percent of outstanding amount unless other factors, e.g., history of such loans at the credit union, indicate a greater or lesser amount is appropriate.~~

A credit union will calculate and fund its allowance for loan loss account as outlined in North Dakota Administrative Code 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 _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-16-05 is amended as follows:

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. less In determining the aggregate balances allowance for purposes of this limitation, a credit union may exclude any loan losses account 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 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 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; _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-16-06 is amended as follows:

13-03-16-06. Prohibitions.

1. **Senior management employees.** A credit union may not make member business loans to the following:
 - a. ~~Any member of the board of directors who is~~ A compensated as such director unless the board of directors approves granting the loan and the compensated director is recused from the decision making 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 _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-16-08 is amended as follows:

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. ~~The aggregate loan limit must include the outstanding balance of any loan portion retained as to any participation sold and must include any outstanding balance for any portion of a loan participation purchased.~~

History: Effective January 1, 2001; amended effective _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

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

13-03-20-01. Definitions. For purposes of this section:

1. "Credit union" means any state-chartered or federal-chartered credit union.
2. "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.
3. "Eligible organization" means a credit union, credit union organization, or financial organization.
4. "Financial organization" means any federally chartered or federally insured financial institution ~~and~~ the Bank of North Dakota, or any entity or association created under authority of the Farm Credit Act of 1971 [Pub. L. 92-181; 85 Stat 583; 12 U.S.C. 2001 et seq.], as amended.
5. "Originating lender" means the participant with which the member contracts.
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 _____, 2012.

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:
 - a. 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.
 - b. 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, eligible organization, or financial organization;
- 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 _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

Section 13-03-21-02 is amended as follows:

13-03-21-02. Authorizations.

1. Purchase.

- a. A credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:
 - (1) Eligible obligations of its members, originating from any source in the state of North Dakota, if either they are loans it is empowered to grant or they are refinanced with the consent of the borrowers, within sixty days after they are purchased, so that they are loans it is empowered to grant;
 - (2) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;
 - (3) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and
 - (4) Real estate-secured loans, originating from any source in the state of North Dakota, if the purchaser is granting real estate-secured loans on an ongoing basis and if the

~~purchase will facilitate the purchasing credit union's packaging of a pool of such loans to will be sold or pledged on to the secondary mortgage market. A pool must include a substantial portion of the credit union's members' in the same manner as loans and must be sold promptly to the credit union's members.~~

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

(1) ~~The board of directors, or investment committee, loan committee, or credit manager approves the purchase; and~~

(2) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office; and for purchases under paragraph 2 of subdivision a, any advance written approval from the national credit union administration required by section 741.8 of national credit union administration rules and regulations is obtained before consummation of such purchase.

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

(1) Student loans purchased in accordance with paragraph 3 of subdivision a;

(2) Real estate loans purchased in accordance with paragraph 4 of subdivision a;

(3) Eligible obligations purchased in accordance with paragraph 1 of subdivision a that are refinanced by the purchaser so that it is a loan it is empowered to grant; and

(4) An indirect lending or indirect leasing arrangement that is classified as a loan and not the purchase of an eligible obligation because the credit union makes the final underwriting decision and the sales or lease contract is assigned to the credit union very soon after it is signed by the member and the dealer or leasing company.

2. **Sale.** A credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph 2 of subdivision a of subsection 1, student loans

purchased in accordance with paragraph 3 of subdivision a of subsection 1, and real estate loans purchased in accordance with paragraph 4 of subdivision a of subsection 1, within the limitations of the board of directors' written sale policies, provided:

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

3. **Pledge.**

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

- (1) The board of directors ~~or~~ investment committee, loan committee, or credit manager approves the pledge;
- (2) Copies of the original loan documents are retained; and
- (3) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

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

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

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

History: Effective January 1, 2007; amended effective _____, 2012.

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. ~~"Equity" means the total of regular reserves, investment valuation reserve, other reserves, and undivided earnings as reported on the most recent year-end call report.~~
4. "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 consists 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 losses 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.

History: Effective January 1, 2007; amended effective _____, 2012.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

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

13-03-23-03. Application. An application to establish, make an initial investment, or increase the amount of an investment in a credit union service

organization must be submitted to the ~~board~~ commissioner in writing and must contain the following:

1. A full explanation and complete documentation of the proposed credit union service organization;
2. A listing of proposed management and their qualifications;
3. A proposed business plan with financial projections for at least three years;
4. The amount of investment authority requested; and
5. Any additional information as requested by the board or commissioner.

~~Once an application is determined to be complete by the commissioner, it must be submitted to the board for consideration. The board shall issue an order to either approve or disapprove the application. Upon notice of disapproval, the applicant has fifteen days to petition for a hearing before the board.~~

Within twenty days after receiving the application, the commissioner must either approve, disapprove, or arrange to have the application submitted for consideration by the state credit union board. If the commissioner fails to take one of the foregoing actions regarding the application within twenty days after receiving the application, the application shall be deemed approved. If the application is disapproved by the commissioner, the applicant credit union may appeal the decision of the commissioner to the state credit union board.

History: Effective January 1, 2007; amended effective _____, 2012.

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.** A state credit union may invest upon approval by order of the board in those credit union service organizations that provide one or more of the following services and activities:~~

1. ~~The credit union service organization may conduct the following services and activities without approval of the board, but subject to applicable state licensing requirements:~~
 - a. ~~Credit card and debit card services;~~
 - b. ~~Check cashing and wire transfers;~~

- c. — Internal audits for credit unions;
- d. — Automated teller machine services;
- e. — Electronic funds transfer services;
- f. — Accounting services;
- g. — Data processing;
- h. — Shared credit union branch (service center) operations;
- i. — Sale of repossessed collateral;
- j. — Management, development, sale or lease of fixed assets;
- k. — Sale, lease, or servicing of computer hardware or software;
- l. — Management and personnel training and support;
- m. — Payment item processing;
- n. — Locator services;
- o. — Marketing services;
- p. — Research services;
- q. — Record retention and storage;
- r. — Microfilm and microfiche services.
- s. — Alarm monitoring and other security services;
- t. — Debt collection services;
- u. — Credit analysis;
- v. — Coin and currency services;
- w. — Provision of forms and supplies;
- x. — Income tax preparation; and y. Provision of vehicle warranty programs.

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 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, 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 organization 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 non-performing 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, 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 non-credit union service organization service providers: In connection with providing a permissible service, a credit union service organization may invest in a non-credit 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 or services.
- (s) Credit card loan origination;
- (t) Payroll processing services; and
- (u) Appraisal services.

If a 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 credit union service organization may not initiate the following services and activities after December 1, 1992, without approval of the board, and subject to applicable state licensing requirements:~~
 - a. ~~Consumer mortgage loan origination;~~
 - b. ~~Loan processing, servicing, and sales;~~
 - c. ~~Financial planning and counseling;~~

- d. — Retirement counseling;
 - e. — Investment counseling;
 - f. — Securities brokerage services;
 - g. — Estate planning;
 - h. — Acting as administrator for prepaid legal service plans, developing, and administering individual retirement account, Keogh, deferred compensation, and other personnel benefit plans, trust services;
 - i. — Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity;
 - j. — Real estate brokerage services;
 - k. — Travel agency services;
 - l. — Agency for sale of insurance; and
 - m. — Personal property leasing.
3. The board may ~~approve~~ issue an order approving any service or activity which is not expressly authorized in subsection 1 or 2, ~~subject to approval by the national credit union administration.~~
3. The board or commissioner may at any time, based upon supervisory, legal, or safety and soundness reasons, limit any of the credit union service organization activities expressly listed in subsection 1, or adopted by the board under subsection 2.
4. The board or commissioner in granting approval for a service or activity shall consider all relevant factors, including:
- a. Whether the credit union service organization 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 _____, 2012.

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

1. A credit union may not invest in shares, stocks, or obligations of credit union service organizations in an amount exceeding ten percent of its equity 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 in which it is affiliated in an amount exceeding ten percent of its equity net worth.
3. ~~Any credit union currently holding an investment in a credit union service organization shall apply to the board for approval to engage in any additional service or activity.~~

History: Effective January 1, 2007; amended effective _____, 2012.

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 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 foregoing, each credit union must have a written agreement in place with the credit union service organization, prior to investing in or lending to the credit union service organization, providing that the 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 45 days of the quarter end; and
4. Comply with applicable Federal, state and local laws.

History: Effective January 1, 2007; amended effective _____, 2012.

General Authority: NDCC 6-01-04

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