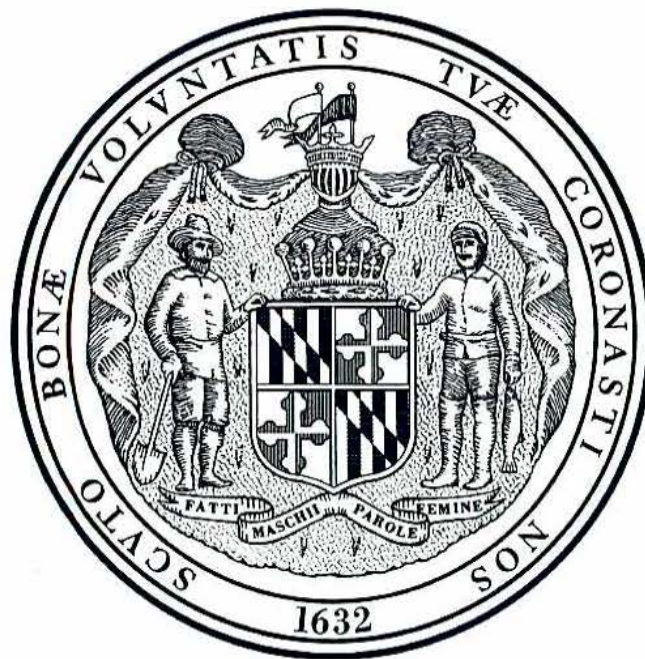


TASK FORCE TO STUDY MODERNIZATION
OF
CREDIT UNION LAWS

Report of the 2001 Interim



ANNAPOLIS, MARYLAND
JANUARY 2002

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MARYLAND GENERAL ASSEMBLY
TASK FORCE TO STUDY MODERNIZATION OF CREDIT UNION LAW
January 10, 2002

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Casper R. Taylor, Jr., Speaker of the House
The Honorable Members of the General Assembly

Ladies and Gentlemen:

The Task Force to Study Modernization of Credit Union Law respectfully submits its final report summarizing its activities during the 2001 interim. The task force met three times in June and July 2001. The task force's recommendations, which will be provided in a 2002 legislative proposal, primarily involve two issues: (1) the phase-out and dissolution of the Credit Union Insurance Corporation; and (2) the regulation of private credit union share guaranty corporations.

The 15-member task force is composed of representatives of the General Assembly; the Department of Labor, Licensing, and Regulation; federally- and State-chartered financial institutions; consumer interests; and the general public.

Original Charge

Originally, the task force was charged under Chapter 604 of 1999 with comprehensively studying the existing State laws that affect the operation and powers of State credit unions in order to modernize the State's credit union laws. In carrying out its duties, the task force was to identify, document, and study the federal law changes since 1934 that affect credit unions, the response to these federal law changes by other states, and current State laws for chartering credit unions. The task force was in effect through June 2001. With the purpose in mind to modernize Maryland's credit union laws and allow the State credit unions to more effectively compete with their federal counterparts, the task force identified a lengthy list of issues for consideration.

In addition to streamlining certain regulatory requirements and processes, the significant issues that the task force addressed in its 2001 legislative package included: (1) providing State credit unions with the same tax status as federal credit unions; (2) expanding the "wildcard" statute to allow a State credit union, with commissioner approval, to engage in any additional activity, service, or other practice in which, under federal law or regulation, federal credit unions may engage; (3) expanding the field of membership provisions for State credit unions similar to federal law; (4) allowing for the conversion, merger, and consolidation of credit unions under certain circumstances; (5) altering provisions relating to State credit union directors' powers and compensation; (6) altering

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provisions relating to loaning and making investments by State credit unions; and (7) allowing a State credit union to organize or invest in a credit union service organization that engages in activities incidental to the conduct of the credit union.

Please refer to the task force's *Report of the 2000 Interim* issued in January 2001 for further information. During the 2001 session, the task force's legislative package was adopted by the General Assembly as Senate Bill 377/House Bill 399 (Chapters 147 and 148).

New Charge

In light of the comprehensive review of the issues that were required by the task force during the 1999 and 2000 interims, the task force was unable to fully conclude its work. Accordingly, the task force included in its 2001 legislative proposal a new charge that required the task force to continue through June 30, 2001.

Under Chapters 147 and 148 of 2001, the task force was charged with discussing the implications and making recommendations regarding: (1) the dissolution of the current private insurer, Credit Union Insurance Corporation (CUIC); (2) the policy and standards for the regulation by the Commissioner of Financial Regulation of credit union share guaranty corporations that seek to insure the member accounts of credit unions regulated by the commissioner; and (3) any other issues that the task force determines are appropriate for consideration by the General Assembly concerning credit unions.

Credit union guaranty corporations insure and guarantee the share and deposit accounts of its member credit unions. Currently, CUIC insures the share and deposit accounts of 5 of the 11 State-chartered credit unions. The other six State-chartered credit unions are insured by the National Credit Union Administration Share Insurance Program. All of the 129 federally-chartered credit unions are also insured by the federal program. At this time, no other credit union guaranty corporations operate in Maryland.

CUIC has indicated that it is interested in dissolving. Also, at this time a private carrier based in Ohio, American Share Insurance Corporation, has expressed interest in entering Maryland. Since State law created CUIC and only allows for CUIC as the private carrier, the appropriate provisions of law need to be amended, including a regulatory scheme for the licensing of private credit union guaranty corporations seeking to enter the State. Further, a transition period needs to be specified for the orderly phasing out of CUIC once a private carrier has obtained a certificate of authority from the Commissioner of Financial Regulation.

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The Honorable Casper R. Taylor, Jr., Speaker of the House
The Honorable Members of the General Assembly
January 10, 2002
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As was the practice in previous interims, the task force heard from a variety of interested groups, including the Office of the Commissioner of Financial Regulation; the Office of the Secretary of the Department of Labor, Licensing, and Regulation; the Maryland Credit Union League; the Credit Union Insurance Corporation; and American Share Insurance Corporation.

Accordingly, the recommendations of the task force that are included in the task force's 2002 legislative proposal are summarized below. These recommendations are more fully described in this report.

Dissolution of CUIC

- Require credit unions that are members of CUIC to obtain alternative primary deposit guaranty insurance within two years from the date that an alternative credit union share guaranty corporation has obtained a certificate of authority.
- Require the board of directors of CUIC to dissolve the corporation within two years from the date that the corporation has no members.
- Require CUIC to file articles of dissolution and, after payment of all outstanding liabilities, transfer its assets to a nonprofit corporation that has been organized for educational and charitable purposes and to promote and publicize the interest and welfare of credit unions and their members and that has been in existence at least ten years.

Policy and Standards for the Regulation of Credit Union Share Guaranty Corporations

- Prohibit a person from acting as a credit union share guaranty corporation unless the person has a certificate of authority issued by the Commissioner of Financial Regulation.
- Require a guaranty corporation to insure and guarantee the share and deposit accounts of each participating credit union to at least the same extent and amount as provided by the National Credit Union Administration Share Insurance Program.
- Require an applicant, in order to qualify for a certificate of authority, to satisfy to the Commissioner of Financial Regulation specified items, including a \$5,000 application fee. The commissioner may suspend or revoke a certificate if a director or officer of the certificate holder commits any of the specified violations.

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Casper R. Taylor, Jr., Speaker of the House
The Honorable Members of the General Assembly
December 19, 2001
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- Require the commissioner to examine the business of each certificate holder at least once every 24 months; require the commissioner to delegate the authority to conduct an examination or accept an examination from the responsible supervising officials of the certificate holders' state of domicile; require the certificate holder to pay all reasonable expenses for an examination.
- Require a certificate holder to pay an annual assessment of \$5,000 and file an annual report to the commissioner.
- Require a guaranty corporation to have a written contract with each participating credit union that establishes the rights and obligations of the parties; require a guaranty corporation to maintain a guaranty fund of at least 1 percent of the aggregate shares and deposits of participating credit unions (however, a guaranty corporation would maintain the level allowed by its state of domicile under certain circumstances); require a guaranty corporation to establish a reserve for guaranty losses; and allow a guaranty corporation to terminate the participation of a participating credit union under certain circumstances, such as the credit union failure to satisfy the risk eligibility standards.
- Exempt a guaranty corporation that is a nonprofit corporation exempt from federal taxation under §501(c)(6) of the Internal Revenue Code from all taxes imposed by the State or any of its subdivisions.

Other Issues

- Due to constitutional ramifications, repeal the requirement (established under Chapters 147 and 148 of 2001) that a member of a supervisory committee or a credit committee be a United States citizen.

The task force expresses its appreciation for the advice and assistance provided by governmental officials and members of the public during the past three legislative interims.

Respectfully submitted,

John C. Astle
Senate Co-Chair

Maggie McIntosh
House of Delegates Co-Chair

Maryland General Assembly

Task Force to Study Modernization of Credit Union Law

2001 Membership Roster

Senator John C. Astle, **Co-Chair**
Delegate Maggie McIntosh, **Co-Chair**
Senator John J. Hafer
Delegate David R. Brinkley

Commissioner of Financial Regulation

Ms. Mary Louise Preis
Commissioner of Financial Regulation

Representative of Department of Labor, Licensing, and Regulation

Mr. Richard Feller, Deputy Secretary
Department of Labor, Licensing, and Regulation

Representative of State-Chartered Credit Union

Ms. Teresa A. Halleck, President & CEO
State Employees Credit Union of Maryland

Mr. Bert J. Hash, Jr., President & CEO
Municipal Employees Credit Union of Baltimore, Inc.

Ms. Deborah D. DiBlasio, General Manager/CEO
Maryland Steelworkers Credit Union, Inc.

Representative of Federal Credit Union

Mr. David H. Bussard, President
Giant Food Federal Credit Union

Representative of Start-Chartered Commercial Bank

Mr. Robert E. Noll, Chairman of the Board
People's Bank of Elkton

Representative of Consumer Group/Agency

Mr. Stephen D. Hannan, Administrator
Howard County Office of Consumer Affairs

Representative of Credit Union Insurance Corporation (CUIC)

Ms. Maureen Walsh McAtee, President
Credit Union Insurance Corporation

Representative of General Public

Ms. Marilyn L. Jumalon
Ms. Marysabel Rodriguez-Nanney

Committee Staff

Tami Burt
Laura Lodge

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Report and Recommendations

Under Chapters 147 and 148 of the Acts of 2001, the task force was charged with discussing the implications of and making recommendations regarding:

- the dissolution of the current private insurer, the Credit Union Insurance Corporation (CUIC);
- the policy and standards for the regulation by the Commissioner of Financial Regulation of credit union share guaranty corporations that seek to insure the member accounts of credit unions regulated by the commissioner; and
- any other issues that the task force determines are appropriate for consideration by the General Assembly concerning credit unions.

The task force completed its work and intends to present the following recommendations to the General Assembly through a 2002 legislative package.

Dissolution of the Credit Union Insurance Corporation (CUIC)

Background

Current law requires each State-chartered credit union to be insured either by CUIC, a private insurer authorized under Title 7 of the Financial Institutions Article, or the National Credit Union Share Insurance Fund (NCUSIF) administered by the National Credit Union Administration (NCUA) (FI §6-701).

CUIC was created by statute in 1975 as a nonprofit nonstock corporation (FI, Title 7), called the Maryland Credit Union Insurance Corporation. In 1986 CUIC's name was changed to the Credit Union Insurance Corporation. CUIC is not an agency or instrumentality of the State. The members of CUIC may only be State-chartered credit unions that qualify for membership. The purposes of CUIC are to insure and guarantee the share and deposit accounts of member credit unions and generally promote and strengthen the "credit union movement." CUIC's powers are exercised by an 11-member board of directors. Member credit unions are required to deposit with CUIC an amount equal to 1 percent of the credit unions' shares. This deposit is returned to member credit unions upon the credit union leaving CUIC or the dissolution of CUIC. However, net earnings of CUIC that have accumulated are not returned to member credit unions. CUIC is exempt from all taxes. With assets of approximately \$4 million, CUIC's net income for the past several calendar years has amounted to approximately \$40,000 to \$60,000.

Currently, CUIC insures the share and deposit accounts of 5 of the 11 State-chartered credit unions at an amount of \$100,000 of coverage per member. The other six State-chartered credit unions are insured by NCUSIF. All of the 129 federally-chartered credit unions are also insured by the federal program. At this time, no other credit union share guaranty corporation operates in Maryland.

CUIC has expressed an interest in dissolving if an alternative private insurer is authorized to enter Maryland to provide State-chartered credit unions with the choice between private insurance and federal insurance. A transition period needs to be specified in law for the orderly phasing out of CUIC once a private carrier has obtained a certificate of authority from the Commissioner of Financial Regulation.

Three states recently passed legislation that allows their respective statutorily created guaranty corporations to dissolve.

- In Georgia, the board of directors of the statutorily created corporation voted in 1991 to phase out the corporation. At the time, there were over 100 privately-insured credit unions. Despite allowing alternative corporations to enter the state, no private corporation has elected to do so. The conversion to federal insurance took about two years. The final credit union not eligible for federal insurance was voluntarily liquidated in 1996. The statutory corporation remained in a dormant status until the end of 2000 at which time the remaining funds were distributed to its members in a liquidating dividend and the charter was surrendered.
- Florida's conversion process started January 1991 with the board of directors' vote to dissolve its statutorily created corporation. Florida had about 125 credit unions to convert to federal insurance. The process was completed in 1995. Florida's law does not allow for an alternative private corporation to enter the state.
- Washington converted over 70 of its state-chartered credit unions from the state's statutorily created corporation beginning in 1996. Two years later, the process was complete.

In order to promote the credit union movement, the CUIC Foundation, Inc. was created in 1981. The foundation's purpose, as expressed in its charter, is to be organized exclusively for educational and charitable purposes, including receiving and administering funds and making distributions to organizations that qualify as tax exempt organizations. Specifically, the foundation's mission is to:

- promote the ideals of the credit union movement;
- provide scholarships to credit union schools;

- help strengthen and develop credit unions, including assisting low-income individuals;
- improve and stimulate the ability for credit unions to provide low-cost consumer loans;
- give awards to professionals and volunteers in the credit union movement;
- give awards for credit union publications;
- promote the elasticity and flexibility of the resources of credit unions;
- conduct or fund research in all aspects of credit union operations; and
- cooperate with and assist credit unions and local and national organizations of credit unions to improve the general welfare of the people through credit unions.

The foundation is a nonprofit organization that is exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). It is operated by a board of directors.

Recommendation

The task force recommends that CUIC be allowed to dissolve effective July 1, 2002, as follows:

- **Prohibit CUIC from accepting an application made by a credit union for new membership on or after the date that an alternative credit union share guaranty corporation has obtained a certificate of authority, and require commissioner to notify CUIC of the date that an alternative guaranty corporation has been approved.**
- **Require credit unions that are members of CUIC to obtain alternative primary deposit guaranty insurance within two years from the date that an alternative credit union share guaranty corporation has obtained a certificate of authority.**
- **Require the board of directors to dissolve the corporation within two years from the date that the corporation has no members.**
- **Require CUIC to file articles of dissolution and, after payment of all outstanding liabilities, transfer its assets to a nonprofit corporation that has been organized for educational and charitable purposes and to promote and publicize the interest and welfare of credit unions and their members, and that has been in existence at least ten years. Among others, the purposes of the corporation must include under its charter: (1) helping to strengthen and develop credit unions serving low-income individuals; (2) improving and stimulating the ability of credit unions to provide low-cost consumer**

loans; and (3) cooperating and assisting credit unions and local and national organizations to improve the general welfare of the people through credit unions.

- **Allow the commissioner to require CUIC to provide any information that the commissioner deems necessary to determine whether the dissolution, transfer of assets, and the liquidation of CUIC are in accordance with law.**
- **Require the commissioner to report annually to the General Assembly on the status of the phase out, dissolution, and liquidation of CUIC.**

Policy and Standards for the Regulation of Credit Union Share Guaranty Corporations

Background

Credit union share guaranty corporations insure and guarantee the share and deposit accounts of its member credit unions. A principal insurer for credit unions in the country is American Share Insurance Corporation (ASI), based in Ohio for 25 years. ASI operates in Alabama, California, Idaho, Illinois, Indiana, Nevada, and Ohio. Representatives from ASI indicated to the task force that ASI will seek to insure the credit unions that CUIC currently insures.

Since State law created CUIC and allows only for CUIC as the private carrier, the appropriate provisions of law need to be amended, including the establishment of a regulatory scheme for the licensing of private credit union share guaranty corporations seeking to enter the State.

The deposit requirement for ASI is 1 to 1.3 percent of total shares, depending upon the credit union's CAMEL rating and covers \$250,000 per account, regardless of the number of accounts held by a member. Liability, beyond the capital contribution amount, is contractually limited to a maximum of 3 percent of member credit unions' total assets.

If a credit union that is federally insured fails, NCUSIF covers \$100,000 per credit union member. By law, NCUA is required to deplete all capital within member credit unions before it can seek assistance from the U.S. Treasury. This, in effect, places unlimited liability upon the capital of its member credit unions. For further information on a comparison between ASI and the federal program, see the comparison chart prepared by ASI that is presented later in this publication. Also, for information regarding the use of share guaranty corporations in other states, see the document prepared by the National Association of State Credit Union Supervisors (NASCUS) that is presented later in this publication.

Recommendation

The task force recommends that effective July 1, 2002, private credit union share guaranty corporations be allowed to enter and operate in Maryland under the following conditions:

- Prohibit a person from acting as a share guaranty corporation unless the person has a certificate of authority issued by the Commissioner of Financial Regulation.
- Require a share guaranty corporation to insure and guarantee the share and deposit accounts of each participating credit union to at least the same extent and amount as provided by the federal program (National Credit Union Administration Share Insurance Fund). A share guaranty corporation may make contracts for reinsurance.
- Require an applicant, in order to obtain a certificate of authority, to satisfy the commissioner that the applicant meets specified qualifications, including a \$5,000 application fee. Among others, the qualifications include: (1) being trustworthy and reputable and having a good business reputation; (2) having a license in its state of domicile (if located out-of-state); and (3) maintaining retained earnings or equity capital of at least \$5 million.
- Allow the commissioner to suspend or revoke a certificate if a director or officer of the certificate holder commits specified violations. Among others, the violations include: (1) making a material misstatement in the application for a certificate; (2) being convicted of a felony or certain misdemeanors or committing a fraudulent act; (3) being in an unsound business condition; or (4) refusing to be examined by the commissioner or to provide information to the commissioner. There are certain circumstances that the commissioner must consider in determining whether a certificate should be suspended or revoked. The commissioner may also order a share guaranty corporation to cease and desist from a violation, impose a civil penalty on a share guaranty corporation of up to \$1,000 for each violation, and file a petition in the circuit court to seek enforcement of an order. Before the commissioner takes any of these actions, the certificate holder has the opportunity for a hearing.
- Require the commissioner to examine the business of each certificate holder at least once every 24 months; allow the commissioner to delegate the authority to conduct an examination or accept an examination from the responsible supervising officials of the certificate holder's state of domicile; require the certificate holder to pay all reasonable expenses for an examination; and allow the commissioner to subpoena documents or summon and examine individuals under oath.

- **Require a certificate holder to pay an annual assessment of \$5,000 and file an annual report with the commissioner. Among others, the information in the annual report includes: (1) current administrative actions taken either by the share guaranty corporation or the credit unions' respective state regulators; (2) all credit unions with composite CAMEL ratings of four or five; and (3) the share guaranty corporation's plan for any corrective action.**
- **Allow a share guaranty corporation and the commissioner to exchange information about participating credit unions and those credit unions that are applying for participation; and allow the commissioner to exchange information about a guaranty corporation with any state or federal agency having supervisory authority over the share guaranty corporation.**
- **Require a share guaranty corporation to have a written contract with each participating credit union that establishes the rights and obligations of the parties; and require a corporation to file a material amendment to the contract with the commissioner at least 30 days before its effective date.**
- **Require a share guaranty corporation to provide written notice to the commissioner of any applications for membership to the share guaranty corporation and any terminations of participation from the share guaranty corporation.**
- **Require a share guaranty corporation to maintain a guaranty fund of at least 1 percent of the aggregate shares and deposits of participating credit unions; however, allow a share guaranty corporation to maintain the level permitted by its state of domicile under certain circumstances. The circumstances include having been domiciled in the other state for the immediately preceding 25 years and having been engaged in the credit union share guaranty business for the immediately preceding 25 years.**
- **Require the guaranty fund of a share guaranty corporation to consist of: (1) the account for each participating credit union; (2) retained earnings; and (3) reserves for guaranty losses. A guaranty corporation may require the participating credit unions to make additional capital contributions to maintain the normal operating level during any calendar year in which the fund has been reduced below the minimum operating level.**
- **Entitle a participating credit union that is voluntarily liquidated, withdraws from participation in the guaranty corporation, or merges with another credit union that becomes the surviving credit union that is not insured by the share guaranty corporation, to its capital contribution account. If the share guaranty corporation is dissolved, the net assets less any outstanding**

debts owed to the share guaranty corporation are to be distributed to the participating credit unions in accordance with their share balances.

- **Allow a guaranty corporation to terminate the participation of a participating credit union under certain circumstances. Among others, these circumstances include a participating credit union: (1) failing to satisfy the risk eligibility standards; (2) operating in an unsafe and unsound manner; (3) failing to remedy in a timely manner a qualification arising from an audit; or (4) failing to pay its capital contribution or applicable premium, fee, or assessment.**
- **Provide that any person who violates the provisions of law regulating share guaranty corporations is subject to a misdemeanor penalty of up to \$5,000 or up to five years imprisonment, or both.**
- **Provide that the provisions of law regulating share guaranty corporations do not create a liability upon the State.**
- **Exempt a share guaranty corporation that is a nonprofit corporation from federal taxation under §501(c)(6) of the Internal Revenue Code is exempt from all taxes imposed by the State or any of its subdivisions.**

Other Issues

Background

In a letter from the Attorney General of Maryland to Governor Parris N. Glendening dated May 14, 2001, the attorney general indicates that the U.S. citizenship requirement established under Chapters 147 and 148 of 2001 for members of a credit union's supervisory committee and credit committee discriminates against aliens in violation of the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution. For a further explanation of the constitutional ramifications by the attorney general, see the letter prepared by the attorney general that is presented later in this publication.

Recommendation

Due to constitutional ramifications, repeal effective July 1, 2002, the requirement (established under Chapters 147 and 148 of 2001) that a member of a supervisory committee or a credit committee be a United States citizen (as a technical correction).

Maryland State-Chartered Credit Unions

Central Credit Union of Maryland
8501 LaSalle Road
Baltimore, Maryland 21286
(410) 828-4500
FAX: (410) 337-4905

Fort Meade Community Credit Union*
P.O. Box 140
Ft. Meade, Maryland 20755
(410) 551-5800

Lever United Family Credit Union*
5300 Holabird Avenue
Baltimore, Maryland 21224
(410) 631-7250
FAX: (410) 631-5063

MTA Employees Credit Union
6200 Harford Road
Baltimore, Maryland 21214
(410) 254-0402
FAX: (410) 426-4018

Maryland Steelworkers Credit Union, Inc.
535 Dundalk Avenue
P.O. Box 8865
Baltimore, Maryland 21224
(410) 633-8850
FAX: (410) 633-2120

Municipal Employees Credit Union
401 E. Fayette Street
Baltimore, Maryland 21202
(410) 752-8313
FAX: (410) 539-0745

Point Breeze Credit Union
Executive Plaza II
11350 McCormick Road
Hunt Valley, Maryland 21031
(410) 771-3850
FAX: (410) 771-8491

Post Office Credit Union of Maryland, Inc.*
900 E. Fayette Street, Room 606
Baltimore, Maryland 21202-9810
(410) 727-5469
FAX: (410) 727-0929

State Employees Credit Union of Maryland,
Inc.
8503 LaSalle Road
Baltimore, Maryland 21286
(410) 296-7328 or 1-800-879-7328
FAX: (410) 821-3606

U.S. Coast Guard Yard Credit Union*
2415 Hawkins Point Road
Baltimore, Maryland 21226
(410) 789-5420
FAX: (410) 789-6419

White Eagle Credit Union, Inc.*
1714 Eastern Avenue
Baltimore, Maryland 21231
(410) 675-1714

Source: Department of Labor, Licensing, and Regulation (Division of Financial Regulation)

* Member of CUIC

Proposed Legislation 2002 Session

(Unofficial Copy)

By: Delegate McIntosh (Co-Chairman, Task Force to Study the Modernization of Credit Union Law) and Delegate Brinkley

Senator Astle (Co-Chairman, Task Force to Study the Modernization of Credit Union Law) and Senator Hafer

A BILL ENTITLED

AN ACT concerning

Credit Unions - Credit Union Insurance Corporation - Credit Union Share Guaranty Corporations

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Financial Institutions

6-401.

- (d) (5) Each member of the supervisory committee:
 - (i) Shall be bonded;
 - (ii) [Shall be a citizen of the United States;
 - (iii)] May not have been convicted of any criminal offense involving dishonesty or breach of trust;
 - [(iv)] (III) May not have habitually neglected to pay any debts;
 - [(v)] (IV) May not become insolvent or bankrupt while serving on the supervisory committee; and
 - [(vi)] (V) May not have been removed by the Commissioner or any state or federal regulatory agency as an officer, official, or employee of a financial institution.

6-602.

- (e) (2) Each member of the credit committee:

- under the bylaws;
 - (i) Shall be a member of the credit union for the period of time required
 - (ii) Shall be bonded;
 - (iii) [Shall be a citizen of the United States;
 - (iv)] May not have defaulted on the payment of any monetary obligation to the credit union;
 - [(v)] (IV) May not have been convicted of any criminal offense involving dishonesty or breach of trust;
 - [(vi)] (V) May not have habitually neglected to pay any debts;
 - [(vii)] (VI) May not have been insolvent or bankrupt within 5 years of becoming a member and may not become insolvent or bankrupt while serving as a member; and
 - [(viii)] (VII) May not have been removed by the Commissioner or any state or federal regulatory agency as an officer, official, or employee of a financial institution.

Title 7. Credit union share insurance [CORPORATION].

SUBTITLE 1. CREDIT UNION INSURANCE CORPORATION.

PART I. DEFINITIONS.

7-101.

- (a) In this [title] **SUBTITLE** the following words have the meanings indicated.
- (b) "Corporation" means the Credit Union Insurance Corporation.
- (c) "Credit union" means:
 - (1) Any credit union that is incorporated under the laws of this State; and
 - (2) Any other credit union that is authorized to do business in this State and has its principal office in this State.

PART II. ESTABLISHMENT; POWERS; MEMBERSHIP.

7-102.

(a) There is a Credit Union Insurance Corporation, established as a nonprofit, nonstock corporation, the members of which are credit unions that are accepted for membership under this [title] **PART**.

(b) (1) The Corporation is not and may not be deemed a department, unit, agency, or instrumentality of the State for any purpose.

(2) All debts, claims, obligations, and liabilities of the Corporation, whenever incurred, shall be the debts, claims, obligations, and liabilities of the Corporation only and not of the State, its agencies, instrumentalities, officers, or employees.

(3) The Corporation moneys may not be considered part of the General Fund of the State.

(4) The debts, claims, obligations, and liabilities of the Corporation may not be considered to be a debt of the State or a pledge of its credit.

7-103.

The purposes of the Corporation are to:

- (1) Insure and guarantee the share and deposit accounts of member credit unions;
- (2) Improve and stimulate the ability of credit unions to provide low-cost consumer loans;
- (3) Promote the elasticity and flexibility of the resources of credit unions;
- (4) Make loans for liquidity purposes to credit unions;
- (5) Discount notes of credit unions;
- (6) Provide a State service of lending among credit unions;
- (7) Help rehabilitate and stabilize credit unions;
- (8) Help liquidate credit unions in an orderly manner when necessary;
- (9) Help strengthen and develop credit unions serving low-income individuals; and
- (10) Cooperate with and assist credit unions, organizations of credit unions, the Commissioner, the National Credit Union Administration, [the Central Credit Union of Maryland,] and others in improving the general welfare of the people through credit unions.

7-104.

(a) The Corporation exercises its powers and performs its duties subject to the authority of the Commissioner.

(b) Except as otherwise provided in this [title] **SUBTITLE**, the Corporation has all of the powers, privileges, and immunities granted to Maryland corporations under the Maryland General Corporation Law.

(c) **SUBJECT TO THE PROVISIONS OF PART III OF THIS SUBTITLE, THE** [The] Corporation has perpetual existence.

(d) The Corporation may:

(1) Lend money to any credit union;

(2) Guarantee, endorse, or act as surety on the obligations of or otherwise assist financially any credit union; and

(3) Establish and regulate the terms and conditions of any charges for any loans or financial assistance to credit unions.

(e) (1) The Corporation may buy, lease, or otherwise acquire and sell, mortgage, lease, or otherwise dispose of real or personal property on the terms that its Board of Directors considers advisable.

(2) The Corporation may acquire any real or personal property in satisfaction of debts or enforcement of obligations and may dispose of that property.

(f) The Corporation may:

(1) Assist in the merger, stabilization, consolidation, or liquidation of credit unions;
and

(2) Take possession of and operate the business and assets of any credit union if ordered to do so by the Commissioner under § 6-905 of this article.

(g) The Corporation may become a member of the National Association of Share Insurance Corporations or any comparable organization.

(h) The Corporation may invest any of its funds in:

(1) Cash or deposits in checking or savings accounts with or certificates of deposit

of:

(i) Any bank that is a member of the Federal Deposit Insurance Corporation; and

(ii) Any savings and loan association [that is a member of the Federal Savings and Loan Insurance Corporation, the State of Maryland Deposit Insurance Fund Corporation or a similar insurance program] **WHOSE DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION;**

(2) Cash or deposits in share or deposit accounts with or certificates of deposit or notes of any credit union that is a member of the Corporation, the National Credit Union Administration Share Insurance Program, or a similar insurance program;

(3) Obligations of:

(i) The United States or any state or any political subdivision of any state;

(ii) Any commission, instrumentality, agency, or authority of the United States or any state; and

(iii) Any corporation that is incorporated under the laws of the United States or of any state;

(4) Readily marketable, dividend-paying shares of any corporation that is incorporated under the laws of the United States or of any state, except that it may not invest more than 10 percent of its total assets in these shares nor more than 3 percent of its total assets in the shares of any one corporation; and

(5) Any other investments, including common trust investments, that are permitted by law or authorized by the Commissioner for credit unions.

(i) The Corporation may:

(1) Borrow money and otherwise incur obligations for any of its purposes;

(2) Issue its secured or unsecured bonds, debentures, notes, or other evidences of obligation; and

(3) Secure these obligations by mortgage, pledge, or other lien on all or any part of its property, rights, and privileges.

7-105.

(a) The Corporation shall insure and guarantee the share and deposit accounts of each member on the same basis, and to the same extent and amount as provided by the National Credit Union Administration Share Insurance Program.

(b) The Corporation may make contracts for reinsurance.

7-106.

(a) (1) **SUBJECT TO THE PROVISIONS OF PART III OF THIS SUBTITLE, ANY [Any]** credit union may apply to the Corporation to become a member of the Corporation.

(2) The Corporation shall refer each application that it receives to the Commissioner.

(b) (1) On receipt of an application for membership, the Commissioner shall examine the affairs of the credit union.

(2) If the Commissioner finds that the credit union qualifies for membership under § 7-107 of this title, the Commissioner shall certify that fact to the Corporation.

(c) The Corporation may not extend benefits to any credit union until the Corporation receives the certification of the Commissioner.

7-107.

(a) (1) A credit union becomes a member of the Corporation when:

(i) The financial affairs, solvency, and management of a credit union have been certified by the Commissioner as approved for insurance of its share and deposit accounts; and

(ii) The application of the credit union is accepted by the Board of Directors of the Corporation.

(2) The Board of Directors of the Corporation may deny the application of a credit union only for good cause shown.

(b) Subject to the bylaws, rules, and regulations of the Corporation and except as provided in subsection (c) of this section **AND PART III OF THIS SUBTITLE**, membership in the Corporation continues as long as the Corporation exists.

(c) (1) If the Board of Directors of the Corporation finds that unsafe or unsound practices or mismanagement or a member threatens loss to the Corporation or appears to affect

adversely the solvency of the member, the Board may:

- (i) Order the member to correct the situation; or
- (ii) With the approval of the Commissioner and after giving the member notice and an opportunity for a hearing, revoke the membership of the credit union.

(2) A credit union that is organized under federal law or the laws of any other state may withdraw from the Corporation by:

- (i) Giving written notice at least 1 year in advance; and
 - (ii) Complying with the bylaws, rules, and regulations of the Corporation.
- (d) Each member of the Corporation shall make the investments and pay the assessments, premiums, and other charges required for participation in the Corporation.

7-108.

- (a) In the election of directors and in voting on any other matter at a meeting of the members of the Corporation, each member has one vote, to be cast by its delegate.
- (b) A delegate may not vote on behalf of more than one member.
- (c) A majority of the votes cast is sufficient to elect directors or decide any questions voted on by the members.

7-109.

- (a) The powers of the Corporation shall be exercised by its Board of Directors.
- (b) The Board of Directors consists of 11 directors elected by the members of the Corporation.
- (c) Each director shall be a resident [and registered voter] of this State.
- (d) (1) Each director serves for a term of 4 years and until a successor is chosen and qualifies.
- (2) The terms of the directors shall be staggered as required by the terms provided for directors on July 1, 1988.
- (3) If a vacancy occurs as to an elected director, the Board of Directors shall elect

a successor to fill the vacancy until the next annual meeting of the Corporation. At the annual meeting, the members of the Corporation shall elect a successor to serve for the rest of the term and until a successor is elected and qualifies.

(e) A majority of the full authorized membership of the Board of Directors is a quorum.

(f) Each director is entitled to reasonable compensation, as set by the Board of Directors with the approval of the Commissioner.

7-110.

(a) (1) The Board of Directors of the Corporation:

(i) Shall elect one of its members as chairman of the Board; and

(ii) May appoint any officers and employees that it considers advisable.

(2) The manner of election of the chairman and appointment of officers and their terms of office shall be as the bylaws provide.

(b) In accordance with the bylaws of the Corporation, the Board of Directors shall set the amount of the fidelity bonds of the officers and employees of the Corporation.

7-111.

(a) The Board of Directors of the Corporation shall adopt bylaws for the Corporation and rules and regulations to carry out the provisions of this title.

(b) (1) A bylaw, rule, or regulation becomes effective only after it is submitted to and approved by the Commissioner.

(2) A bylaw, rule, or regulation is considered approved if the Commissioner does not notify the Corporation of disapproval and the reasons for it within 30 days after submission of the bylaw, rule, or regulation.

(3) The Commissioner may disapprove a bylaw, rule, or regulation only if the Commissioner has reason to believe that:

(i) It is contrary to the principles or purposes of this title; or

(ii) It does not serve the best interests of the public.

7-112.

The Corporation may require independent audits and investigations of any member to determine the member's financial condition as it relates to insurance of share and deposit accounts. These audits and investigations shall be made at the expense of the credit union.

7-113.

(a) This section applies notwithstanding any other provisions of law.

(b) (1) The Corporation and the Commissioner may exchange information about credit unions.

(2) The Commissioner shall make available to the Corporation all examinations of credit unions that are members of the Corporation.

(c) If a credit union is not incorporated under the laws of this State, the credit union may not be accepted as a member of the Corporation unless it submits a written statement from the agency that regulates it stating that the agency will cooperate with the Commissioner in carrying out the provisions of this title.

7-114.

The net earnings of the Corporation shall be accumulated and may not be returned to its members.

7-115.

The Corporation, its members, and persons who have share and deposit accounts in credit unions are not subject to the provisions of the Insurance Article as a result of any of the activities of the Corporation under this title.

7-116.

The Corporation is exempt from all taxes imposed by this State or any its political subdivisions under Title 9 of Article 24 of the Code, Title 6, Subtitle 1 of the Insurance Article, the Tax-General Article, or the Tax-Property Article.

7-117.

This title does not, and the Corporation may not, pledge the faith or credit of this State.

PART III. PHASE-OUT; DISSOLUTION.

7-118.

(A) SUBJECT TO THE PROVISIONS OF PARAGRAPH (B) OF THIS SECTION, THE CORPORATION MAY NOT ACCEPT AN APPLICATION FROM A CREDIT UNION FOR NEW MEMBERSHIP ON OR AFTER THE DATE THAT THE COMMISSIONER ISSUES THE FIRST CERTIFICATE OF AUTHORITY UNDER § 7-203 OF THIS TITLE.

(B) THE COMMISSIONER SHALL NOTIFY THE CORPORATION OF THE DATE THAT THE COMMISSIONER ISSUES THE FIRST CERTIFICATE OF AUTHORITY UNDER § 7-203 OF THIS TITLE.

7-119.

(A) SUBJECT TO THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION, A CREDIT UNION THAT IS A MEMBER OF THE CORPORATION SHALL OBTAIN PRIMARY SHARE GUARANTY INSURANCE WITH:

(1) THE NATIONAL CREDIT UNION ADMINISTRATION SHARE INSURANCE PROGRAM; OR

(2) A CREDIT UNION SHARE GUARANTY CORPORATION REGULATED UNDER SUBTITLE 2 OF THIS TITLE THAT IS APPROVED BY THE COMMISSIONER TO PROVIDE PRIMARY SHARE GUARANTY INSURANCE AT LEAST TO THE SAME EXTENT AND AMOUNT AS PROVIDED BY THE NATIONAL CREDIT UNION ADMINISTRATION SHARE INSURANCE PROGRAM.

(B) A CREDIT UNION THAT IS A MEMBER OF THE CORPORATION SHALL COMPLY WITH THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION WITHIN 2 YEARS FROM THE DATE THAT THE COMMISSIONER ISSUES THE FIRST CERTIFICATE OF AUTHORITY UNDER § 7-203 OF THIS TITLE.

7-120.

(A) (1) IN THIS SECTION, "ASSETS" MEANS:

(I) ALL NET EARNINGS OF THE CORPORATION ACCUMULATED UNDER §7-114 OF THIS SUBTITLE; AND

(II) ALL TANGIBLE OR INTANGIBLE REAL OR PERSONAL PROPERTY OF THE CORPORATION.

(2) IN THIS SECTION, "ASSETS" DOES NOT INCLUDE MEMBER DEPOSITS.

(B) WITHIN 2 YEARS FROM THE DATE THAT THE CORPORATION NO

LONGER HAS ANY MEMBERS, THE CORPORATION SHALL COMPLETE THE DISSOLUTION OF THE CORPORATION IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(C) (1) WHEN THE CORPORATION NO LONGER HAS ANY MEMBERS, THE CORPORATION SHALL FILE ARTICLES OF DISSOLUTION WITH THE COMMISSIONER AND THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.

(2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE CORPORATION IS DISSOLVED WHEN THE COMMISSIONER ACCEPTS THE CORPORATION'S ARTICLES OF DISSOLUTION.

(D) (1) THE CORPORATION CONTINUES TO EXIST FOR THE PURPOSE OF COLLECTING MONEY OWING TO THE CORPORATION, PAYING, SATISFYING, AND DISCHARGING ANY EXISTING DEBTS OR OBLIGATIONS, COLLECTING AND DISTRIBUTING THE CORPORATION'S ASSETS, AND DOING ALL OTHER ACTS REQUIRED TO LIQUIDATE AND WIND UP THE BUSINESS AND AFFAIRS OF THE CORPORATION.

(2) AFTER PAYING, SATISFYING, AND DISCHARGING ANY EXISTING DEBTS OR OBLIGATIONS, THE CORPORATION SHALL TRANSFER ITS REMAINING ASSETS TO A CORPORATION THAT SATISFIES THE REQUIREMENTS OF SUBSECTION (E) OF THIS SECTION.

(E) THE CORPORATION RECEIVING THE ASSETS UNDER PARAGRAPH (D)(2) OF THIS SECTION SHALL:

(1) BE A NONPROFIT CORPORATION THAT IS EXEMPT FROM FEDERAL TAXATION UNDER §501(C)(3) OF THE INTERNAL REVENUE CODE;

(2) HAVE BEEN ORGANIZED:

(I) FOR EDUCATIONAL AND CHARITABLE PURPOSES; AND

(II) TO PROMOTE AND PUBLICIZE THE INTEREST AND WELFARE OF CREDIT UNIONS AND THEIR MEMBERS IN THIS STATE; AND

(3) HAVE BEEN IN EXISTENCE AND OPERATING UNDER A CHARTER THAT INCLUDES THE FOLLOWING PURPOSES FOR AT LEAST 10 YEARS:

(I) PROMOTING THE IDEALS OF THE CREDIT UNION MOVEMENT, INCLUDING THE COOPERATIVE NONPROFIT ASPECT, DEMOCRATIC

ASPECT, THE COMMON BOND, VOLUNTEERISM, PERSONALIZED SERVICE, COOPERATIVE SPIRIT, AND THE ENCOURAGEMENT OF THRIFT AND THE CREATION OF A SOURCE OF CREDIT AT FAIR AND REASONABLE RATES;

(II) HELPING TO STRENGTHEN AND DEVELOP CREDIT UNIONS SERVING LOW-INCOME INDIVIDUALS;

(III) IMPROVING AND STIMULATING THE ABILITY OF CREDIT UNIONS TO PROVIDE LOW-COST CONSUMER LOANS;

(IV) PROMOTING THE ELASTICITY AND FLEXIBILITY OF THE RESOURCES OF CREDIT UNIONS;

(V) CONDUCTING OR FUNDING RESEARCH ON ALL ASPECTS OF CREDIT UNION OPERATIONS AND THE CREDIT UNION MOVEMENT IN GENERAL;

(VI) COOPERATING AND ASSISTING CREDIT UNIONS AND LOCAL AND NATIONAL ORGANIZATIONS AND CREDIT UNIONS TO IMPROVE THE GENERAL WELFARE OF THE PEOPLE THROUGH CREDIT UNIONS;

(VII) PROVIDING SCHOLARSHIPS AND AWARDS TO PROFESSIONALS AND VOLUNTEERS IN THE CREDIT UNION MOVEMENT; AND

(VIII) FURTHERING THE CREDIT UNION MOVEMENT AND PERFORMING ALL NECESSARY AND PROPERLY RELATED SERVICES AND ACTIVITIES.

(F) THE CORPORATION SHALL PROMPTLY NOTIFY THE COMMISSIONER FOLLOWING THE COMPLETION OF THE LIQUIDATION AND THE WINDING UP OF THE BUSINESS AND AFFAIRS OF THE CORPORATION.

7-121.

THE COMMISSIONER MAY REQUIRE THE CORPORATION TO PROVIDE ANY INFORMATION THAT THE COMMISSIONER DEEMS NECESSARY TO DETERMINE WHETHER THE PHASE-OUT AND DISSOLUTION OF THE CORPORATION ARE IN ACCORDANCE WITH THE PROVISIONS OF THIS PART.

SUBTITLE 2. CREDIT UNION SHARE GUARANTY CORPORATIONS.

7-201.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) UNLESS THE CONTEXT REQUIRES OTHERWISE, "CREDIT UNION" HAS THE MEANING STATED IN § 6-101(D) OF THIS ARTICLE.

(C) "CREDIT UNION SHARE GUARANTY CORPORATION" MEANS A CORPORATION THAT IS:

(1) ENGAGED IN THE BUSINESS OF PROVIDING PRIMARY SHARE GUARANTY INSURANCE FOR THE SHARE AND DEPOSIT ACCOUNTS OF A CREDIT UNION; AND

(2) REGULATED UNDER THIS SUBTITLE.

(D) "PARTICIPATING CREDIT UNION" MEANS A CREDIT UNION THAT HAS APPLIED FOR AND BEEN ADMITTED TO PARTICIPATION IN A CREDIT UNION SHARE GUARANTY CORPORATION AND WHOSE PARTICIPATION HAS NOT TERMINATED.

7-202.

THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO THE CREDIT UNION INSURANCE CORPORATION ESTABLISHED UNDER SUBTITLE 1 OF THIS TITLE.

7-203.

(A) A PERSON MAY NOT CONDUCT BUSINESS AS A CREDIT UNION SHARE GUARANTY CORPORATION UNLESS THE PERSON HAS A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER UNDER THIS SUBTITLE.

(B) A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER UNDER THIS SUBTITLE IS NOT TRANSFERRABLE.

7-204.

(A) A CREDIT UNION SHARE GUARANTY CORPORATION SHALL INSURE AND GUARANTEE THE SHARE AND DEPOSIT ACCOUNTS OF EACH PARTICIPATING CREDIT UNION TO AT LEAST THE SAME EXTENT AND AMOUNT AS PROVIDED BY THE NATIONAL CREDIT UNION ADMINISTRATION SHARE INSURANCE PROGRAM.

(B) A CREDIT UNION SHARE GUARANTY CORPORATION MAY MAKE

CONTRACTS FOR REINSURANCE.

7-205.

THE COMMISSIONER MAY ADOPT RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

7-206.

(A) TO QUALIFY FOR A CERTIFICATE OF AUTHORITY UNDER THIS SUBTITLE, AN APPLICANT SHALL SATISFY THE COMMISSIONER THAT THE APPLICANT:

- (1) IS TRUSTWORTHY AND REPUTABLE;**
- (2) HAS A GOOD BUSINESS REPUTATION;**
- (3) IF DOMICILED OUTSIDE THE STATE, IS CURRENTLY LICENSED AND AUTHORIZED TO ENGAGE IN THE CREDIT UNION SHARE GUARANTY BUSINESS IN ITS STATE OF DOMICILE;**
- (4) HAS AND WILL MAINTAIN RETAINED EARNINGS OR EQUITY CAPITAL OF AT LEAST \$5,000,000, COMPUTED ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES;**
- (5) IS IN COMPLIANCE WITH:**
 - (I) ITS CHARTER POWERS AND THIS SUBTITLE; AND**
 - (II) IF DOMICILED OUTSIDE THE STATE, ALL LAWS AND REGULATIONS APPLICABLE TO CREDIT UNION SHARE GUARANTY CORPORATIONS IN ITS STATE OF DOMICILE;**
- (6) WILL CONDUCT THE CREDIT UNION SHARE GUARANTY BUSINESS IN THE STATE IN A MANNER THAT WILL ADEQUATELY PROTECT THE SHARE AND DEPOSIT ACCOUNTS OF ITS PARTICIPATING CREDIT UNIONS; AND**
- (7) WILL MAINTAIN A RESERVE FOR GUARANTY LOSSES IN COMPLIANCE WITH § 7-218 OF THIS SUBTITLE.**

(B) A PERSON MAY NOT BE AUTHORIZED TO ENGAGE IN THE CREDIT UNION SHARE GUARANTY BUSINESS IN THE STATE IF THE PERSON HAS OR USES A NAME THAT IS SO SIMILAR TO THE NAME OF A CREDIT UNION SHARE

GUARANTY CORPORATION ALREADY ISSUED A CERTIFICATE OF AUTHORITY UNDER THIS SUBTITLE AS TO TEND TO CAUSE UNCERTAINTY OR CONFUSION OR TO DECEIVE OR MISLEAD.

7-207.

(A) (1) TO APPLY FOR A CERTIFICATE OF AUTHORITY, AN APPLICANT SHALL SIGN AND SUBMIT TO THE COMMISSIONER AN APPLICATION MADE UNDER OATH ON THE FORM THAT THE COMMISSIONER REQUIRES.

(2) THE APPLICATION SHALL INCLUDE:

(I) THE APPLICANT'S CORPORATE NAME, BUSINESS ADDRESS, AND ANY TRADE NAMES UNDER WHICH THE APPLICANT CONDUCTS BUSINESS;

(II) THE NAME AND BUSINESS ADDRESS OF EACH OF THE APPLICANT'S OFFICERS AND DIRECTORS;

(III) THE ADDRESS AT WHICH THE BUSINESS IS TO BE CONDUCTED;

(IV) THE NAME AND ADDRESS OF THE APPLICANT'S PROPOSED RESIDENT AGENT IN THE STATE; AND

(V) ANY OTHER INFORMATION THAT THE COMMISSIONER REASONABLY REQUIRES.

(B) WITH THE APPLICATION, THE APPLICANT SHALL SUBMIT:

(1) A CERTIFIED COPY OF ITS ARTICLES OF INCORPORATION WITH ALL AMENDMENTS;

(2) A CERTIFIED COPY OF ITS BYLAWS WITH ALL AMENDMENTS;

(3) A COPY OF THE APPLICANT'S ANNUAL FINANCIAL STATEMENTS AS OF THE IMMEDIATELY PRECEDING DECEMBER 31, PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND AUDITED AND CERTIFIED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT;

(4) IF DOMICILED OUTSIDE THE STATE, A COPY OF THE APPLICANT'S MOST RECENT REPORT OF EXAMINATION, IF ANY, MADE BY THE

RESPONSIBLE SUPERVISORY OFFICIAL IN ITS STATE OF DOMICILE;

(5) IF DOMICILED OUTSIDE THE STATE, CERTIFICATION BY THE RESPONSIBLE SUPERVISORY OFFICIAL IN ITS STATE OF DOMICILE SHOWING THAT THE APPLICANT IS AUTHORIZED TO ENGAGE IN THE CREDIT UNION SHARE GUARANTY BUSINESS IN THAT STATE;

(6) A COPY OF THE APPLICANT'S CURRENT STANDARD WRITTEN CONTRACT WITH PARTICIPATING CREDIT UNIONS CONTAINING THE RIGHTS AND OBLIGATIONS OF THE PARTIES; AND

(7) ANY OTHER INFORMATION AND DOCUMENTS THAT THE COMMISSIONER REASONABLY REQUIRES.

(C) WITH THE APPLICATION, THE APPLICANT SHALL PAY TO THE COMMISSIONER A NONREFUNDABLE APPLICATION FEE OF \$ 5,000.

7-208.

(A) WHEN AN APPLICANT FOR A CERTIFICATE OF AUTHORITY FILES THE APPLICATION AND PAYS THE APPLICATION FEE REQUIRED UNDER § 7-207 OF THIS SUBTITLE, THE COMMISSIONER SHALL CONDUCT AN INVESTIGATION TO DETERMINE IF THE APPLICANT MEETS THE REQUIREMENTS OF § 7-206 OF THIS SUBTITLE.

(B) UNLESS THE COMMISSIONER NOTIFIES THE APPLICANT THAT A DIFFERENT TIME PERIOD IS NECESSARY, THE COMMISSIONER SHALL APPROVE OR DENY EACH APPLICATION FOR A CERTIFICATE OF AUTHORITY WITHIN 120 DAYS AFTER THE COMPLETE APPLICATION IS FILED AND THE APPLICATION FEE IS PAID.

(C) THE COMMISSIONER SHALL ISSUE A CERTIFICATE OF AUTHORITY TO ANY APPLICANT WHO MEETS THE REQUIREMENTS OF THIS SUBTITLE.

7-209.

(A) IF AN APPLICATION FOR A CERTIFICATE OF AUTHORITY IS DENIED, THE NOTIFICATION OF THE DENIAL SHALL:

(1) BE IN WRITING; AND

(2) STATE THE APPLICANT'S RIGHT TO A HEARING HELD IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(B) AN APPLICANT WHO SEEKS A HEARING ON AN APPLICATION DENIAL SHALL FILE A WRITTEN REQUEST FOR A HEARING WITHIN 30 DAYS FOLLOWING RECEIPT OF THE NOTICE TO THE APPLICANT OF THE APPLICANT'S RIGHT TO A HEARING.

7-210.

(A) THE COMMISSIONER MAY SUSPEND OR REVOKE THE CERTIFICATE OF AUTHORITY OF ANY CREDIT UNION SHARE GUARANTY CORPORATION IF THE CREDIT UNION SHARE GUARANTY CORPORATION OR ANY DIRECTOR OR OFFICER OF THE CREDIT UNION SHARE GUARANTY CORPORATION:

(1) MAKES ANY MATERIAL MISSTATEMENT IN AN APPLICATION FOR A CERTIFICATE OF AUTHORITY;

(2) IS CONVICTED UNDER THE LAWS OF THE UNITED STATES OR ANY STATE OF:

(I) A FELONY; OR

(II) A MISDEMEANOR THAT IS DIRECTLY RELATED TO THE ACTIVITIES AUTHORIZED BY THE CERTIFICATE OF AUTHORITY;

(3) IN CONNECTION WITH ANY CREDIT UNION SHARE GUARANTY TRANSACTION:

(I) COMMITS ANY FRAUD;

(II) ENGAGES IN ANY ILLEGAL OR DISHONEST ACTIVITIES; OR

(III) MISREPRESENTS OR FAILS TO DISCLOSE ANY MATERIAL FACTS TO ANY PERSON ENTITLED TO THAT INFORMATION;

(4) VIOLATES ANY PROVISION OF THIS SUBTITLE, ANY RULE OR REGULATION ADOPTED UNDER THIS SUBTITLE, OR ANY OTHER LAW REGULATING CREDIT UNION SHARE GUARANTY BUSINESS IN THE STATE, OR FAILS TO COMPLY WITH AN ORDER OF THE COMMISSIONER;

(5) IS FOUND BY THE COMMISSIONER TO BE IN UNSOUND CONDITION OR IN A CONDITION THAT RENDERS FURTHER TRANSACTION OF CREDIT UNION SHARE GUARANTY BUSINESS HAZARDOUS TO PARTICIPATING CREDIT UNIONS, THE MEMBERS OF THE PARTICIPATING CREDIT UNIONS, OR

THE PUBLIC;

(6) REFUSES OR DELAYS PAYMENT OF AMOUNTS DUE CLAIMANTS WITHOUT JUST CAUSE;

(7) REFUSES TO BE EXAMINED OR TO PRODUCE RECORDS OR FILES FOR EXAMINATION BY THE COMMISSIONER WHEN REQUIRED;

(8) REFUSES TO PROVIDE ADDITIONAL INFORMATION REASONABLY REQUESTED BY THE COMMISSIONER; OR

(9) OTHERWISE DEMONSTRATES UNWORTHINESS, BAD FAITH, DISHONESTY, OR ANY OTHER QUALITY THAT INDICATES THAT THE BUSINESS OF THE CREDIT UNION SHARE GUARANTY CORPORATION HAS NOT BEEN OR WILL NOT BE CONDUCTED HONESTLY, FAIRLY, AND EQUITABLY.

(B) IN DETERMINING WHETHER THE CERTIFICATE OF AUTHORITY OF A CREDIT UNION SHARE GUARANTY CORPORATION SHOULD BE SUSPENDED OR REVOKED FOR A CONVICTION LISTED IN ITEM (A)(2) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER:

(1) THE NATURE OF THE CRIME;

(2) THE RELATIONSHIP OF THE CRIME TO THE ACTIVITIES AUTHORIZED BY THE CERTIFICATE OF AUTHORITY;

(3) THE RELEVANCE OF THE CONVICTION TO THE FITNESS AND QUALIFICATION OF THE CREDIT UNION SHARE GUARANTY CORPORATION TO ENGAGE IN THE CREDIT UNION SHARE GUARANTY BUSINESS;

(4) THE LENGTH OF TIME SINCE THE CONVICTION; AND

(5) THE BEHAVIOR AND ACTIVITIES OF THE CREDIT UNION SHARE GUARANTY CORPORATION SINCE THE CONVICTION.

(C) (1) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS SUBTITLE AND ANY REGULATION ADOPTED UNDER THIS SUBTITLE BY:

(I) ISSUING AN ORDER TO OR ENTERING INTO AN AGREEMENT WITH THE CREDIT UNION SHARE GUARANTY CORPORATION:

1. TO CEASE AND DESIST FROM THE VIOLATION AND ANY FURTHER SIMILAR VIOLATIONS; AND

2. REQUIRING THE VIOLATOR TO TAKE AFFIRMATIVE ACTION TO CORRECT THE VIOLATION, INCLUDING THE RESTITUTION OF MONEY OR PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION; AND

(II) IMPOSING A CIVIL PENALTY NOT EXCEEDING \$ 1,000 FOR EACH VIOLATION.

(2) IF A VIOLATOR FAILS TO COMPLY WITH AN ORDER OR AGREEMENT UNDER THIS SUBSECTION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING \$ 1,000 FOR EACH VIOLATION FROM WHICH THE VIOLATOR FAILED TO CEASE AND DESIST OR FOR WHICH THE VIOLATOR FAILED TO TAKE AFFIRMATIVE CORRECTIVE ACTION.

(D) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT FOR ANY COUNTY SEEKING ENFORCEMENT OF AN ORDER ISSUED UNDER THIS SECTION.

(E) IN DETERMINING THE AMOUNT OF FINANCIAL PENALTY TO BE IMPOSED UNDER SUBSECTION (C) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER:

- (1) THE SERIOUSNESS OF THE VIOLATION;**
- (2) THE GOOD FAITH OF THE VIOLATOR;**
- (3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;**
- (4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC AND HOLDERS OF CREDIT UNION SHARE OR DEPOSIT ACCOUNTS;**
- (5) THE ASSETS OF THE VIOLATOR; AND**
- (6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE FINANCIAL PENALTY.**

(F) (1) BEFORE THE COMMISSIONER TAKES ANY ACTION UNDER SUBSECTIONS (A) OR (C) OF THIS SECTION, THE COMMISSIONER SHALL GIVE THE CREDIT UNION SHARE GUARANTY CORPORATION AN OPPORTUNITY FOR A HEARING.

(2) NOTICE OF THE HEARING SHALL BE GIVEN AND THE HEARING SHALL BE HELD IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(3) THE HEARING NOTICE TO THE CREDIT UNION SHARE GUARANTY CORPORATION SHALL BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PRINCIPAL PLACE OF BUSINESS OF THE CREDIT UNION SHARE GUARANTY CORPORATION AT LEAST 30 DAYS BEFORE THE HEARING.

7-211.

(A) (1) THE COMMISSIONER:

(I) SHALL EXAMINE THE BUSINESS OF EACH CREDIT UNION SHARE GUARANTY CORPORATION AT LEAST ONCE EVERY 24 MONTHS; AND

(II) MAY EXAMINE THE BUSINESS OF EACH CREDIT UNION SHARE GUARANTY CORPORATION AT ANY TIME THAT THE COMMISSIONER REASONABLY CONSIDERS NECESSARY.

(2) THE COMMISSIONER MAY ENTER INTO AGREEMENTS WITH THIRD-PARTIES AND DELEGATE THE AUTHORITY TO CONDUCT AN EXAMINATION REQUIRED OR PERMITTED UNDER THIS SUBSECTION.

(3) IN LIEU OF PERFORMING AN EXAMINATION OF A CREDIT UNION SHARE GUARANTY CORPORATION, THE COMMISSIONER MAY ACCEPT AN EXAMINATION REPORT FROM THE RESPONSIBLE SUPERVISORY OFFICIAL OF THE CREDIT UNION SHARE GUARANTY CORPORATION'S STATE OF DOMICILE.

(B) (1) ANY PERSON AGGRIEVED BY THE CONDUCT OF A CREDIT UNION SHARE GUARANTY CORPORATION UNDER THIS SUBTITLE IN CONNECTION WITH THE CREDIT UNION SHARE GUARANTY BUSINESS MAY FILE A WRITTEN COMPLAINT WITH THE COMMISSIONER WHO MAY INVESTIGATE THE COMPLAINT.

(2) THE COMMISSIONER MAY MAKE ANY OTHER INVESTIGATION OF ANY PERSON IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THAT THE PERSON HAS VIOLATED ANY PROVISION OF THIS SUBTITLE, ANY REGULATION ADOPTED UNDER THIS SUBTITLE, OR ANY OTHER LAW REGULATING CREDIT UNION SHARE GUARANTY CORPORATIONS IN THE STATE.

(C) IN CONNECTION WITH AN EXAMINATION OR INVESTIGATION MADE UNDER THIS SECTION, THE COMMISSIONER MAY:

(1) EXAMINE THE BOOKS AND RECORDS OF ANY CREDIT UNION

SHARE GUARANTY CORPORATION OR OF ANY OTHER PERSON WHO THE COMMISSIONER BELIEVES HAS VIOLATED ANY PROVISION OF THIS SUBTITLE, ANY REGULATION ADOPTED UNDER THIS SUBTITLE, OR ANY OTHER LAW REGULATING CREDIT UNION SHARE GUARANTY CORPORATIONS IN THE STATE;

(2) SUBPOENA DOCUMENTS OR OTHER EVIDENCE; OR

(3) SUMMON AND EXAMINE UNDER OATH ANY INDIVIDUAL WHOSE TESTIMONY THE COMMISSIONER REQUIRES.

(D) IF ANY PERSON FAILS TO COMPLY WITH A SUBPOENA OR SUMMONS ISSUED BY THE COMMISSIONER UNDER THIS SECTION, THE COMMISSIONER MAY FILE A PETITION FOR ENFORCEMENT IN THE APPROPRIATE CIRCUIT COURT.

7-212.

(A) A CREDIT UNION SHARE GUARANTY CORPORATION SHALL PAY ALL REASONABLE EXPENSES FOR TRANSPORTATION, LODGING, AND MEALS ASSOCIATED WITH:

(1) AN EXAMINATION REQUIRED OR PERMITTED UNDER § 7-211 OF THIS SUBTITLE; AND

(2) ANY OTHER EXAMINATION OR INVESTIGATION CONDUCTED UNDER THIS ARTICLE THAT RESULTS IN THE DISCOVERY OF A VIOLATION OF THIS SUBTITLE BY THE CREDIT UNION SHARE GUARANTY CORPORATION.

(B) (1) A CREDIT UNION SHARE GUARANTY CORPORATION SHALL PAY AN ANNUAL ASSESSMENT OF \$ 5,000.

(2) A CREDIT UNION SHARE GUARANTY CORPORATION SHALL PAY THE ASSESSMENT IMPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE COMMISSIONER ON OR BEFORE THE FEBRUARY 15 AFTER THE ASSESSMENT IS IMPOSED.

7-213.

(A) (1) ON OR BEFORE APRIL 1 OF EACH YEAR, UNLESS THE COMMISSIONER EXTENDS THE TIME FOR GOOD CAUSE, EACH CREDIT UNION SHARE GUARANTY CORPORATION SHALL FILE WITH THE COMMISSIONER AN ANNUAL REPORT FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR.

(2) THE ANNUAL REPORT SHALL INCLUDE:

(I) THE ANNUAL FINANCIAL STATEMENTS PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND AUDITED AND CERTIFIED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT THAT CONTAINS:

- 1. A BALANCE SHEET;**
- 2. AN INCOME STATEMENT;**
- 3. A STATEMENT OF CASH FLOWS;**
- 4. A STATEMENT OF CHANGES OF THE CREDIT UNION SHARE GUARANTY CORPORATION'S EQUITY; AND**
- 5. NOTES TO THE FINANCIAL STATEMENT;**

(II) THE FOLLOWING INFORMATION REGARDING ALL PARTICIPATING CREDIT UNIONS, AS APPROPRIATE, REGARDLESS OF THE STATE IN WHICH A PARTICIPATING CREDIT UNION IS DOMICILED:

- 1. THE COMPOSITE CAMEL RATING OF EACH CREDIT UNION IF THE COMPOSITE CAMEL RATING OF A CREDIT UNION IS 4 OR 5; AND**
- 2. ANY CURRENT ADMINISTRATIVE ACTION OR ANY CURRENT PLAN FOR CORRECTIVE ACTION CONCERNING EACH CREDIT UNION INITIATED BY THE CREDIT UNION SHARE GUARANTY CORPORATION OR THE RESPONSIBLE SUPERVISORY OFFICIAL IN THE CREDIT UNION'S STATE OF DOMICILE; AND**

(III) AN ANALYSIS OF THE COMPONENTS OF THE GUARANTY FUND REQUIRED UNDER § 7-217 OF THIS SUBTITLE, INCLUDING ANY RESERVES FOR GUARANTY LOSSES ESTABLISHED UNDER § 7-218 OF THIS SUBTITLE.

(3) UNLESS THE COMMISSIONER EXTENDS THE TIME FOR FILING, A CREDIT UNION SHARE GUARANTY CORPORATION THAT FAILS TO FILE AN ANNUAL REPORT ON OR BEFORE APRIL 10 SHALL PAY A PENALTY OF \$ 100 FOR EACH DAY FROM APRIL 1 TO THE DAY BEFORE THE COMMISSIONER RECEIVES THE REPORT.

(B) AT ANY TIME, THE COMMISSIONER MAY REQUIRE A CREDIT UNION SHARE GUARANTY CORPORATION TO FILE AN INTERIM REPORT CONTAINING

THE INFORMATION THAT THE COMMISSIONER CONSIDERS NECESSARY.

7-214.

(A) THIS SECTION APPLIES NOTWITHSTANDING ANY OTHER PROVISION OF LAW.

(B) A CREDIT UNION SHARE GUARANTY CORPORATION AND THE COMMISSIONER MAY EXCHANGE INFORMATION, INCLUDING INFORMATION OBTAINED DURING AN EXAMINATION, ABOUT A PARTICIPATING CREDIT UNION OR A CREDIT UNION THAT IS APPLYING FOR PARTICIPATION IN THE CREDIT UNION SHARE GUARANTY CORPORATION.

(C) THE COMMISSIONER MAY EXCHANGE INFORMATION, INCLUDING INFORMATION OBTAINED DURING AN EXAMINATION, ABOUT A CREDIT UNION SHARE GUARANTY CORPORATION WITH ANY STATE OR FEDERAL AGENCY HAVING SUPERVISORY AUTHORITY OVER THE CREDIT UNION SHARE GUARANTY CORPORATION.

7-215.

(A) A CREDIT UNION SHARE GUARANTY CORPORATION SHALL HAVE A WRITTEN CONTRACT WITH EACH PARTICIPATING CREDIT UNION THAT CLEARLY ESTABLISHES THE RIGHTS AND OBLIGATIONS OF THE PARTIES.

(B) AT LEAST 30 DAYS BEFORE THE EFFECTIVE DATE OF ANY MATERIAL AMENDMENT TO THE STANDARD WRITTEN CONTRACT THAT IS SUBMITTED UNDER § 7-207(B) OF THIS SUBTITLE, THE CREDIT UNION SHARE GUARANTY CORPORATION SHALL FILE THE AMENDMENT WITH THE COMMISSIONER.

7-216.

A CREDIT UNION SHARE GUARANTY CORPORATION SHALL PROVIDE WRITTEN NOTICE TO THE COMMISSIONER OF:

(1) THE RECEIPT FROM A CREDIT UNION OF AN APPLICATION FOR PARTICIPATION IN THE CREDIT UNION SHARE GUARANTY CORPORATION;

(2) THE CREDIT UNION SHARE GUARANTY CORPORATION'S UNDERWRITING DECISION REGARDING THE APPLICATION FOR PARTICIPATION; AND

(3) THE VOLUNTARY OR INVOLUNTARY TERMINATION OF THE

PARTICIPATION OF A CREDIT UNION IN THE CREDIT UNION SHARE GUARANTY CORPORATION.

7-217.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A CREDIT UNION SHARE GUARANTY CORPORATION SHALL ESTABLISH AND MAINTAIN A GUARANTY FUND OF AT LEAST 1 PERCENT OF THE AGGREGATE SHARES AND DEPOSITS OF THE PARTICIPATING CREDIT UNIONS.

(2) A CREDIT UNION SHARE GUARANTY CORPORATION THAT IS DOMICILED OUTSIDE THE STATE MAY MAINTAIN A GUARANTY FUND AT THE LEVEL PERMITTED BY ITS STATE OF DOMICILE IF THE CREDIT UNION SHARE GUARANTY CORPORATION:

(I) HAS BEEN DOMICILED IN THAT STATE FOR AT LEAST 25 YEARS IMMEDIATELY PRECEDING THE DATE OF THE CREDIT UNION SHARE GUARANTY CORPORATION'S COMPLETED APPLICATION FOR A CERTIFICATE OF AUTHORITY;

(II) HAS ENGAGED IN THE CREDIT UNION SHARE GUARANTY BUSINESS FOR AT LEAST 25 YEARS IMMEDIATELY PRECEDING THE DATE OF THE CREDIT UNION SHARE GUARANTY CORPORATION'S COMPLETED APPLICATION FOR A CERTIFICATE OF AUTHORITY; AND

(III) THE BUSINESS OF THE CREDIT UNION SHARE GUARANTY CORPORATION IS SUBJECT TO REGULATION BY ITS STATE OF DOMICILE.

(B) THE GUARANTY FUND SHALL BE COMPRISED OF THE FOLLOWING:

(1) THE ACCOUNT FOR EACH PARTICIPATING CREDIT UNION;

(2) RETAINED EARNINGS; AND

(3) ANY RESERVES ESTABLISHED UNDER § 7-218 OF THIS SUBTITLE.

(C) THE AMOUNT OF THE ACCOUNT OF EACH PARTICIPATING CREDIT UNION SHALL BE CARRIED ON THE BOOKS OF THE PARTICIPATING CREDIT UNION AS AN ASSET.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A CREDIT UNION SHARE GUARANTY CORPORATION MAY REQUIRE A PARTICIPATING CREDIT UNION TO MAKE ADDITIONAL CAPITAL

CONTRIBUTIONS TO MAINTAIN THE NORMAL OPERATING LEVEL DURING ANY CALENDAR YEAR IN WHICH THE FUND HAS BEEN REDUCED BELOW THE MINIMUM OPERATING LEVEL AS A RESULT OF PAYMENT OF ANY DEFICIENCIES IN CREDIT UNION SHARE ACCOUNTS.

(E) WITHIN 60 DAYS OF THE ASSESSMENT, A CREDIT UNION SHARE GUARANTY CORPORATION SHALL FILE WITH THE COMMISSIONER A REPORT OF EACH CAPITAL CONTRIBUTION THAT THE CREDIT UNION SHARE GUARANTY CORPORATION REQUIRES UNDER SUBSECTION (D) OF THIS SECTION.

(F) (1) IF A PARTICIPATING CREDIT UNION FAILS TO PAY AN ANNUAL CAPITAL CONTRIBUTION, PREMIUM, FEE, OR ASSESSMENT WHEN DUE, THE CREDIT UNION SHARE GUARANTY CORPORATION:

(I) WITHIN 10 DAYS OF THE FAILURE, SHALL REPORT THE FAILURE IN WRITING TO THE COMMISSIONER; AND

(II) AFTER 30 DAYS NOTICE, MAY REVOKE THE PARTICIPATING CREDIT UNION'S PARTICIPATION IN THE CREDIT UNION SHARE GUARANTY CORPORATION, UNLESS GOOD CAUSE IS SHOWN FOR THE FAILURE.

(2) THE 30 DAY NOTICE OF REVOCATION REQUIRED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION DOES NOT APPLY TO THE REVOCATION OF EXCESS COVERAGE.

(G) (1) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2) OF THIS SUBSECTION, A CREDIT UNION SHARE GUARANTY CORPORATION SHALL REFUND TO A PARTICIPATING CREDIT UNION AN AMOUNT EQUAL TO THE BALANCE OF THE PARTICIPATING CREDIT UNION'S CAPITAL CONTRIBUTION ACCOUNT, LESS ANY OUTSTANDING DEBTS OWED TO THE CREDIT UNION SHARE GUARANTY CORPORATION, IF THE PARTICIPATING CREDIT UNION:

(I) VOLUNTARILY DISSOLVES;

(II) OBTAINS PRIMARY SHARE GUARANTY INSURANCE FROM THE NATIONAL CREDIT UNION ADMINISTRATION SHARE INSURANCE PROGRAM OR ANOTHER CREDIT UNION SHARE GUARANTY CORPORATION REGULATED UNDER THIS SUBTITLE; OR

(III) MERGES OR CONSOLIDATES WITH ANOTHER CREDIT UNION THAT RESULTS IN THE SHARE AND DEPOSIT ACCOUNTS OF THE SURVIVING OR NEW CREDIT UNION BEING INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION SHARE INSURANCE PROGRAM OR ANOTHER CREDIT

UNION SHARE GUARANTY CORPORATION REGULATED UNDER THIS SUBTITLE.

(2) A CREDIT UNION SHARE GUARANTY CORPORATION SHALL MAKE A REFUND UNDER PARAGRAPH (1) OF THIS SUBSECTION ONLY IF THE GUARANTY FUND EQUALS OR EXCEEDS THE GUARANTY FUND'S NORMAL OPERATING LEVEL AS CALCULATED WITHOUT THE ACCOUNT OF THE EXITING CREDIT UNION.

(H) IF 2 OR MORE PARTICIPATING CREDIT UNIONS MERGE OR CONSOLIDATE AND THE SURVIVING OR NEW CREDIT UNION IS TO BE INSURED BY THE CREDIT UNION SHARE GUARANTY CORPORATION, THE FUNDS IN THE CAPITAL CONTRIBUTION ACCOUNT OF EACH CREDIT UNION SHALL BE TRANSFERRED TO THE ACCOUNT OF THE SURVIVING OR NEW CREDIT UNION, LESS ANY OUTSTANDING DEBTS OWED TO THE CREDIT UNION SHARE GUARANTY CORPORATION.

(I) IF A CREDIT UNION SHARE GUARANTY CORPORATION IS DISSOLVED, THE NET ASSETS AFTER PAYING ALL LIABILITIES AND ALL COSTS OF DISSOLUTION SHALL BE DISTRIBUTED TO THE PARTICIPATING CREDIT UNIONS IN ACCORDANCE WITH THEIR SHARE AND DEPOSIT BALANCES, LESS ANY OUTSTANDING DEBTS OWED TO THE CREDIT UNION SHARE GUARANTY CORPORATION.

7-218.

(A) (1) A CREDIT UNION SHARE GUARANTY CORPORATION SHALL ESTABLISH RESERVES FOR GUARANTY LOSSES ON AN INCURRED BASIS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES DURING THE PERIOD IN WHICH THE LOSSES BECOME EVIDENT.

(2) THE RESERVES SHALL PROVIDE FOR:

(I) LOSSES REPORTED TO THE CREDIT UNION SHARE GUARANTY CORPORATION;

(II) LOSSES INCURRED BUT NOT PREVIOUSLY REPORTED;
AND

(III) ESTIMATED LOSSES ON THE COLLECTION OF NOTES AND OTHER GUARANTEES TO PARTICIPATING CREDIT UNIONS.

(B) THE RESERVES SHALL BE MAINTAINED UNTIL THE LOSSES FOR WHICH THE RESERVES WERE ESTABLISHED HAVE BEEN SATISFIED.

7-219.

(A) THE COMMISSIONER SHALL GIVE PROMPT NOTICE TO THE APPLICABLE CREDIT UNION SHARE GUARANTY CORPORATION WHENEVER THE COMMISSIONER:

(1) TAKES POSSESSION OF THE PROPERTY AND ASSETS OF A PARTICIPATING CREDIT UNION; AND

(2) DETERMINES TO LIQUIDATE THE PROPERTY AND ASSETS OF A PARTICIPATING CREDIT UNION.

(B) NOTWITHSTANDING THE PROVISIONS OF §§ 5-605 AND 6-905(D) OF THIS ARTICLE, THE COMMISSIONER MAY PETITION THE COURT HAVING PROPER JURISDICTION TO APPOINT THE APPLICABLE CREDIT UNION SHARE GUARANTY CORPORATION AS RECEIVER OF THE PARTICIPATING CREDIT UNION.

(C) WHEN THE PROPERTY AND BUSINESS OF A PARTICIPATING CREDIT UNION HAS BEEN LIQUIDATED OR IS IN THE PROCESS OF LIQUIDATION AND THE PROCEEDS OF LIQUIDATION DISTRIBUTED ARE INSUFFICIENT TO PAY THE FULL GUARANTEED AMOUNT OF EACH CREDIT UNION SHARE OR DEPOSIT ACCOUNT, THE CREDIT UNION SHARE GUARANTY CORPORATION SHALL PAY EACH DEFICIENCY UP TO THE GUARANTEED AMOUNT WITHIN 30 DAYS FROM THE DATE THE CREDIT UNION SHARE OR DEPOSIT ACCOUNT BALANCE IS VERIFIED.

(D) WHEN ANY PARTICIPATING CREDIT UNION SHARE OR DEPOSIT ACCOUNT IS PAID, THE CREDIT UNION SHARE GUARANTY CORPORATION SHALL BE SUBROGATED TO ALL RIGHTS OF THE MEMBER OR DEPOSITOR, UP TO THE AMOUNT PAID BY THE CREDIT UNION SHARE GUARANTY CORPORATION TO THE MEMBER OR DEPOSITOR.

7-220.

(A) A CREDIT UNION SHARE GUARANTY CORPORATION MAY TERMINATE THE PARTICIPATION OF A PARTICIPATING CREDIT UNION FOR ANY OF THE FOLLOWING REASONS:

(1) THE PARTICIPATING CREDIT UNION FAILS TO SATISFY THE RISK ELIGIBILITY STANDARDS ESTABLISHED BY THE CREDIT UNION SHARE GUARANTY CORPORATION AND APPLICABLE TO ALL PARTICIPATING CREDIT UNIONS;

(2) THE PARTICIPATING CREDIT UNION OPERATES IN AN UNSAFE

AND UNSOUND MANNER AS DETERMINED BY THE CREDIT UNION SHARE GUARANTY CORPORATION;

(3) THE PARTICIPATING CREDIT UNION FAILS TO FURNISH FINANCIAL STATEMENTS, DELINQUENT LOAN REPORTS, OR OTHER INFORMATION CONSIDERED NECESSARY BY THE CREDIT UNION SHARE GUARANTY CORPORATION;

(4) THE PARTICIPATING CREDIT UNION FAILS TO REMEDY IN A TIMELY MANNER A QUALIFICATION ARISING FROM AN AUDIT PERMITTED OR REQUIRED UNDER THE WRITTEN CONTRACT BETWEEN THE PARTICIPATING CREDIT UNION AND THE CREDIT UNION SHARE GUARANTY CORPORATION;

(5) THE PARTICIPATING CREDIT UNION FAILS TO PAY WHEN DUE A CAPITAL CONTRIBUTION OR APPLICABLE PREMIUM, FEE, OR ASSESSMENT UNDER THIS SUBTITLE;

(6) THE PARTICIPATING CREDIT UNION FAILS TO COMPLY WITH ANY PROVISION OF THIS ARTICLE OR THE ARTICLES OF INCORPORATION OR BYLAWS OF THE CREDIT UNION SHARE GUARANTY CORPORATION THAT ARE MATERIAL TO THE SAFETY AND SOUNDNESS OF THE PARTICIPATING CREDIT UNION; OR

(7) CONTINUED PARTICIPATION BY THE PARTICIPATING CREDIT UNION WOULD RESULT IN A VIOLATION OF THIS SUBTITLE OR OTHER APPLICABLE STATE OR FEDERAL LAW BY THE CREDIT UNION SHARE GUARANTY CORPORATION.

(B) (1) AT LEAST 30 DAYS PRIOR TO THE EFFECTIVE DATE OF ANY TERMINATION, THE CREDIT UNION SHARE GUARANTY CORPORATION SHALL SEND WRITTEN NOTICE OF THE PENDING TERMINATION AND THE REASONS FOR THE TERMINATION TO:

(I) THE PARTICIPATING CREDIT UNION WHOSE PARTICIPATION IS TO BE TERMINATED; AND

(II) THE COMMISSIONER.

(2) THE 30 DAY NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO THE TERMINATION OF EXCESS COVERAGE.

7-221.

A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$ 5,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

7-222.

NOTHING IN THIS SUBTITLE CREATES ANY LIABILITY ON THE STATE FOR THE PAYMENT OF ANY FUNDS TO ANY PARTICIPATING CREDIT UNION OR OTHER PERSON BY REASON OF:

(1) ANY ACT OR OMISSION OF A CREDIT UNION SHARE GUARANTY CORPORATION; OR

(2) ANY DEFICIENCY OF A PARTICIPATING CREDIT UNION IN THE EVENT A CREDIT UNION SHARE GUARANTY CORPORATION IS UNABLE TO PAY THE DEFICIENCY.

7-223.

A CREDIT UNION SHARE GUARANTY CORPORATION, ITS PARTICIPATING CREDIT UNIONS, AND PERSONS WHO HAVE SHARE OR DEPOSIT ACCOUNTS IN THE PARTICIPATING CREDIT UNIONS ARE NOT SUBJECT TO THE PROVISIONS OF THE INSURANCE ARTICLE AS A RESULT OF ANY OF THE ACTIVITIES OF THE CREDIT UNION SHARE GUARANTY CORPORATION UNDER THIS SUBTITLE.

7-224.

A CREDIT UNION SHARE GUARANTY CORPORATION THAT IS A NONPROFIT CORPORATION EXEMPT FROM FEDERAL TAXATION UNDER §501(C)(6) OF THE INTERNAL REVENUE CODE IS EXEMPT FROM ALL TAXES IMPOSED BY THE STATE OR ANY OF ITS SUBDIVISIONS UNDER:

(1) ARTICLE 24, TITLE 9 OF THE CODE;

(2) TITLE 6, SUBTITLE 1 OF THE INSURANCE ARTICLE;

(3) THE TAX-GENERAL ARTICLE; OR

(4) THE TAX-PROPERTY ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That the Commissioner of Financial Regulation shall report annually on or before December 15 to the Senate Finance Committee and the House Commerce and Government Matters Committee, in accordance with §2-1246

of the State Government Article, on the status of the phase-out and dissolution of the Credit Union Insurance Corporation, including:

(a) whether the phase-out and dissolution of the Corporation and the transfer of the assets of the Corporation are in accordance with the provisions of this Act;

(b) how the nonprofit corporation receiving the assets of the Corporation anticipates utilizing the assets or has been utilizing the assets; and

(c) when the provisions of law regarding the phase-out and dissolution of the Corporation are no longer needed.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2002. Section 2 of this Act shall remain effective only through the date of the report in which the Commissioner of Financial Regulation advises that the phase-out and dissolution of the Credit Union Insurance Corporation and the transfer of the assets of the Corporation are completed and, at the end of that date, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.

Minutes of Meetings



MARYLAND GENERAL ASSEMBLY
TASK FORCE TO STUDY MODERNIZATION OF CREDIT UNION LAW

June 20, 2001

Minutes

Members Present: Co-Chairs Senator John Astle and Delegate Maggie McIntosh; Richard Feller (replaces Emelda Johnson); Deborah DiBlasio; David Bussard; Robert Noll; Stephen Hannan; Maureen Walsh McAtee; and Marysabel Rodriguez-Nanney. **Staff Present:** Tami Burt and Laura Lodge.

Opening Remarks

The meeting began at 1:10 p.m.

Senator Astle welcomed the new member Richard Feller who replaces Emelda Johnson as the representative of the Department of Labor, Licensing, and Regulation.

Under Chapters 147 and 148 of 2001, the remaining charge of the task force is to make recommendations on:

- the regulation by the Commissioner of Financial Regulation of credit union share guaranty corporations; and
- the dissolution of the Credit Union Insurance Corporation (CUIC).

Work Session on the Draft Regulatory Legislation

Comments were provided by Mr. Tom Gounaris, Assistant Attorney General Office of Financial Regulation; Mr. Mark Feinroth, Assistant Secretary, Department of Labor, Licensing, and Regulation; Mr. James R. Brown, III, Attorney, Brown & Brown, Maryland Credit Union League; and Mr. Jay Schwartz, Represents CUIC and ASI. The Office of Financial Regulation prepared the draft regulatory legislation.

Mr. Gounaris stated that after the new credit union law was enacted, the commissioner came up with a comprehensive regulatory scheme. She wanted a self-contained document (18 pages). It is longer than the industry wanted. There is no immediate need for regulations. Part of the draft has been borrowed from other statutes in Maryland Law and from Alabama and Ohio statutes.

7-201 Definitions

Mr. Gounaris stated that this section is consistent with the credit union law with a few additional definitions. There is one section where all credit unions are referred to (§7-212 - reporting) and the requirement in that section applies regardless of state of incorporation.

Senator Astle stated that there seems to be no opposition with this section.

7-202 Commissioner's Approval

Mr. Gounaris stated that there would be a one-time approval that cannot be transferred. Ms. McAtee stated that CUIC does not have a certificate of authority. Senator Astle agreed that the task force would not want unintended consequences. Mr. Gounaris stated that this section did not mean to have that effect. Mr. Schwartz asked what if a company is sold to another company. Mr. Gounaris responded that is not what is contemplated for this section. Mr. Hannan asked what is contemplated. Mr. Gounaris responded that a license cannot be sold; if the entity is not the survivor in a merger, the commissioner has the right of approval in a merger situation.

7-203 Insure Accounts

Mr. Gounaris stated that a licensee would have to have insurance at least the same as CUIC; this is the same language as in the CUIC statute. Mr. Brown stated that "on the same basis" should be out. Mr. Gounaris stated that would be fine.

7-204 Regulations

Mr. Gounaris stated that he does not see the need for additional regulations.

7-205 Qualifications for Certificate of Authority

Mr. Gounaris stated that an applicant has to show experience and must be currently licensed in its host state. This prevents start-ups. The inexperienced need not apply. This is a serious business. This is consistent with Alabama.

Senator Astle asked about trustworthy and reputable and good business reputation. Are they terms of art? They are subjective. Mr. Gounaris stated that they are not terms of art but they are subjective. The decision is delegated to the administrative unit head for its discretion; this is language pulled from other licensing schemes (money transmitters and mortgage lender laws). Any adverse decision is subject to the right of a hearing under the Administrative Hearing Act to determine if the decision was capricious or without basis.

Mr. Schwartz stated that he agrees with Senator Astle. The decision could be bias. It should say that "an applicant shall do the following..." His client will not care about this provision but what about another company. A Maryland company cannot get a certificate. First, it would have to be in another state and operate with retained earnings of at least \$10 million. Why not use assets instead of retained earnings. CUIC could not even apply. The reserve requirement is from Ohio law. Why Ohio law? What if another company comes in, Maryland should write its own law. The commissioner went to various statutes but did not go into the CUIC law. CUIC is seven pages; this is 18 pages. Mr. Schwartz stated that he submitted two pages.

Mr. Gounaris stated that he does not think CUIC is a good model because CUIC is in business to only insure Maryland credit unions; it is easy to regulate, especially since the commissioner regulates credit unions to ensure they are in sound condition. Therefore, CUIC is in good sound condition. Therefore, this legislation has to be more comprehensive. As far as lifting it from Ohio, Ohio is the only state that has a statute and that is where ASI is. This draft is being written to cover any guaranty corporations; the draft in a much broader vain.

Mr. Schwartz stated that this provision is borrowed from money transmitters, travelers check companies, mortgage bankers laws. It is not from the bank laws. He stated that he thinks the first three requirements should come out due to problems. This gives the commissioner more authority than she has over banks. The mortgage bankers problem was that companies were hiding behind shell corporations. He thinks the draft should use as much as the CUIC statute as possible.

Delegate McIntosh asked if Mr. Gounaris looked at the insurance code. Mr. Gounaris responded that he did for a number of provisions.

7-206 Application

Mr. Gounaris stated that the \$10,000 application fee is substantial. He would like defending of these fees to be when the commissioner and Mr. Rooney are able to be present. It is a serious fee and serves two purposes. One, it weeds out companies that may not be substantial enough for Maryland depositors; and two, the regulatory of this industry will carry a fair amount of expenses. The commissioner will need to hire employees since no one in the commissioner's office is available. So it is expensive to regulate.

Senator Astle asked if numbers three and four would give the commissioner the information about whether the company is substantial. The first argument is not strong.

Mr. Brown asked about the resident agent. A company would not have an agent until the company was approved. This is putting the cart before the horse. Further, suppose it is a statutory corporation, they would not have articles of corporation. What if they do not issue certificates in Ohio? In number six, add the word "insurance;" also he is upset with the high fee.

7-207 Commissioner's Investigation

Mr. Gounaris stated that the provision allows 120 days for completion of an application. These companies and their financial situations are complicated. In looking at ASI, Mr. Rooney went to Ohio to review the company. The right number may not be 120 days. Mr. Schwartz stated that he suggests 60 days and then it should be deemed approved.

7-208 Denial

Mr. Schwartz stated that he thinks 30 days for a denial should be deleted. For a hearing, it should be 30 days. These companies are liquid; they are easy companies to examine. He gave the task for CUIC's and ASI's financial statements.

Mr. Hannan asked if there are other players in other states or just ASI. Mr. Schwartz responded that there is only ASI so far; the others in other states have not gone beyond their borders. There have been phases. First, private insurance, then federal, then private reemerged. Then, during the savings and loan crisis, federal insurance came back; but now private is coming back. Ms. McAtee stated that on the national level, the Renaissance Commission is looking at federal versus private insurance.

Mr. Feinroth wanted to address the unstated issue of fees and costs and burdens. This includes how the department handles the additional workload, how it evaluates, how it regulates over time. If a licensee does not have to pay, taxpayers pay. The fee should be calculated to cover costs. Whatever the fee, big or small, it does not go to the Commissioner of Financial Regulation. There needs to be additional resources. He does not want this activity to take away from other activities that the department performs.

Mr. Gounaris stated that the provision that allows the commissioner an additional 30 days prior to a hearing, in addition to the full 120 days for the application process, could be deleted. Mr. Schwartz stated that the 30 days is the Administrative Procedures Act.

7-209 Grounds for Suspension

Mr. Gounaris stated that this provision is from the Insurance Code and the mortgage lender law. Mr. Schwartz stated that he has a problem in subsection (A) where if an employee commits a felony, ASI could lose its certificate; this is from the mortgage broker law and is not the same for banks. This refers to any provision of the title, including filing a report late. He thinks subsections (A), (B), and (E) should be deleted; (C), (D), and (F) are fine.

Senator Astle asked if a certificate holder is a business entity. Some person is the one who takes an action, how does the law look at a business entity with regard to any infractions? Mr.

Schwartz responded that the person cannot be touched; but in a criminal case, they can go after the individual.

Mr. Gounaris stated that if an officer committed a felony, that does not mean the certificate is in jeopardy. In subsection (B), the commissioner would have to look at the felony to see if it related to the business.

Senator Astle stated that if an employee committed a fraudulent act pertaining to the company, it would relate to the certificate. This connects the crime of the individual to the group; that is, if one person commits a crime, the crime becomes the business. Mr. Gounaris stated that there are differences for criminal versus administrative; this provision is just administrative.

Mr. Hannan stated that if (A)1 is eliminated, they can lie on the application. Mr. Schwartz stated that (A)1 is fine. Mr. Hannan stated that subsection (B) takes care of subsection (A). Mr. Schwartz stated that would be if an officer is embezzling. Mr. Hannan stated that there is a burden of proof that may be taken away.

Mr. Schwartz stated that the provision says that the commissioner must consider certain items, but it does not say how this is determined. Senator Astle responded that commissioners come and go; he wants this language etched in stone since it is uncertain who will be commissioner in the future.

7-210 Examination

Mr. Gounaris stated that this section allows examinations, as deemed necessary. The office can also use third-party examiners (independent contractors) or accept examinations of other state supervisors.

Delegate McIntosh asked how often banks are examined. Mr. Gounaris responded that they are examined once every 18 months. Ms. McAtee stated that CUIC is reviewed every 12 to 18 months. Delegate McIntosh asked why not put in the draft at least once every 18 months. Mr. Gounaris stated the a time could be added to the draft.

Senator Astle asked about the third-party provision. If a big auditor negotiates a contract with the commissioner, the party that is being audited pays the fee. Mr. Gounaris stated that was not the intent; there could be a cap. Mr. Brown stated that the fee could be steep. Mr. Gounaris stated that could be fixed. Delegate McIntosh stated that the Insurance Commissioner has similar language; that is, the commissioner can go out when needed, but at least every five years. Therefore, the commissioner could accept an out of state auditor, but at least every five years the commissioner would have to take a look.

Ms. McAtee stated that she knows that a big firm does something every three years at CUIC; perhaps the sharing of information would work.

Mr. Schwartz stated that Ohio does an annual examination. They invite other regulators to come in and they do it together. Coopers & Lybrand could be \$100,000. He spoke to his client. They will not apply if the fees are not reasonable. People will not come in the State if there are regulatory hurdles, especially since the business is small and is only hoping to grow.

7-211 Fees

Mr. Gounaris stated that this section allows for a \$350 fee plus expenses or the contract rate plus expenses. But he could put a cap on the contract rate. Also as of 12/00, ASI would pay \$12,000 per year.

Senator Astle asked about the purpose of the fee. Mr. Gounaris stated that it is designed to defray the cost of regulating a new industry. Senator Astle stated that there are no guarantees that the fees will come to you. Mr. Gounaris agreed.

Senator Astle asked about the \$350 fee. Mr. Gounaris stated that there is a \$250 fee for mortgage lenders. Mr. Schwartz stated that most states charge reasonable expenses. Most places do not charge a "per day" rate; this is only mortgage lenders. The annual fee includes \$1,000 and could amount to \$11,000 per year. He asked why all of the assets are taxed in Maryland; if 1 percent is in Maryland, why not just tax that portion? He stated that CUIC does not pay anything, not even expenses.

Mr. Brown stated that banks and credit unions pay \$1,000 in assessments; these fees are high. He thought the State was supposed to be friendly. Mr. Gounaris stated that the commissioner will have to hire a person. The cost will be considerably more than what will be received here. He is assuming that there will be only one entrant. But even if the fee is multiplied a couple of times, the costs are still there. Mr. Brown stated that the commissioner is picking fees out of the air. The commissioner could start low and then come back to the legislature.

Mr. Schwartz stated that the commissioner's office is probably raising more fees than it gets. The commissioner could just take the person that is doing CUIC and put them on ASI and call it a wash.

7-212 Reports

Mr. Gounaris stated that the commissioner would like to see audited reports for all of the credit unions (not just for the State credit unions). These are issues that could impact the stability of the insurer. Interim statements as needed. The commissioner has authority to request that. Mr.

Brown stated that there may be a LUA (a letter of understanding and agreement). He asked if that is an administrative action. The provision (# 3) asks for a plan for corrective action. In federal law, the credit union submits the plan to the insurer. But \$100 per day is steep. For banks and credit unions it is \$50 per day.

Mr. Schwartz stated that he is concerned with (II) 1-4 which asks about what is going on with the credit unions that the insurer insures in other states. Some of this may be confidential. They would not want to broadcast that a credit union is on the watch list.

Senator Astle stated that the commissioner wants to know the overall health of the company that is coming into Maryland. Mr. Gounaris stated that the commissioner would want to know the potential loss. Senator Astle asked what the commissioner would do if there is a credit union that is going belly up in another state. Mr. Gounaris stated that if there is a catastrophic effect, then the commissioner would prevent ASI from insuring any other State credit unions.

Ms. McAtee stated that credit unions have to be insured by someone. There is a time table for mergers of federal credit unions; also ASI has gotten rid of its tall trees (no one credit union could cause problem). Other states would like this information too. She was not sure how that is handled.

Mr. Gounaris stated that the State has a profound interest to make sure the insurer is in sound condition. If losses are looming out on the horizon, the commissioner would want to know. Mr. Feinroth added that ASI is a mutual company with a cap exposure (federal insurance has no cap exposure). This is over the amount sent to ASI to be insured by ASI.

Mr. Hannan asked if this is the part about encumbering funds so that there is enough to cover the Maryland credit unions. He asked if any of the items in paragraph II 1-4 indicate that. Mr. Gounaris responded that the item in II 4 would give the commissioner an indication. Mr. Schwartz stated that the late fee is high.

7-213 Additional Powers

Mr. Gounaris stated that the powers that a guaranty corporation would have are similar to those of CUIC. He indicated that Mr. Schwartz will say that this is already covered in corporate law and he will ask to have this section deleted.

7-214 Exchange of Information

Mr. Gounaris stated that this section concerns the sharing of information to ensure that there is free flow with other state regulators that have authority over the credit unions insured by ASI. Mr. Brown stated that this is already on page 86, line 19 of this past session's bill. Mr. Gounaris stated

that what is in last year's bill is only half; this draft needs to say that there is the sharing with others. There may be duplications, but for drafting purposes the language should be in this subtitle. The provision on page 86 could be deleted instead.

7-215 Contract with Participating Credit Unions

Mr. Gounaris stated that this section requires that ASI have a contract with its credit unions. That will set up the regulatory requirements that the credit unions will have to live up to. The commissioner felt that it was important that this contract be in writing. Mr. Schwartz stated that he does not know why this is needed here; it is already on page four. Mr. Gounaris stated that the contract could be amended and the commissioner's office would want to know about those amendments.

7-216 Notice

Mr. Gounaris stated that this section is a notice provision.

7-217 Guaranty Fund

Mr. Gounaris stated that this section is from the Ohio code which requires a 1 percent contribution of the share capital; they can require additional contributions.

Mr. Brown asked whether capital should be changed to net worth in subsection (C). Mr. Gounaris responded yes.

Mr. Schwartz stated that pages 13-16 of the draft were taken from Ohio law. ASI complies with Ohio law; but he questioned whether it is a model. That is the old model that requires 1 percent of deposits. It used to be all 1 percent. ASI has started to charge bad credit unions 1.3 percent. What if the really good ones should be .7 percent? This provision constrains business practice. He thinks this provision should be deleted.

Mr. Gounaris stated that the commissioner's office was not trying to just draft for ASI; there may be others. Ohio is the only model available. If 1 percent is not the correct number, then another number needs to be provided. The statute needs to provide guidelines, whatever it is.

7-218 Reserve

No comment.

7-219 Notice of Liquidation

Mr. Gounaris stated that this provision requires notice to the guaranty corporation if a commissioner takes over a credit union.

7-220 Terminate

Ms. McAtee stated that this provision should be part of any contract. It is not necessary in law. Mr. Gounaris agreed but stated that it would be beneficial to the guaranty corporation.

7-221 Criminal

Mr. Gounaris stated that the criminal penalties in this provision are somewhat standard. Senator Astle asked about the five years. Mr. Gounaris responded that is what is in the money transmitter law. Mr. Schwartz stated that he thinks the provision should be stricken. There are other statutes on the books. The language refers to "violating any provision;" this could be anything from not filing reports to a more serious offense. Mr. Gounaris stated that these are criminal violations. A corporate seal cannot be locked up, instead fines are imposed.

7-220 State Not Liable

Mr. Gounaris stated that this section provides that the State is not liable. The State is not reinsuring the deposits. Mr. Schwartz stated that this is already in the CUIC statute and he has no objections with including it. Mr. Gounaris stated that this is a stand alone statute, knowing that something will happen to CUIC. Senator Astle stated that this language is feel good language, especially after the savings and loan crisis.

Ms. McAtee stated that the CUIC statute is better than the Ohio statute.

7-223 Insurance laws

Mr. Gounaris stated that this section provides that the State insurance laws do not apply to guaranty corporations.

Mr. Gounaris stated that the draft's effective date is July 1, 2002.

Additional Items

Mr. Schwartz stated that there are items to add. Specifically, there should be an exemption from taxation. ASI is exempt from federal taxation. It is nonprofit (a 501(c)(6)); therefore, Section 7-116 should be added in this draft.

Mr. Schwartz stated that he is practical and his client is practical. Alabama's law is one sentence with regulations. This sets up a big regulatory scheme. He suggested a two page draft. Senator Astle responded that he does not want to do what Alabama does, but he does want to do something equitable. He does not want to measure it by pages, but by content.

Senator Astle stated that there will be a work session to work through these issues to see if there is consensus. The workgroup will meet on Tuesday, June 26 at 11:00 a.m.

Dissolution

Mr. Schwartz stated that this regulator draft would have to be in statute. Then the directors of CUIC would file article of dissolution within two years with State Department of Assessments and Taxation. There are taxing issues. The legislature would have to repeal the statute. There will be \$3 million left in CUIC. This is its earnings over the years. A foundation was set up with seed money (\$125,000) that is used to encourage the credit union movement. It is not State money.

Closing Remarks

Senator Astle concluded the meeting by stating that the next meeting would be a work session on Tuesday, June 26, 2001 at 11:00 a.m.

The meeting ended at 3:10 p.m.

Respectively submitted,

Tami Burt
Senate Legislative Analyst

Laura Lodge
House Legislative Counsel

TDB/LL/ncs



MARYLAND GENERAL ASSEMBLY
TASK FORCE TO STUDY MODERNIZATION OF CREDIT UNION LAW

June 26, 2001

Minutes

Members Present: Co-Chairs Senator John Astle and Delegate Maggie McIntosh; Senator John Hafer and Delegate David Brinkley; Commissioner Mary Louise Preis; Teresa Halleck; and Maureen Walsh McAtee. **Staff Present:** Tami Burt and Laura Lodge.

Opening Remarks

The work session began at 11:25 a.m.

The commissioner stated that the best way to go is to have this draft in law. She is not assuming that only ASI will apply. Some states went the other way and left more to the commissioner. She hopes the legislature is happy that the commissioner is this way. She would be fine doing it the other way.

Senator Astle stated that he thinks the commissioner has done well but would like to leave little to the future commissioners. He would like consensus. The commissioner responded that her office drafted the long version and will try to work out the differences.

Mr. Schwartz stated that he does not have a problem with nailing down the issues; but he thinks a shorter version would be better. Ohio is being used. The State commissioner would regulate Maryland credit unions. He stated that he could live with the statute but the task force has to be careful. A future commissioner could say that he/she does not like a particular contract that a credit union has with the guaranty corporation. It is not clear if a guaranty corporation will elect to do business here with this draft.

Senator Astle stated that if the specifics are left to regulations, then the legislature and other interested parties will still have to fight that battle anyway. Mr. Schwartz agreed that content is more important.

The commissioner stated that ASI and Ohio are fine; but what about state x and state y. She does not know. This probably complies with other states. Sooner or later there may be competition if more credit unions want private insurance.

Work Session on the Draft Regulatory Legislation

Comments were provided by Mr. Tom Gounaris, Assistant Attorney General, Office of Financial Regulation; Mr. Joseph Rooney, Supervisor, Credit Unions; Mr. Mark Feinroth, Assistant Secretary, Department of Labor, Licensing, and Regulation; Mr. James R. Brown, III, Attorney, Brown & Brown, Maryland Credit Union League; Mr. Jay Schwartz, Represents CUIC and ASI; and Mr. Dennis R. Adams, President/Chief Executive Officer of American Share Insurance (ASI).

7-201 Definitions

No comments.

7-202 Commissioner's Approval

Mr. Gounaris stated that the concern was that CUIC would need a certificate of authority. That is not the office's intention. CUIC will go away. Mr. Schwartz stated that language should be put in the draft that this subtitle does not apply to CUIC.

Ms. Lodge stated that perhaps uncodified is best. Mr. Schwartz stated that the language could say that "this subtitle does not apply to CUIC" and then when CUIC is phased out, the sentence that says "this subtitle does not apply to CUIC" could be stricken.

The commissioner stated that if an entity buys a guaranty corporation, then the new entity has to comply with the law. Mr. Schwartz asked about the situation with a name change. Mr. Gounaris stated that if there is a name change, there is no transfer of a certificate; in a merger, then there is a transfer. This tracks corporate entity law.

Delegate Brinkley asked about what is transferrable with the approval of commissioner. There may be an unforeseen situation. Perhaps it could say that it is not transferable unless the commissioner approves.

The commissioner stated that her office is trying to use other models since the banks do not do this. The question is how much language to put in here. The section could define transfer and name change. Mr. Schwartz stated that Mr. Gounaris is saying that a change of name is not a transfer. In a merger where another entity is the survivor, then it would be a transfer.

Mr. Adams stated that ASI could go from a mutual interest to another entity form. If there is an out right sale, then there is a transfer. If ASI want to change its type to a different way, he would hope that could be worked out.

The commissioner stated that if there are two owners and some ownership transfers between the two, her office reviews the situation. Specifically, if more than 25 percent transfers, then her office reviews the new person. Otherwise, one broker would get a license and then simply transfer it to someone else and the commissioner would know.

7-203 Insure Accounts

The commissioner stated that the language “on the same basis” was left in because her office is not sure if ASI does its insurance the same way as NCUA. Mr. Schwartz stated that he does not know what “on the same basis” means. This was taken out of the new law and “at least to the same amount” was used.

Senator Astle stated that “on the same basis” would be deleted. Mr. Gounaris agreed that it should be consistent with the legislation enacted this past session.

7-204 Commissioner May Adopt Regulations

No comments.

7-205 Qualifications for Certificate of Authority

Mr. Gounaris stated that items one and two are subjective. The commissioner stated that these are the same for directors of banks. There is judgment. The applicant can appeal. The language is from nondepository licensing also. In banking, there is a similar provision when the commissioner is considering a newly chartered bank. It is slippery language, but it allows subjectivity for the commissioner. If it is taken out, then it guts the underpinning of the administrative law.

Mr. Adams stated that this is unusual to his company. He wonders how it is determined. He thinks something more quantitative should be used, like bonding. That could be a measure of trustworthiness.

The commissioner stated that a bond could not prove they are trustworthy. Mr. Adams stated that he thinks “trustworthy” is too subjective. Mr. Schwartz stated that item seven gives the commissioner discretion; it is broad.

The commissioner asked if Mr. Schwartz’s client was denied for not having a good business reputation, would he appeal. Mr. Schwartz responded yes. The commissioner stated that the items listed are the ones the commissioner’s office would examine; the draft could just have one sentence to say the commissioner has judgment. Mr. Schwartz responded that there are legal standards. The commissioner stated that it is up to legislators.

Senator Astle stated that he brought it up. The other criteria are quantifiable. It was just a question of being subjective. The commissioner responded that there is law on that; bankruptcy people are not considered trustworthy. Senator Astle stated that the applicant would have to satisfy the commissioner that it will conduct business in manner that will adequately protect the credit unions. The commissioner questioned the situation of a person who ran a business into the ground in Ohio but could prove the person is fine now.

Mr. Brown stated that if the applicant is a start up, how would it have business experience. The commissioner responded that her office would look at those who will take the leadership role.

Mr. Adams stated that he prefers objectivity, such as does the company pay its claims. He does not think a new company could do this. If he were commissioner, he would tell the start up no.

Mr. Gounaris stated that the qualifications would be vaguer and fluffier if the draft got rid of items one and two because of item seven. Mr. Adams stated that he would suggest a check list for things for the company to have in order to qualify.

Senator Astle asked the commissioner if she could accept a check list. The commissioner responded that she has that already. But this is something different. The question is whether the company is going to do what the office wants them to do or will it pull out of Maryland in some future date.

Senator Astle stated that he defers the decision on this one.

The commissioner stated that her office would rather the applicant to have started elsewhere. But that is anticompetitive to prevent a Maryland company to start up. She would rather have an established company here but she thinks this should be deleted so that they are not anticompetitive. Mr. Schwartz agreed that the draft should not exclude domestic companies.

Senator Hafer wanted to confirm that CUIC is doing well and ASI is doing well. What the task force is trying to do is see if others could come in.

Delegate Brinkley stated that there will be language to phase out CUIC. CUIC is staying where it is, but this allows another company to come in and deal with CUIC later. He questioned a foreign company. Ms. McAtee stated that she thinks a foreign company should be licensed elsewhere.

Ms. Lodge questioned whether another type of company would want to start doing this. Mr. Adams responded yes. Mr. Gounaris stated that it could include a corporation domiciled in a state other than Maryland.

The commissioner stated that if a company is licensed as an insurer in another state but not as a guaranty company, this is self-serving from the State's position. There is a difference between a start up guaranty company in Maryland and a start up in Maryland that is related to a company licensed elsewhere. Ms. McAtee stated that the draft could require the applicant to have done guaranty insurance elsewhere. Mr. Gounaris stated that the draft should add "if domiciled in a state other than Maryland."

Mr. Schwartz stated that item three would disqualify a Wisconsin company and a Maryland company. Ms. Lodge stated that item three could be deleted and item four could be modified.

The commissioner stated that the \$10 million is reasonable. Start up banks need \$1 million in capital and generally are required to be bonded. The commissioner's office looked to see how much ASI had; it has \$23 million. Her office picked a number; she suggested that the draft needs to require something.

Delegate Brinkley stated that the draft refers to retained earnings; he questions whether this is dealing with chicken and eggs. Should the draft refer to capital? The commissioner responded that equity capital would be fine, but there has to be something. Delegate Brinkley questioned whether a company could have retained earnings and not experience. Mr. Adams responded that \$5 million is common for capital. There is \$90 million shared in CUIC. A 2 percent loss is \$1.2 million. The \$10 million would be tough and hard for credit unions. The commissioner stated that it is up to the legislature.

Delegate Brinkley questioned what it takes to start a Maryland credit union. Mr. Brown responded that there is a fee for the application. That is all; except each member puts in \$10 and there only needs to be seven members. Mr. Rooney stated that a credit union can start up with no capital. It has to transfer 10 percent of its income to its reserve account so that it equals 7 percent capital to assets.

Delegate Brinkley stated that he wants to allow someone in Maryland to start up. The commissioner stated that she prefers it not to be someone too small. Mr. Brown stated that it would need to be in existence for years to have earnings.

Mr. Schwartz stated that CUIC has \$3 million and it has been around for 25 years. The commissioner stated that based on a prior decision the applicant can be a new company now; therefore, the draft cannot require retained earning. The draft needs to refer to equity capital.

Ms. Halleck stated that it would make sense for it to be based on deposits or else it will be outdated in statute in the future. For SECU, \$10 million is nothing, but for a smaller credit union, that is a lot. So it should be based on a percentage of deposits.

Senator Astle questioned on what the percentage would be based. Mr. Adams stated that a percentage is dangerous too. A dollar amount shows the company has something. From his experience around the country, he suggests \$3 to \$5 million. This would show that the company has some minimum capital.

Delegate Brinkley asked when the commissioner looks at insurance for a credit union whether there is a say by the office that the credit union is adequately protected. The commissioner stated no; the credit union must now have federal insurance or CUIC. Ms. McAtee stated that CUIC would not accept SECU.

Mr. Schwartz stated that after CUIC gives back the deposits to its member credit unions, there is \$3 million remaining.

Mr. Adams asked if the commissioner can deny renewal. Mr. Gounaris stated the denial of an applicant for renewal is not in the draft.

The commissioner stated that she is conservative to pick a high number. The legislature is safer with a higher number. Delegate Brinkley suggested using \$3 million. Mr. Gounaris questioned what the \$3 million would be, equity capital or retained earnings. Mr. Schwartz stated that at one time CUIC had SECU and MECU. At that time, CUIC did not have \$3 million.

Ms. McAtee stated that she would be worried about it, but a good leadership would not take SECU. It would have too great of a risk.

Mr. Gounaris stated that CUIC is a different breed of cat. CUIC is only insuring the credit unions already under the commissioner's review. CUIC will not get in trouble; but it is unclear about the credit unions in another state that are insured by ASI. The commissioner stated that one hit in another state cleans out the fund.

Mr. Adams suggested that a higher amount be used. ASI operated at one time in ten states; now they are in seven states. They have had about \$6 million in losses.

The commissioner stated that \$3 million can hardly pay salaries; \$3 million is nothing.

Senator Hafer asked if, in the past, CUIC had problems. Perhaps \$3 million is low. Senator Astle stated that maybe \$5 million should be used.

The commissioner stated there are two choices. The draft could take out all of the provisions that duplicate Ohio law or the draft could have something; she thinks it should say something about reserves. Senator Astle stated that it would be hard to sell politically without something.

Mr. Schwartz stated that this provision mimics Ohio law. ASI will listen to the Ohio commissioner where it is domiciled. They would be coming to Maryland for a small opportunity. There would be different interpretations between the Ohio and Maryland commissioners.

Mr. Brown stated that the draft could just refer to losses in the state in which it is domiciled. The commissioner stated that her office knows what Ohio is and suggests her office is fine with the statutes in that state; however, she does not know other states' statutes.

Mr. Schwartz stated that the Ohio law did require a 1 percent deposit. But ASI is allowed to charge premiums in a different way, based on risk.

The commissioner stated that the task force can either include Ohio's law in the draft since this is where ASI comes from or allow other states' statutes to govern. The legislature would be more comfortable with these provisions in statute.

7-206 Application Information and Fees

Senator Astle questioned whether the word "proposed" should be added in to describe a resident agent. Mr. Brown stated that a resident agent is required by the Department of Assessments and Taxation. For a foreign company, there needs to be a resident agent.

Senator Astle asked about the requirement for a certificate of authority from the company's domiciled state. Ms. Lodge questioned whether another state would necessarily issue a certificate of authority. Mr. Gounaris responded that what the commissioner's office had in mind was that the domiciled state would certify "good standing." Ms. Lodge stated that perhaps the word "statement" could be used. The commissioner stated that most states do comparable documents; she would just want something from the supervisory authority. Mr. Gounaris suggested using "certification."

Ms. Lodge stated that the contract is between the participating credit union and the guaranty corporation; the word "insurance" is not needed.

Senator Astle stated that there is an objection to the fee. The commissioner stated that the fee amount is based on what it would cost the State.

Mr. Schwartz stated that the fee is excessive. He knows the Maryland Insurance Administration and they raise more money from licensees than they get back in their budget. He asked the commissioner if her office raises more from license fees than the amount budgeted for the office. The commissioner responded that she tries to convenience the budget people. There are actual costs, including the time spent and the hiring of new folks. Her office came up with this number. This company wants to come in. Her office has spent a lot of time. There is no renewal. There is only a one-time fee. Her office has already done a lot. There is a cost to the State. She will

have to hire someone (on contract). It is a lot of work and should not be \$1,000. There is no charge for a conversion for a credit union. ASI benefits from that, they get a customer. She will need to hire someone at \$200 per hour.

Mr. Adams stated that ASI has done insurance conversions in other states. There is little activity by the regulator. ASI spends the money for the conversion. When ASI makes an application in another state, it is generally \$5,000 in other states. Sometimes it is as low as \$1,000. It is an economic issue.

Mr. Brown stated credit unions switched from an examination fee to an assessment fee. Ms. McAtee stated that she agrees with the commissioner on conversions. Most are from federal to ASI. These would be from a State insured to ASI.

The commissioner stated that she would propose an examination every other year. She would hire her own employees or hire a third party. She thought the company would pay for that. There are other costs. For example, for every bank there are thousands of requests. Maybe she will not hear from ASI. It is hard to put a number on it.

Mr. Schwartz stated that the draft provides \$350 per day for a State employee or unlimited for another company. The commissioner stated that if the company picks up the expenses, then it will not have to go through her budget. The real costs are not small. She suggests \$10,000 as the one-time fee.

Delegate McIntosh questioned if other states have an annual amount.

Mr. Adams stated that Alabama is \$5,000 per year and \$5,000 application fee. This draft would amount to \$12,000 annually. This is an economic burden.

The commissioner stated that banks pay .08 on assets. Mr. Brown stated that credit unions pay a \$500 application fee.

Ms. McAtee stated that the examination fee should pay the expenses for the State employees to come to Ohio. This would include accommodations and travel, but not the time of the person.

The commissioner stated that she will not be able to send out her own examiners since they will not know how to examine this type of a company. Mr. Adams stated that other states only send their own examiners. Ms. McAtee suggested taking out the per diem and leaving the payment of expenses. The commissioner agrees with taking out the per diem \$350.

Ms. McAtee stated that if it is an asset-based fee, then only Maryland assets should be used. The company should not be penalized for expanding nationally. The commissioner stated that CUIC does not currently pay.

Delegate McIntosh asked how much the cost would be if the draft referred only to Maryland assets. Mr. Schwartz responded that it is \$1,000 plus 8 cents per \$1,000 for assessments. Mr. Adams responded that it would be about \$6,400 (\$80 million x \$.08/1,000), plus an additional \$1,000.

The commissioner stated that if the purpose is to know how Maryland credit unions are doing, the commissioner can do that here; but the purpose is to look at the other business of ASI, then the commissioner's office needs help.

Senator Astle suggested looking at the in-state business and then calling the commissioner's counterparts in other states for the out-of-state business. The commissioner stated that she will continue to look at all of the State credit unions and presume that the other states do that for their state credit unions. She is not sure if she can call other states and ask how those credit unions are doing.

Senator Astle asked if Ohio regulators look at the business in other states. Mr. Adams responded that there is a joint examination that looks at all states. They look at the camel rating and there are full disclosures.

Delegate McIntosh suggested an application fee of \$5,000 and a flat annual fee of \$5,000. Further, there would be no \$350 per diem, but the company would pay expenses. Senator Astle added that the fees go to the general fund.

The commissioner stated that there is no way to get the money to do other things. There should be an additional allocation. Delegate McIntosh agreed to go to bat for the commissioner to get her more money. Delegate Brinkley agreed.

Mr. Feinroth stated that the issue that Senator Hafer mentioned before had to do with special funding. This is still a general fund activity; but what will occur is that the department will write a fiscal note. When it's time for the budget cycle, the department will ask to add employees. But the budget process is based on the fiscal note. So if the fiscal note from the Department of Legislative Services does not indicate the need for additional employees, the department may not receive an additional employee. The department could request a deficiency appropriation that could help to fund an additional employee. But the process starts here. The task force should not take away the ability of additional funding for the department.

Senator Astle asked about others that the department hires. The commissioner agreed to take out the third-party contractual hiring.

7-207 Commissioner's Investigation and Approval

Mr. Schwartz referred to the bank holding company law where an application is deemed approved within a certain period of time. The commissioner disagreed saying that she likes what is in the draft. Mr. Gounaris stated that "deemer" language is not anywhere else. The commissioner has six months for new bank applications. Senator Astle stated that for the formation of a new credit union, the time period was 60 days but was changed last session to 120 days. Mr. Schwartz agreed to keeping it at 120 days.

7-208 Commissioner's Denial of Application

Mr. Gounaris stated that he is fine with taking out the 30-day denial. He suggests adding the phrase "if the application is denied" to subsection (B). He stated that it is fine to change the time from 45 days to 30 days for the Administrative Procedures Act.

7-209 Grounds for Suspension or Revocation, Cease and Desist Order or Civil Penalty

Ms. Burt suggested that "intentional" be added before "material misstatement." The commissioner stated that "intentional" is different from just "material." Intentional should not be added.

Mr. Gounaris stated that this section concerning the convictions of officers is drawn from other sections of law (mortgage lender law). It not as draconian as it appears. In subsection (B), the commissioner would have to consider certain items, including the nature of the crime. If the crime were not honesty related, then the crime would not be considered (littering, traffic violation). Subsection (B) provides protection against a capriciousness or arbitrary decision of the commissioner.

Mr. Adams asked what would happen if an auditor committed a crime and the company recovers under a bond. The employee level is too low. Directors and officers should be accountable. But what is in the draft is unique.

The commissioner stated that she would take away a mortgage broker license if three people worked for the broker and one of the employees was convicted. That is the genesis. If something bad happens, how bad would it have to be? She will not take away a bank license if a teller embezzles. The bank statute is broader and gives the commissioner some discretion.

Mr. Schwartz stated that the language in the draft is not in the bank law or the credit union law. Delegate Brinkley suggesting taking "employee" out.

Senator Astle commented that felony does not have the same language associated with it as a misdemeanor. The commissioner stated that a felony is more serious crime.

Delegate Brinkley asked what the difference is between an employee and an agent. Mr. Schwartz stated that he is an agent and what if he commits a crime with another part of his work. An agent is a contractor. Senator Astle stated that agent and employee have less effect to the control of the company.

Mr. Adams stated that ASI has no stockholders. Delegate McIntosh suggested taking out "stockholders."

Senator Astle stated that the company would not have control as to who would be stockholders. So he suggests limiting the provision to officers, directors, and certificate holders.

Ms. Lodge stated that some of the language in the section may be duplicative of the commissioner's powers found in §§ 2-115 and 2-116. She questioned whether they should be in this subtitle as well; if the language is in both places it would underscore the importance. Mr. Gounaris stated that the enforcement powers provided to the commissioner in legislation several years ago was designed to overlay any other powers. He thinks the language should keep here; for any regulatory legislation, he thinks it should still be self contained.

Mr. Schwartz stated that he understand "honestly, fairly, and equitably;" but he thinks "efficiently" should be taken out. Mr. Gounaris stated that this section is designed to be broad and catch all. He is not arguing that Mr. Schwartz is wrong. This is from the mortgage lender law. If it is taken out, then the commissioner is faced with the question as to why the two are different. But he really does not have a problem taking out "efficiently."

7-210 Examination by Commissioner

The commissioner suggested to change the draft to an examination every two years. Mr. Adams responded that some states do exams every other year, some every year. The commissioner asked Mr. Gounaris if the part about the agreement needs to be in law for her to be able to delegate. Mr. Gounaris responded yes.

7-211 Examination Fees and Annual Assessment

Ms. McAtee suggested deleting the part of the section that requires the company to pay the third party directly. Delegate McIntosh stated that the cost should be \$5,000 per year.

7-212 Filing of Reports with Commissioner

Delegate McIntosh asked if there would be confidentiality issues with requiring ASI to provide information about the credit unions it insures. Mr. Schwartz stated that he is not sure what the administrative action would be since it is not defined. He is unsure about the ability to share information and whether it is confidential. It may be confidential between the regulator and insured.

Mr. Adams stated that if the plan for corrective action is part of the annual report and is only a paragraph, he has no problem. ASI has merger and liquidation plan that it can share about the credit unions it insures.

Delegate McIntosh asked about the late fee of \$100. The commissioner stated that it can be taken out since it is not really an incentive. Mr. Brown stated that it is \$50 for credit unions and banks. Mr. Gounaris stated that it is \$100 for insurance companies. Delegate McIntosh asked Mr. Schwartz if that is okay.

Mr. Adams stated that ASI cannot have an interim audit; that would be costly. The commissioner agreed that could be taken out.

7-213 Additional Powers

Mr. Gounaris stated that this section should come out.

7-214 Exchange of Information

Delegate McIntosh asked if the language is duplicative to the language about sharing of information in the legislation from this past session. Mr. Gounaris stated that the ability of the commissioner to share with the guaranty corporation about the participating credit unions may be somewhat duplicative. But he would leave it here and take it out of § 6-909(c).

Delegate McIntosh requested that Ms. Burt and Ms. Lodge determine if the language is needed in both places.

Mr. Gounaris stated that subsection (B) gets the information from ASI; subsection (C) gets the information about ASI.

7-215 Contract with Participating Credit Unions

Mr. Gounaris stated that the question is whether it is necessary to duplicate other states. Now that the decision has been made to allow start ups, the statute needs to address the issue. The question was why does each contract have to be given to the commissioner. He thinks the

commissioner should have the authority to review the contracts and any amendments. The contract stands in place of the NCUA regulations. With a private insurer, the contract gives the commissioner a level of oversight.

Mr. Adams asked what happens if there is a material change and the Maryland commissioner does not approve the change. Perhaps there is a change in price. So would there be two different contracts? Perhaps ASI would have to withdraw from Maryland.

Delegate Brinkley asked if this is necessary. The commissioner stated that it is if it is a regulatory issue. Mr. Gounaris agreed but stated that the commission could review them with no action. The commissioner stated that she will not interfere with the contracts. Approval is not the issue. She does not get to approve the NCUA regulations, but she provide an opinion. Mr. Gounaris suggested changing it to a "notice" for amendments to the contracts. Mr. Adams asked if the commissioner would want 30 days notice for these amendments (before their effective date). The commissioner stated that she would call Ohio is she noticed a problem with the contracts.

Mr. Gounaris stated that if the commissioner was concerned about the credit union's ability to pay, the commissioner could impose sanctions. The commissioner stated that she knows that the question is what happens if Ohio changes law; but she does not know how to do it otherwise.

Delegate McIntosh stated that she and Senator Astle agree. The task force is not just writing this law for ASI. If another entity applies and ASI decides not to enter Maryland, the legislators want to have the option. She hopes ASI does not feel that the comments about having specific language about possible problems in the law are pointed against ASI.

Delegate Brinkley asked if there are any other states with this type of law. Mr. Gounaris stated that he considers Ohio as the model.

7-216 Notice to Commissioner

No comments.

7-217 Guaranty Fund

7-218 Reserve for Guaranty Losses

7-219 Notice of Possession/Liquidation, Subrogation

7-220 Credit Union Share Guaranty Corporation May Terminate Credit Union Participation

Mr. Schwartz stated that the draft commits to 1 percent. There has been talk of going to less at ASI. He does not want to take the method of charging a premium and place it in statute. It is a benchmark. There could be a conflict between two commissioners as to whether or not an assessment should be required. There are problems with harmonizing.

Mr. Adams stated that he sees parts of this section that are not a hazard; but other parts are not doable for ASI. ASI would have to abide by Ohio law.

The commissioner stated that she has had a compact since interstate banking became effective. The home state looks at everything everywhere. The home state sets the capital and other requirements, regardless of whether the branch is in Virginia or where ever. The states' commissioners share information. Mr. Schwartz responded that a similar type of sharing is done in the insurance industry.

The commissioner stated that the home state regulator should decide. She does not love Ohio law. But she does not want to leave out key provisions in Maryland law. She agrees that there cannot be too many regulators.

Delegate McIntosh requested the commissioner's office meet with Mr. Schwartz and Mr. Brown on these sections to determine how much of the language is necessary.

Mr. Brown stated that "capital" should be changed to "share and deposit" throughout these sections. Mr. Rooney stated that "net worth" applies to a credit union; "capital" applies to a corporation.

7-221 Criminal Violation

Ms. Lodge stated that the credit union law provides that "any officer, official, agent, or employee who violates the provisions of this title is guilty of a misdemeanor and subject to \$3,000 or five years." Mr. Schwartz responded that the regular criminal statute could take care of this. The Judiciary Committee would not want this. Mr. Gounaris stated that all licensing statutes have a criminal provision; he disagrees with Mr. Schwartz.

Delegate McIntosh stated that she agrees since all other types of licensing have a similar provision. She asked Mr. Schwartz to swallow this one.

7-222 State Not Liable

No comments.

7-223 Insurance Laws Not Applicable

Mr. Schwartz stated that this is fine since CUIC is not covered and any new corporation should not be as well.

Additional Issue

Mr. Schwartz stated that the draft needs to include a tax exemption for the guaranty corporation. ASI is already exempt from federal taxes and Ohio taxes. Another section should be added. CUIIC has always been exempt and ASI should be as well.

Mr. Rooney asked if ASI would they have income in Maryland. Mr. Schwartz responded that under its corporation, its income that derived in Maryland could be appropriated. Senator Hafer asked if they are tax exempt because they are the insurer of last resort. Mr. Adams responded that the earnings are really the credit unions' earning so if there is a tax it would be double tax.

Delegate McIntosh required that Ms. Burt and Ms. Lodge come up with language. Further, a letter should be sent to the House Ways and Means Committee altering them of this action.

Closing Remarks

Delegate McIntosh concluded the meeting by stating that the next meeting would be on Tuesday, July 10, 2001 at 1:00 p.m.

The meeting ended at 2:40 p.m.

Respectively submitted,

Tami Burt
Senate Legislative Analyst

Laura Lodge
House Legislative Counsel

TDB/LL/ncs



MARYLAND GENERAL ASSEMBLY
TASK FORCE TO STUDY MODERNIZATION OF CREDIT UNION LAW

July 10, 2001

Minutes

Members Present: Co-Chairs Senator John Astle and Delegate Maggie McIntosh; Mary Louise Preis; Richard Feller (replaces Emelda Johnson); Teresa Halleck; Bert Hash; David Bussard; Robert Noll; Stephen Hannan; and Maureen Walsh McAtee. **Staff Present:** Tami Burt and Laura Lodge.

Opening Remarks

The meeting began at 1:10 p.m.

Senator Astle began by saying that there has been some consensus on the regulation draft.

Work Session on the Draft Regulatory Legislation

Comments were provided by Mr. Tom Gounaris, Assistant Attorney General Office of Financial Regulation; Mr. Joseph Rooney, Supervisor, Credit Unions; Mr. Mark Feinroth, Assistant Secretary, Department of Labor, Licensing, and Regulation; Mr. James R. Brown, III, Attorney, Brown & Brown, Maryland Credit Union League; and Mr. Jay Schwartz, Represents CUIIC and ASI.

7-217, 7-218, and 7-219 Guaranty Fund

Mr. Gounaris stated that he met with Mr. Schwartz the day before on Sections 7-217, 218, and 219. There has been agreement. These sections related to the guaranty fund. At the last meeting, it was discussed that the deposit with the guaranty insurer by the credit unions should be at least 1 percent. That provision was not satisfactory to the industry because in their opinion it did not give enough flexibility. The industry wanted flexibility in the draft. So the commissioner's office and Mr. Schwartz came up with a new idea. If a guaranty corporation meets certain criteria (including having been in business for 25 years, and being currently regulated by an agency in their home state), they can maintain the deposit requirement that is allowed in their home state.

Senator Astle asked if this is generic or just for ASI. Mr. Gounaris responded that it is generic but narrow enough. He thinks ASI and Ohio will fit into this.

Ms. McAtee responded that this is fine with ASI. Mr. Schwartz agreed.

Senator Astle asked if ASI does not come in, whether the General Assembly has shot itself in the foot. Mr. Schwartz stated that there are not a lot of insurers out there. Ms. McAtee stated that Massachusetts has an insurer, as well as Puerto Rico.

The commissioner stated that this draft says that anyone that fits this can come in the State with less than 1 percent, but any others need to meet to the 1 percent requirement. This is a window for ASI but does not close the door for others.

Mr. Schwartz stated that today ASI uses 1 percent for its pricing mechanism. The 1 percent is not magic. Perhaps the company would want to do risk based premiums, rather than this flat percentage. FDIC does risk based. He does not want to lock in a specific pricing mechanism in Maryland law when Ohio law could change to allow something different.

Senator Astle asked what their risk would be. Mr. Schwartz responded that they could be assessed up to 4 percent. The commissioner stated that this was put in so that the company does not have to come back and ask the Maryland legislature to change the law. The company picked something that it is secure about. Perhaps the right number of years is not 25 years, but rather it should be 15 years. Mr. Brown stated that the federal guaranty fund could go to a premium base assessment.

Mr. Gounaris stated that the next substantive change was to delete some language in draft. There was a (C), (D), and (G). Each of these dealt with certain circumstances where the corporation could make an additional assessment to keep its funds at a certain level. These provisions could be taken care of in the contract and maybe not in statute. With the 1 percent or what is allowed in the domiciled state of the guaranty corporation, that is what the commissioner's office is concerned with. Accordingly, this draft does not include the superfluous sections. Also, in § 7-218, the draft does not include (B) and (C). Those sections included the factors to review when a company sets its loss reserves. Those may be redundant since they have to be calculated in accordance with GAAP. Subsection (C) dealt with a report to the commissioner which referred to an analysis of reserves. In § 7-219, new language was added to allow the commissioner to petition the court when a credit union is placed in receivership. Also, (B)(2) was deleted since it is more appropriate for a contract. Therefore, this draft has consensus of the parties.

Senator Astle asked if there were any other sections in the draft that needed discussion.

The commissioner asked if ASI is required to do something in Ohio law and it is not in Maryland law, could ASI make separate contracts for Maryland credit unions as compared to contracts with Ohio credit unions. Mr. Schwartz stated that, by way of law, the company could; but for the most case, these provisions were taken out to benefit ASI. Mr. Gounaris agreed that nothing was taken out that would have protected Maryland credit unions more if it were in the draft.

7-206 Qualifications for Certificate of Authority

Ms. Burt provided examples of where in the code “trustworthy” and “good business reputation” were used. Mr. Schwartz stated that the application has the burden of satisfying to the commissioner. Of the professions listed by Ms. Burt, not all require both “trustworthy” and “good business reputation.” Ms. Burt responded that only both those requirements are found in the laws regulating mortgage brokers and check cashers.

Mr. Schwartz stated that the commissioner has a lot of discretion in subsection (A) (6); but it is more factually based. So he would rather use the more objective determination.

Senator Astle asked if a company has a good business reputation, could the company be “not trustworthy or disreputable.” Mr. Brown asked how a start up company could have a reputation. The commissioner responded that there is a way to look at it, just as they do for banks.

Mr. Hannan stated that the law needs “terms” that gives the commissioner discretion. If not, it is possible that someone who is a “dirt ball” could be licensed.

Senator Astle made a motion for a vote. Mr. Hannan stated that he suggests accepting the “terms,” as stated in § 7-206. Mr. Noll seconded the motion. All of members present voted for this motion, with the exception of one or two.

7-224 Exemption from Taxation

Ms. Burt discussed the tax issue. The draft states that the guaranty insurer would be exempt from taxes if the company is currently exempt under the IRS. The task force will draft a letter to send to House Way & Means Committee and the Senate Budget & Taxation Committee about this.

7-210 Grounds for Suspension or Revocation, Cease and Desist Order or Civil Penalty

Mr. Schwartz stated that he does not think the draft reflects what was voted on “in nature of a crime to directors and officers.” Mr. Gounaris stated that the crime has to relate to the activity.

Senator Astle asked what happens if there is a crime. Mr. Gounaris stated that the licensee is charged with a violation if the commissioner determines that the crime is connected with activity. For example, a violation would be if a CEO is convicted of embezzling trust funds.

Senator Astle asked about the board of directors and officers; are they on their own and separate from the company if they write a bad check but did not engage in activities. Mr. Gounaris stated that it would be a concern for those people at the highest level who turn out to be dishonest. The draft no longer affects “employees.” A corporation is its officers and directors; they set the tone.

Senator Astle asked why should a company suffer from the hands of one. Mr. Gounaris agreed saying that is why there are numbers two and three. If the person kicks the cat, shoots his/her spouse, or steals money that does not have to do with his/hers duties, that action may not be relevant.

The commissioner asked if someone with a drug conviction should be allowed to be licensed as a check casher. She does not know. It depends; but this language gives the commissioner's office the opportunity to review the situation. The language could be left broad. She does not have a problem as to what has to be relevant to the activity. But what if there is a scandal and she is unable to take away the person's license? This type of situation has already been thought out by the General Assembly. If this is changed for these licensees, then there is a slip and slide slope.

Senator Astle asked if the language which refers to "directly relating to" is put in the front part of the section, is that okay? Mr. Schwartz stated that he would be fine with that. The commissioner stated that would make the language narrower.

Senator Astle stated that he is still concerned about punishing the whole corporation. The commissioner stated that the person could resign. Mr. Schwartz stated that the person would be fired. This language comes from the small business guy; this situation will not be seen with mature businesses.

Senator Astle stated that this legislation anoints ASI as the successor. The commissioner stated that everyone should be careful when saying that. Mr. Schwartz stated that anyone could fit in to be licensed. All provisions are on an equal playing field, except for the 1 percent requirement.

Senator Astle stated that he envisions that these are stable entities and the boards are going to be in another state; would the commissioner take their license away? The commissioner responded that she will look at this when the company goes through the licensing process. This is not like a bank where the commissioner could call around to find out about the company's reputation. This provision can be taken away, thereby leaving more discretion to the commissioner.

Senator Astle stated that he does not think there will not be other insurers. The commissioner responded that one example could be Merrill Lynch; there could be others. Mr. Brown stated that the Renaissance Commission is reviewing whether federal insurers could be allowed to get private insurance, instead of federal insurance. This would encourage the establishment of private share insurance.

Mr. Gounaris stated that these provisions are not designed for small companies. Mortgage lenders are not small.

Mr. Hannan stated that it could be limited for a misdemeanor and not limited for a felony. The commissioner stated that "cruelty to animals" is misdemeanor. Senator Astle stated that the task

force has not previously taken a vote on this. The task force agreed to make "directly related" for a misdemeanor.

7-212 Examination Fees and Annual Assessment and 7-213 Filing of Reports with Commissioner

Mr. Schwartz mentioned another issue. He stated that the old draft stated "fees and expenses;" the new draft says "expenses." This needs to be defined.

Senator Astle asked whether "reasonable" is defined anywhere. Mr. Gounaris stated that it is not defined. Mr. Schwartz stated that his client does not want the salaries or a third-party expense to be included. Perhaps this is nit picking. The commissioner agreed that this is nit picking; her office will not charge for those type of expenses. Mr. Schwartz stated that what should be included is: travel, lodging, and meals. The commissioner stated that she wants whatever ASI gives to other states' regulators. Ms. McAtee suggested saying what items are excluded from expenses. Mr. Schwartz suggested that he will find out what ASI pays in other states. The commissioner reaffirmed that she wants whatever they get.

Mr. Schwartz stated that he has another issue on pages 10 and 11; is April 1 a good date? The assessment is due April 1 and the report is due April 1. Should the April 10 date on page 11 for the late fee be April 1? Ms. Burt responded that April 10 is the grace period; the report is due April 1, but a late fee will not be imposed until April 10.

Senator Astle asked about the April 1 date for the assessment. The commissioner responded that it could be January 1 since there is no calculation involved. Senator Astle suggested July 1. The commissioner responded no; the date was changed in the credit union law. It should be what others are (February 15). Bank assessments are in January and February. Perhaps one person works on this and it would be better for it to be the same date.

Senator Astle stated that he really does not care about the date. Once this is enacted, he is out of it. The commissioner responded that she is in it so she would like some coordination; she suggests January 1. Ms. McAtee stated that January 1 would be difficult. She stated that it might be better to have the credit union money at the same time as the corporation money comes in. She suggested February 15. Mr. Schwartz stated that he likes April 1 better.

Senator Astle stated that the choices are between April 1 and February 15. Mr. Nash motioned for April 1. Two of the task force members voted for this motion. Mr. Noll motioned for February 15 and the majority voted for this motion.

Mr. Brown asked whether the \$100 late fee was reduced. He remembers the commissioner saying it was fine to take it out completely. Senator Astle stated that staff says the task force already

voted to keep the \$100 late fee. He asked if Mr. Brown wanted to walk away quietly from this suggested change or press it further.

7-201 Definitions

Ms. Halleck stated that on page two the definition should say "primary" so not to include "excessive" insurance in the definition. Mr. Brown stated that § 7-204 refers to federal insurance which does not write "excessive."

Senator Astle asked whether the task force accepts the draft with discussed changes. The members will be given a revised copy. Mr. Noll motioned to accept the draft. All members voted for the motion.

Work Session on the Draft Phase Out and Dissolution of CUIC Legislation

Comments were provided by Mr. Tom Gounaris, Assistant Attorney General Office of Financial Regulation; Mr. Joseph Rooney, Supervisor, Credit Unions; Mr. Mark Feinroth, Assistant Secretary, Department of Labor, Licensing, and Regulation; Mr. James R. Brown, III, Attorney, Brown & Brown, Maryland Credit Union League; and Mr. Jay Schwartz, Represents CUIC and ASI.

Ms. Burt explained the draft legislation that was prepared by staff was based on a previous legislative proposal.

Mr. Schwartz stated that this draft copies the 1991 legislation which had previously copied the 1988 legislation. The 1988 legislation forced savings and loan associations to obtain federal insurance, with staggered periods. Some of the savings and loan associations did not qualify for federal insurance. This time it is not a forced dissolution. This is a voluntary thing. The legislation should reflect it that way since the law says credit unions should have insurance. The draft should dissolve CUIC and not point guns at the credit unions. All of the credit unions would qualify now. There are no poor cousins. The phase out should start with a date certain. The prior situation (1991 legislation) tried to force them out. He does not want CUIC to be dissolved before ASI has a license. The draft allows for the commissioner's approval of the transfer of CUIC's assets. It is not her business. It is CUIC's assets. It would be helpful to say that the General Assembly recognizes giving the money to the foundation. The draft could specifically name the foundation.

Mr. Brown agreed with Mr. Schwartz saying that the draft is predicated on ASI coming into the State. He agreed that the foundation should be named; he set up the foundation. The foundation files a 990 with the IRS. There are five directors which are elected by the membership. He agreed that the commissioner could pay this money to someone else that would qualify; but his vision is that the articles of dissolution would be filed with the Department of Assessments and Taxation and a

copy given to the commissioner, the President of the Senate, and the Speaker of the House of Delegates.

Ms. McAtee stated that those are the items listed in the 1991 law. She prefers the CUIC Foundation to get the money. Then the receivership section could be eliminated since the legislation would have to approve the transfer. The commissioner's responsibility is to protect the credit unions and not the money of CUIC.

The commissioner asked if Mr. Schwartz has proposed language for the timing of the phase out and dissolution of CUIC. She thinks there should be a date certain. Mr. Schwartz agreed that there should be an ending date.

Senator Astle stated that this should be straightforward. With the transfer of the deposits, the relationship with ASI and CUIC would dissolve. He asked if the draft could be done in one or two pages so the task force can sell this idea to the General Assembly.

The commissioner stated that she has trouble with the timing. She was hopeful for a date certain. The date could be keyed off of the approval of ASI. She thinks ASI will have its application in on day one. She does not have a problem with not approving the transfer of the assets; the notification requirement is fine. If she has to give a report to the legislature, then she could just say that it is done. This is a policy issue. She liked the way the draft was done by Ms. Burt and Ms. Lodge. She likes the way the draft says the money goes toward the credit union movement. She would like for the legislature to see what they have done with the money. She would like to know how the foundation intends to spend this money. Did it assist in developing accounts in low income areas? They are a private corporation so there is a limit as to what the legislature can have them do. Again, this is a policy issue.

Senator Astle asked if the language in the draft (about the purpose of the corporation getting the money) is in the foundation's charter. Mr. Brown responded yes. The commissioner stated that there will be questions if the draft only says that the money will be given to the CUIC Foundation. It is a good idea to spell out the purpose of the corporation who is to receive the money. That way, the legislature knows what the money will be used toward.

Senator Astle stated that, in reality, when it is over (and the legislation is passed), the legislature will not care. There will be questions at the hearings though. The commissioner stated that the transfer of the money to the CUIC Foundation does not have to be approved by the commissioner. She knows what the intent is. There will not be a corporation that would compete for the money.

Senator Astle stated that Ms. Lodge just pointed out that the legislation could not provide a “special law” by naming one company. The law could mention qualifications of a company. The commissioner stated that no one could argue with what is listed in the draft for the use of the money.

Mr. Brown asked whether CUIC should file an article of dissolution with the Department of Assessments and Taxation. Senator Astle responded yes, to make a delineation after the money has been transferred. Mr. Schwartz stated that he could draft this language to fit within a page.

Senator Astle stated that this task force ended June 30, 2001. The task force has written a letter to the presiding officers informing them that the task force needs an extension of time in order to get its final report out. He suggests that Mr. Schwartz work with Mr. Gounaris and give the task force the language. He asked whether the task force needs another meeting or could the draft be sent to each member with a pole for comments (by phone).

The commissioner suggested that the task force try a phone vote. Senator Astle confirmed that the language will be sent out to all members asking for comments.

Closing Remarks

Senator Astle concluded the meeting by thanking the members for serving. Mr. Noll responded that he appreciated the privilege of serving; it was enlightening.

The meeting ended at 3:30 p.m.

Respectively submitted,

Tami Burt
Senate Legislative Analyst

Laura Lodge
House Legislative Counsel

TDB/LL/ncs

Miscellaneous Information

**Phase-Out of State Private Insurer
Maryland (1991 legislation), Florida, Georgia, Washington**

Maryland (SB 574 of 1991 -failed- Senate Third Reader, with ECM amendments)	
Current CUIC Members	Of the 11 State-chartered credit unions, five are insured by CUIC (Credit Union Insurance Corporation)
Receivership for Liquidation	Allows the CFR to take possession of, operate, and liquidate CUIC and credit unions that have not obtained alternative insurance by the established date
New CUIC Members	<p>Allows new and continued members in CUIC for four years</p> <p>Only allows CUIC to accept new members if it is by a credit union resulting from the merger of two member credit unions, is temporary, is attempting to obtain federal insurance, and is approved by CFR</p> <p>Note: this was stricken in ECM amendments -- instead, strictly prohibits any new members</p>
Credit Unions to Obtain Alternative Insurance (First Date)	<p>Gives member credit unions four years to obtain alternative insurance</p> <p>Note: ECM amendments implicitly provides that a member credit union is eligible for continued membership in CUIC for four years</p>
Second Date	<p>Gives member credit unions an additional four months to obtain alternative insurance if:</p> <ul style="list-style-type: none"> • the credit union has made a good faith effort; • it is likely to get alternative insurance; and • failure to obtain alternative insurance is not due to the credit union; and interest of the credit union's members are not at risk from continuing with CUIC
Third Date	<p>Gives member credit unions an additional two months to obtain alternative insurance if:</p> <ul style="list-style-type: none"> • the credit union has made a good faith effort; • extraordinary circumstances exist that necessitate continued membership in CUIC; and • continued membership is necessary to safeguard interests of the credit union's members

Receivership of Member Credit Unions	Places member credit unions in receivership if have not obtained alternative insurance by the established dates
Return Deposits to Members by CUIIC	<p>Requires CUIIC to return deposits of member credit unions if:</p> <ul style="list-style-type: none"> • federal insurance requires the credit union to increase capital reserves as acceptance condition; or • the credit union is dissolving or entering into voluntary receivership within 30 days <p>Requires distribution of member deposits one month before CUIIC goes into receivership</p>
Receivership of CUIIC	<p>Places CUIIC in receivership four and one-half years after passage of legislation</p> <p>Note: ECM amendments place CUIIC in receivership UNLESS CUIIC is already dissolved</p>
Assets of Member Credit Union	<p>Requires CFR and CUIIC to report jointly within one year of passage of legislation with recommendations on the distribution of CUIIC's assets</p> <p>Note: ECM amendments strike the above reporting requirement and instead:</p> <ul style="list-style-type: none"> • define assets; • allow the board of directors to dissolve CUIIC if CUIIC has no members and CUIIC has returned all deposits to members; • allow CUIIC to transfer assets to another corporation if (1) the corporation is nonprofit; (2) has been organized for educational/charitable purposes and promotes interest of credit unions; and (3) has a purpose to improve/stimulate ability of credit unions to provide low-cost consumer loans, to promote flexibility of credit union resources, to help to rehabilitate/stabilize credit unions, to help to strengthen and develop credit unions serving low-income, and to cooperate with credit unions to improve general welfare; and • require CFR to certify whether dissolution and transfer are in accordance with law

Florida	
Private Insurer	<p>Florida Credit Union Guaranty Corporation</p> <p>125 credit unions</p>
Phase-Out	<p>New legislation enacted in 1991 1991 started process (corporation voted to dissolve) 1995 completed</p> <p>Requires orderly conversion of credit unions with private insurance to federal insurance; does not allow other private insurance</p>
Apply for Federal Insurance	<p>Requires member credit unions to file application for federal insurance within 30 days of the legislation's effective date</p> <p>Allows the regulator to direct the corporation to assume control or order involuntary liquidation of member credit unions that fail to comply</p>
Obtain Federal Insurance	<p>Requires member credit unions to obtain federal insurance within 42 months of the legislation's effective date (may be extended 12 months)</p> <p>Allows the regulator to order involuntary liquidation or merger of member credit unions that fail to comply</p> <p>Requires member credit unions that have obtained federal insurance to notify the regulator and provides that the member credit union no longer has any claim against the corporation</p>
Books and Records	<p>Allows regulator access to books and records of the corporation upon dissolution</p> <p>Requires corporation to report and turn over books and records to regulator within six months of final distribution to member credit unions</p>
Distribution of Member Contributions	<p>Provides that interest in the loss reserves (from annual/special assessments) is to be applied in the refund made to member credit unions</p> <p>Requires the investment in the corporation and amount paid into the loss reserve to be determined as of the effective date of the legislation</p> <p>Requires a plan of operation providing for dissolution of the corporation to include procedures for the payment of liquidating dividends to member credit unions</p> <p>Requires partial distributions to member credit unions and an annual determination of distributions</p> <p>Requires the corporation to liquidate assets and make final distribution to member credit unions when all assets have been converted to cash and liabilities paid OR within six months after the date all credit unions obtain federal insurance, liquidated, or merged, whichever last occurs</p> <p>Allows assets to assist in the liquidating of credit unions, the merging of credit unions, and the assisting of obtaining federal insurance</p>

Georgia	
Private Insurer	<p>Georgia Credit Union Guaranty Corporation</p> <p>100 credit unions</p>
Phase-Out	<p>No new legislation (used current statute)</p> <p>1991 started process (board of directors voted to dissolve)</p> <p>1993 mostly complete for volunteer credit unions</p> <p>1996 liquidation of credit union that was not eligible for federal insurance</p> <p>2000 dormant corporation distributed final liquidating dividends to member credit unions and its charter was surrendered</p> <p>Allows other private insurance under certain circumstances</p>
Distribution of Member Contributions	<p>Upon termination of membership in the corporation (other than through involuntary liquidation), the credit union is entitled to a refund of membership fees in full within 30 days, pro rata portion of annual premium which is unearned by the corporation in full within 30 days, and any special assessment disbursed over not more than a 24-month period</p> <p>Further, if a credit union terminates its membership voluntarily within 24 months immediately preceding the voluntary cessation of the business of the corporation is entitled to a pro rata distribution of the undivided earnings of the corporation</p> <p>In the event of liquidation of the corporation, assets remaining after the payment of expenses are to be distributed to former members and existing members in proportion to their membership fees into the corporation</p>

Washington	
Private Insurer	Washington Credit Union Guaranty Corporation 70 credit unions
Phase-Out	New legislation enacted in 1996 and amended in 1998 1996 started process 1998 completed process Requires orderly conversion of credit unions with private insurance to federal insurance; does not allow other private insurance
Apply for Federal Insurance	Requires member credit unions with CAMEL rating of three, four, or five to (by 9/1/06 file application for federal insurance, merger with another credit union, or liquidation (credit unions with CAMEL rating one or two have until 12/1/96) Allows the regulator to take action against member credit unions that fail to comply
Obtain Federal Insurance	Ceases guarantee of a member credit union the earlier of: (1) the date the credit union converts to federal insurance or merges with a federally insured credit union; or (2) 12/31/98 Allows the regulator to take action against member credit unions that fail to comply (including ordering of involuntary liquidation or merging) Requires members that obtain federal insurance or merge with another credit union to continue to maintain contingency reserve and capital reserve and provides that they are liable for assessments (as if they were members) until 12/31/98
Dissolution of Private Corporation	Requires the corporation to dissolve effective 12/31/98 and be fully liquidated by 12/31/00 in accordance with a written plan by the board of directors, as approved by the regulator Requires the corporation, after its dissolution and liquidation, to execute articles of dissolution and file them with the regulator
Distribution of Member Contributions	Requires for the distribution of assets (after debts are paid) to qualified former members or their successors on a pro rata basis based on guaranteeable outstanding share and deposit balances of the members as of 12/31/95 Allows assets to assist in the liquidating of credit unions, the merging of credit unions, and the assisting of obtaining federal insurance
Notice to Creditors	Requires within 30 days after the effective date of dissolution notice to creditors informing them of the corporation's dissolution

Source: Legislation from the states and representatives of the states
Prepared by: Department of Legislative Services, June 2001

Ohio Law Regulating Credit Union Guaranty Corporations

CHAPTER 1761: CREDIT UNION GUARANTY CORPORATIONS

Section	
1761.01	Definitions.
1761.02	Organization of credit union share guaranty corporation; tax exemptions.
1761.03	Purposes of corporation.
1761.04	Regulation by superintendent of insurance; annual fee; rules.
1761.05	License required; conditions for issuance; hearing on denial; appeal.
1761.06	Powers and duties of corporation.
1761.07	Conditions for participation of credit union in corporation; voting.
1761.08	Assessment of financial condition of credit union; audits; investigations; confidentiality of information.
1761.09	Guaranteed amounts of share accounts.
1761.10	Guarantee fund; capital contributions by credit unions; special assessments; distribution of assets.
1761.11	Notice of taking possession or liquidation of credit union; payment of deficiency; subrogation.
1761.12	Termination of participation of credit union.
1761.13	Investment or deposit of funds; fidelity bonds.
1761.14	Recording and use of income; charging of expenses.
1761.15	Reserve for guaranty losses.
1761.16	Reports; audited financial statements; examinations; accounting procedures.
1761.17	Superintendents may take possession of property and business of corporation.
1761.18	Cease-and-desist orders.
1761.19	Supervisory conference; agreement.
1761.20	Civil penalty.
1761.21	Confidentiality.
1761.22	Repealed.
1761.23	Revocation of license.
1761.24	State not liable for deficiency.
1761.25-1761.34	Repealed.
1761.99	Penalties.

§ 1761.01 Definitions.

As used in this chapter:

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

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

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

(D) "Credit union share accounts" means funds de-

posited in any shares, accounts, deposits, or certificates of a participating credit union.

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

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

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

(H) "Deficiency" means the difference between the guaranteed amount of an individual member's credit union share account and the proceeds of any liquidation of a participating credit union distributed or to be distributed to the individual member.

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

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

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

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

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

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

Not analogous to former RC § 1761.01 (136 v H 960; 137 v H 356; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

The effective date is set by section 4 of HB 374.

Cross-References to Related Sections

Credit unions, RC Chapter 1733.

Notice of insurance status of accounts, RC § 1733.04.2.

Share guarantee insurance, RC § 1733.04.1.

Supervision and control of officers; creation of divisions, RC § 121.07.

Comparative Legislation

Credit union insurance:

CA—Fin Code § 14410

DE—Code Ann tit 18 § 3107

FL—Stat Ann § 657.041

IL—Comp Stat Ann ch 205 § 305/58

IN—Code 28-7-1-31.5

KY—Rev Stat Ann § 290.405

MI—Comp Laws Ann § 490.31
 NY—Bank Law § 481
 PA—CSA tit 17 § 505

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

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

(B) A credit union share guaranty corporation may be organized as a corporation under this chapter. Chapter 1701. or 1702. of the Revised Code, to the extent either is applicable and not in conflict with this chapter and those chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code, applies to such corporation. A credit union share guaranty corporation shall only be authorized to engage in the business of guaranteeing payment of a credit union share account of an individual member of a credit union or otherwise issue or effect credit union share guaranty insurance.

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

(D) Persons who receive from a credit union share guaranty corporation any commission, salary, or other emolument for services arising out of their association with the corporation shall not comprise a majority of the membership of the board of directors of the corporation. Persons who are officers, directors, or employees of participating credit unions shall not comprise a majority of the membership of the board of directors of a credit union share guaranty corporation.

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

(F) Notwithstanding the provisions of section 5725.18 of the Revised Code, the capital deposits or contributions by participating credit unions shall not be included in the value of capital and surplus subject to the annual franchise tax payable by a credit union share guaranty corporation organized under this chapter nor shall any capital contributions, assessments, or fees received from participating credit unions for primary coverage by such credit union share guaranty corporation be included in the gross amount subject to the annual franchise tax. Any payment otherwise made under this division shall be in addition to any taxes due as an insurer under Title LVII [57] of the Revised Code.

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

Not analogous to former RC § 1761.02 (136 v H 960; 137 v H 356; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Purposes of corporation, RC § 1761.03.

Ohio Administrative Code

Department of commerce, division of credit unions—

Credit union share guaranty corporation. OAC ch. 1301:9-3.

§ 1761.03 Purposes of corporation.

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

(A) To guarantee payment of all or a part of participating credit union share accounts of an individual member of a participating credit union, subject to any express limitations as provided in this chapter;

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

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

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

Not analogous to former RC § 1761.03 (136 v H 960; 137 v H 356; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Powers and duties of credit union share guaranty corporation, RC § 1761.06.

Ohio Administrative Code

Department of commerce, division of credit unions—
 Credit union share guaranty corporation. OAC ch. 1301:9-3.

Research Aids

Purposes of corporation:

O-Jur3d: Banks § 637

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

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

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

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

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

Not analogous to former RC § 1761.04 (136 v H 960; 137 v H 356; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

- Annual reports, RC § 1761.16.
 Cease-and-desist orders, RC § 1761.18.
 Conditions for issuance of license, RC § 1761.05.
 Investment or deposit of funds of credit union share guaranty corporation, RC § 1761.13.
 Organization of credit union share guaranty corporation, RC § 1761.02.
 Superintendents may take possession of property and business of corporation, RC § 1761.17.

Ohio Administrative Code

- Department of commerce, division of credit unions—
 Credit union share guaranty corporation. OAC ch. 1301:9-3.
 Advancement and withdrawal of capital contribution by participating credit unions. OAC 1301:9-3-01.
 Documents filed with the superintendent of insurance. OAC 1301:9-3-02.

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

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

- (1) The articles of incorporation of the applicant or corporation, and any amendments thereto, are filed with and approved by the secretary of state and the attorney general;
- (2) The articles of incorporation and the bylaws of the applicant or corporation, and any amendments thereto, are consistent with the provisions of this chapter and those chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code, and are approved by the superintendent of insurance;
- (3) The applicant holds bona fide applications for participation in the corporation from at least fifty credit unions which shall become effective immediately upon issuance of the license, or, in the case of a renewal of such license, the corporation has at least fifty participating credit unions;
- (4) The applicant or corporation maintains a reserve for guarantee losses in compliance with section 1761.15 of the Revised Code;
- (5) the applicant or corporation has capital deposits in a principal sum no less than five million dollars and such capital deposits are invested in compliance with section 1761.12 of the Revised Code;
- (6) The applicant or corporation submits an audited financial statement verified by the oath of the president and secretary of the corporation, which demonstrates the corporation's compliance with generally accepted accounting principles, and the applicant or corporation submits an annual statement in accordance with sections 3929.30 and 3941.29 of the Revised Code that demonstrates the applicant's or corporation's solvency

according to principles of statutory accounting;

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

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

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

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

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

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

Not analogous to former RC § 1761.05 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Penalties, RC § 1761.99.

Ohio Administrative Code

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

§ 1761.06 Powers and duties of corporation.

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

- (1) Guarantee to participating credit unions the payment of any deficiency in the individual member's credit union share accounts caused by insolvency or any other reason;
- (2) Issue credit union share guaranty insurance policies or otherwise effect credit union share guaranty insurance;
- (3) Advance funds in accordance with agreed lending terms and conditions to aid participating credit unions

to operate and to meet liquidity requirements;

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

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

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

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

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

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

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

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

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

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

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

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

(B) The corporation may obtain, and continuously maintain in effect, reinsurance and a line of credit, each from one or more insurance companies or financial institutions and in such amount as determined by its board of directors. The superintendent of credit unions or the superintendent of insurance may require the corporation to obtain and maintain reinsurance or a line of credit but only in the event the superintendent of credit unions or the superintendent of insurance first

finds that such reinsurance or line of credit is actuarially or financially necessary. Such determination shall be made on a year-to-year basis.

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

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

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

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

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

Not analogous to former RC § 1761.06 (136 v H 960; 137 v H 356; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

The effective date is set by section 4 of HB 374.

Ohio Administrative Code

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

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

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

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

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

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

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

(1) The board of directors of the credit union and the board of directors of the credit union share guaranty corporation approve the participation;

(2) The credit union satisfies the risk eligibility stan-

dards established by the credit union share guaranty corporation and applicable to all applying and participating credit unions;

(3) The credit union agrees to furnish financial statements, delinquent loan reports, and such other information considered necessary by the credit union share guaranty corporation to assess the financial condition and performance of the credit union;

(4) The credit union agrees to be bound by the provisions of this chapter and the articles of incorporation and bylaws of the credit union share guaranty corporation;

(5) Participation by the credit union would not result in a violation by the credit union share guaranty corporation of any provision of this chapter or other applicable state or federal law.

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

(1) Such participation is lawful under the laws of both this state and the domicile state of the credit union applying for participation in the corporation;

(2) The credit union share guaranty corporation by agreement or law has sufficient authority to require the credit union applying for participation in the corporation to comply with the articles of incorporation and bylaws of the corporation, and with this chapter;

(3) The credit union supervisory authority of such state agrees to furnish to the credit union share guaranty corporation copies of all financial and examination reports and other information regarding participating credit unions as is necessary to effect the corporation's purposes. If the credit union supervisory authority is prohibited by law from disclosing such information, the participating credit unions shall provide the information to the corporation.

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

(1) The national credit union administration does not restrict such participation;

(2) Such participation is lawful under the laws of both this state, the domicile state of the credit union applying for participation in the corporation, and the federal government;

(3) The credit union share guaranty corporation by agreement or law has sufficient authority to require the credit union applying for participation in the corporation to comply with the articles of incorporation and bylaws of the corporation, and with this chapter;

(4) Participating credit unions insured by the national credit union administration agree to furnish to the corporation copies of all financial and examination reports and such other information regarding the participating credit unions as is necessary to effect the corporation's purposes.

(D) Any credit union that has become admitted to participation in the credit union share guaranty corporation in accordance with the qualifications of this section shall have referenced in their contract with the corporation all of the appropriate conditions for participation and the manner in which they were satisfied.

(E) Any credit union that has become admitted to

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

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

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

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

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

Not analogous to former RC § 1761.07 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

† So in enrolled bill, division (H).

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

(A) In order to permit the credit union share guaranty corporation to assess the financial condition and performance of a credit union, upon the written request of the corporation, the superintendent of credit unions or other credit union supervisory authority or the national credit union administration may furnish to the corporation a copy of unaudited financial statements filed by a participating credit union or a credit union making application to participate in the corporation pursuant to divisions (B) and (C) of section 1733.32 of the Revised Code or a comparable state or federal statute or of any examination reports of the superintendent or other credit union supervisory authority which were prepared pursuant to division (A) of section 1733.32 of the Revised Code or a comparable state or federal statute. There shall be no liability on the part of, and no cause of action of any nature shall arise against this state or any state, the superintendent of credit unions or other credit union supervisory authority, or the national credit union administration for the release of any information furnished to the corporation pursuant to this division. Such financial statements and analyses furnished to the corporation pursuant to this division are not public documents, and the information contained therein is privileged and confidential to the corporation for its sole use in carrying out its statutory functions.

(B) Each participating credit union shall submit monthly to the credit union share guaranty corporation a copy of its financial statements, delinquent loan report, and any other such information as considered necessary by the credit union share guaranty corporation in order to assess the financial performance of the participating credit union. The corporation may require that participating credit unions submit financial infor-

mation in the format required by the corporation.

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

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

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

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

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

(E) Upon determination by the superintendent of credit unions or the credit union share guaranty corporation that a participating credit union is operating in an unsafe or unsound manner, or that financial statements, delinquent loan reports, and other data received or examined by the corporation is unreliable or the participating credit union investment in the corporation is in excess of five per cent of the corporation's fund, the corporation shall require that an audit of the books and records of the participating credit union be conducted. The audit shall be completed in accordance with generally accepted auditing standards, and include such testing of the records necessary to render an opinion of an independent certified public accountant. If such report, certificate, or opinion of the independent accountant is in any way qualified, the corporation shall require the credit union to take such action as the corporation considers necessary to permit an independent accountant to remove such qualification from the report, certificate, or opinion. If such qualification is not remedied within the time period designated, the corporation shall report such qualification in writing to the superintendent within three days thereof. In addition, the corporation may:

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

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

(3) Submit reports and make recommendations to the superintendent of credit unions, other credit union supervisory authority, or the national credit union administration regarding the financial condition of any participating credit union. Such reports and recommendations are not public documents. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the corporation or its partici-

pating credit unions, directors, officers, employees, or agents, or the superintendent or other credit union supervisory authority or the national credit union administration, for any statements made by them in any reports or recommendations made in accordance with this division.

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

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

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

Not analogous to former RC § 1761.08 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Penalties, RC § 1761.99.

Termination of participation of credit union, RC § 1761.12.

Ohio Administrative Code

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

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

§ 1761.09 Guaranteed amounts of share accounts.

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

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

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

share accounts of any credit union upon the later of any of the following:

(1) The termination of the credit union's participation in the corporation pursuant to section 1761.12 of the Revised Code;

(2) The completion of the liquidation of the credit union;

(3) The withdrawal of the credit union from participation in the corporation.

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

Not analogous to former RC § 1761.09 (136 v H 960; 137 v H 356; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

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

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

(a) The account for each participating credit union;

(b) Retained and undivided earnings;

(c) Any reserves required by statute or order of the superintendent of credit unions.

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

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

(3) If, at the close of a fiscal year, the guarantee fund exceeds the normal operating level determined by the board of directors of a credit union share guaranty cor-

poration, the board of directors may make a distribution of the excess to participating credit unions. Any distribution shall be made to each participating credit union in the proportion that each participating credit union's account bears to the total aggregate participating credit union accounts of the corporation. No determination by the board of directors is effective until approved by the superintendent of insurance. No distribution shall be made, nor shall it confer any rights, until approved by the superintendent of insurance.

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

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

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

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

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

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

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

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

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

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

(F) Any participating credit union that is voluntarily liquidated or any participating credit union that withdraws from participation in the corporation and obtains a different form of share guaranty or insurance pursuant to section 1733.041 [1733.04.1] of the Revised Code or similar state statute, or any participating credit union that merges with another credit union that becomes the surviving credit union whose shares are guaranteed or insured by a different form of guaranty or insurance may be refunded in an amount equal to the balance of its capital contribution account. Such reimbursement of a participating credit union's capital contribution account balance shall be paid only if and when the guarantee fund exceeds its normal operating level as calculated without the account of the withdrawing credit union.

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

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

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

Not analogous to former RC § 1761.10 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

- Annual reports, RC § 1761.16.
- Share guarantee insurance, RC § 1733.04.1.
- Superintendents may take possession of property and business of corporation, RC § 1761.17.
- Termination of participation of credit union, RC § 1761.12.

Ohio Administrative Code

- Advancement and withdrawal of capital contribution by participating credit unions. OAC 1301:9-3-01.
- Normal operating level of guarantee fund. OAC 1301:9-3-11.

✓ **§ 1761.11 Notice of taking possession or liquidation of credit union; payment of deficiency; subrogation:**

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

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

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

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

Not analogous to former RC § 1761.11 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

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

Ohio Administrative Code

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

✓ **§ 1761.12 Termination of participation of credit union.**

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

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

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

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

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

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

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

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

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

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

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

Not analogous to former RC § 1761.12 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Conditions for issuance of license, RC § 1761.05.

Guaranteed amounts of share accounts, RC § 1761.09.

§ 1761.13 Investment or deposit of funds; fidelity bonds.

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

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

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

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

(4) In accounts with, investment certificates or withdrawable shares of, any savings and loan association that is an insured institution as defined by Title IV of the

"National Housing Act," 48 Stat. 1255 (1934), 12 U.S.C. 1724, as amended.

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

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

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

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

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

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

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

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

Not analogous to former RC § 1761.13 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Powers and duties of credit union share guaranty corporation, RC § 1761.06.

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

Ohio Administrative Code

Approval of investments. OAC 1301:9-3-13.

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

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

to provide for current expenses may be credited to participating credit unions' accounts.

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

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

Not analogous to former RC § 1761.14 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

✓ § 1761.15 Reserve for guaranty losses.

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

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

Not analogous to former RC § 1761.15 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Conditions for issuance of license, RC § 1761.05.

ALR

Construction and effect of corporate bylaws or articles relating to change in number of directors. 3 ALR3d 623.

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

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

pendent public accountant. Every such report shall be certified by the oath of the president and secretary of the corporation, and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it.

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

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

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

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

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

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

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

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

Not analogous to former RC § 1761.16 (138 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Ohio Administrative Code

Credit union share guaranty corporation—

Activity requiring notice. OAC 1301:9-3-04.

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

Annual report. OAC 1301:9-3-14.

Quarterly reporting. OAC 1301:9-3-16.

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

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

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

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

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

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

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

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

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

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

(D) An appeal may be taken from the judgment of the court by the superintendent or by the corporation

in the manner provided by law for appeals from the judgment of a court of common pleas. An appeal from the judgment of the court shall not operate as a stay of the judgment unless the court, on good cause, so orders.

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

HISTORY: 142 v H 796, EFF 9-14-88.

Not analogous to former RC § 1761.17 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

§ 1761.18 Cease-and-desist orders.

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

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

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

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

in addition to refraining from such violations or unsafe or unsound practices in the future.

If, after conducting such hearing, the superintendent of insurance determines that the corporation, director, officer, or employee is or has knowingly participated in or consented to a violation of those chapters of Title XXXIX [39] of the Revised Code specified in division (A) of section 1761.04 of the Revised Code, or engaged in an unsafe or unsound practice, he may issue a final cease-and-desist order. Such final cease-and-desist order may direct the corporation, director, officer, or employee to remedy the violation of such chapters of Title XXXIX [39] of the Revised Code, the unsafe or unsound practice, or the failure to comply, in addition to refraining from such violations or unsafe or unsound practices in the future.

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

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

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

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

Nothing in this division shall be construed to prevent the superintendent of credit unions from issuing a

cease-and-desist order pursuant to divisions (A)(1) and (2) of this section or division (B) of this section based on the violation of this chapter, or on an unsafe or unsound practice of the corporation, director, officer, or employee, even though such violation or practice may also constitute a violation of an outstanding supervisory agreement.

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

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

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

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

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

(D) In lieu of a hearing pursuant to division (A) or (B) of this section, the corporation, director, officer, or employee may consent to the issuance of an order requiring such corporation, director, officer, or employee to cease and desist from engaging in any activity or practice as specified in such order. A consent cease-

and-desist order has the full force and effect of a final cease-and-desist order issued pursuant to division (A)(2) of this section and is enforceable in accordance with division (E) of this section. Any corporation, director, officer, or employee that fails to attend a hearing set pursuant to division (A) or (B) of this section is deemed to have consented to the issuance of a final cease-and-desist order.

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

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

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

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

Not analogous to former RC § 1761.18 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Civil penalty, RC § 1761.20.

Confidentiality of proceedings, RC § 1761.21.

Revocation of license, RC § 1761.23.

§ 1761.19 Supervisory conference; agreement.

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

(B) At the supervisory conference, the superintendent shall inquire into the actions or practices at issue. If it appears to the superintendent that such actions or practices are likely to cause harm to the corporation, its members, or creditors, the superintendent may nego-

tiate and conclude an agreement with the corporation, its officers, or directors as to action that is to be taken by the corporation, its officers, or directors to correct or prevent the actions or practices which are the subject of the supervisory conference. Such an agreement shall be reduced to writing as soon as possible after it is concluded, and may be modified or terminated by a subsequent agreement.

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

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

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

Not analogous to former RC § 1761.19 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Capital contributions by credit unions, RC § 1761.10.

Civil penalty, RC § 1761.20.

Confidentiality of proceedings, RC § 1761.21.

§ 1761.20 Civil penalty.

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

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

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

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

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

(3) The history of previous violations or unsafe or unsound practices by the corporation, director, officer,

or employee that resulted in the service of a notice under division (A)(1) of section 1761.18 of the Revised Code;

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

(5) Any other matters as justice may require.

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

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

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

Not analogous to former RC § 1761.20 (136 v H 960; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

§ 1761.21 Confidentiality.

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

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

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

records or reports of the credit union or regulated individual.

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

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

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

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

Not analogous to former RC § 1761.21 (136 v H 960; 137 v H 1; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

This section was originally enacted as RC § 1751.21 (136 v H 960) eff 8-31-76. The number was corrected to 1761.21 in 137 v H 1, eff 8-26-77.

Cross-References to Related Sections

Penalties, RC § 1761.99.

§ 1761.22 Repealed, 146 v S 293 [142 v H 796]. Eff 9-26-96.

This section concerned surety bond for superintendent of credit unions.

§ 1761.23 Revocation of license.

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

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

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

Not analogous to former RC § 1761.23 (136 v H 960; 137 v H 356; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

Cross-References to Related Sections

Cease-and-desist orders, RC § 1761.18.

✓ § 1761.24 State not liable for deficiency.

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

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

Not analogous to former RC § 1761.24 (136 v H 960; 137 v H 356; 138 v H 610), repealed, 142 v H 796, § 2, eff 9-14-88.

§§ 1761.25, 1761.26, 1761.27
Repealed, 142 v H 796, § 2 [136 v H 960; 138 v H 610]. Eff 9-14-88.

These sections concerned the American credit union guaranty association.

§§ 1761.28, 1761.29, 1761.30
Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

These sections concerned the American credit union guaranty association.

§§ 1761.31, 1761.32 Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

These sections concerned the American credit union guaranty association.

§§ 1761.33, 1761.34 Repealed, 142 v H 796, § 2 [136 v H 960; 137 v H 356; 138 v H 610]. Eff 9-14-88.

These sections concerned the American credit union guaranty association.

§ 1761.99 Penalties.

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

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

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

Cross-References to Related Sections

Penalties for misdemeanors, RC § 2929.21.

NASCUS Information

Information for

**The Maryland General Assembly
Task Force to Study Modernization of Credit Union
Law**

**Mary Martha Fortney
NASCUS Vice President
Government Relations & Accreditation
October 25, 2000**

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A

Maryland General Assembly
Task Force to Study Modernization of Credit Union Law
Wednesday, October 25, 2000
Annapolis, Maryland
Prepared Comments of Mary Martha Fortney
NASCUS Vice President of Government Relations and Accreditation

Good afternoon Senators, Delegates and members of the Task Force. Thank you for the privilege of being invited to testify today and answer any questions you may have concerning not only share insurance, but any other aspects of a state Credit Union Act.

My name is Mary Martha Fortney. I am the Vice President of Government Relations and Accreditation for NASCUS. NASCUS is the professional association comprised of the 48 state and territorial state credit union supervisory agencies which are charged by their State Legislatures to oversee the nation's 4,554 state chartered credit unions.

Speaking this afternoon as a representative of NASCUS, it is not my intention to advocate one share insurance approach over another. Rather, I hope to clearly articulate the four models for share insurance legislation in use among the states, dispel three misconceptions about those four models, and provide enough support information to facilitate this Task Force's development of the approach relating to the insurance of credit unions that it concludes is appropriate for Maryland. I will also provide you with information concerning recent activities relating to credit union share insurance and about the supervision of privately insured credit unions by NASCUS accredited states.

Often when share insurance is discussed, it is discussed in terms of "Federal Insurance" or "Private Insurance." This is misleading. The true choice is between "Federal Insurance" and "Alternative Insurance." There is a distinction!

Employing the term "Alternative Insurance" preserves the full range of choices before this Task Force, and accurately describes the 3 alternative models of insurance. They are:

- 1) Private insurance
- 2) State supported insurance
- 3) No requirement for insurance

These "alternative insurance" models, added to the federal insurance model, represent the 4 share insurance approaches in use today. I would like to reiterate that no single model is inherently better than the others are. No single model will guarantee that credit union shareholders in your state will not lose money someday.

All 4 models are viable options. A minute ago, I mentioned the potential for loss. That comment brings me to the first point I would like to make in dispelling misconceptions about insurance models.

Your choice of an insurance requirement will not prevent losses to citizens of your state. A strong state examination program is the single best safeguard against loss. Period!

Regardless of the insurance alternative you choose for state chartered credit unions, the Legislature must give the Maryland Department of Labor Licensing and Regulation the financial resources and the legislative authority to exercise full supervision and examination authority over Maryland chartered credit unions, regardless of which insurance alternative you choose. Beyond all else, you must be sure that the recodified act includes a body of law which gives the regulator sufficient powers to reel-in a credit union that strays, but the flexibility to empower the regulated credit unions to quickly adapt to a changing financial environment.

Why is this important?

Because, regardless of the insurance approach you adopt, your selection will have benefits and limitations. By example:

Federal insurance clearly has the advantage of having access to multiple capital sources. 34 states require that their credit unions participate in the National Credit Union Share Insurance Fund (NCUSIF) administered by the National Credit Union Administration (NCUA) which has over \$4 billion in assets.

The NCUSIF insures shares in 97% of all credit unions. That equals \$257 billion of insurance in force. The NCUSIF itself has assets of about \$4.2 billion, or 1.3% of the amount it insures.

Its shortcoming is that the federal share insurance fund only insures deposits up to \$100,000, and state chartered federally insured credit unions are prevented from offering some members complete insurance protection unless the state allows them to provide excess share insurance.

The second misconception I want to dispel is that state supported insurance does not work. The Commonwealth of Puerto Rico has a state supported insurance program. PROSAD-COOP insures all of the state-chartered credit unions in Puerto Rico. That involves 161 institutions with \$4.4 billion in assets. PROSAD-COOP has \$64 million in assets, or about 1.4% of assets insured.

Its shortcoming is that its access to capital is less diverse than is the federal fund and the Commonwealth does have the obligation to underwrite the fund – rather than just rely on the Federal Government to shoulder the responsibility for its credit unions.

Currently, 18 states have provisions that allow for an alternative form of share insurance. 13 of those states allow credit unions to choose alternative insurance as the sole share insurance for their members. Of the remaining five states, two allow for excess insurance only to be the alternative.

The remaining two states have provisions authorizing the state credit union commissioner to allow alternative insurance if the commissioner makes the determination that the alternative insurance is as sound as the federal insurance fund. In both of those states, the commissioner has currently declined to issue that finding.

In addition, several other states that require federal insurance actually have acts that may be read to allow alternative insurance.

This is an important point. Last year, NASCUS appeared before this Task Force during one of its opening sessions to address the issue of choice. The choice between federal and alternative insurance is truly no different than the choice the Legislature makes to give its credit unions or its regulator access to provisions of other acts for the purpose of parity, director compensation, or even the decisions it makes about field of membership and common bond.

State chartered credit unions serve the needs of residents of the states in which they are chartered. No one, not NASCUS, not the NCUA, not experts from across the country can better determine how those needs should be served better than you can determine.

The third misconception I want to dispel is that alternatively insured credit unions are not healthy. Clearly, alternative insurance has been a successful option in many states and in those states, we find that the participating credit unions have higher capital levels, stronger performing credit portfolios and higher returns on assets – all of which are signs of good financial health.

In terms of numbers of state-chartered credit unions and total assets on deposit, we see several of the largest states choosing to provide their credit unions with a share insurance option. There is little doubt that alternative insurance is a viable option which has proven as sound a choice for those states that use it as federal insurance.

There is growing interest in allowing the option of alternative deposit insurance.

Consider the following:

One state changed its law and others are considering changes in their law to allow the option of alternative insurance. The Alabama State Legislature changed its law to allow alternative and federal insurance, and credit unions have taken advantage of the option by dropping their federal insurance and becoming private insured.

Further, the North Dakota state regulator has changed his previous position on alternative insurance and is not opposed to alternative insurance. In 1987, when the North Dakota credit union league proposed a bill to remove mandatory federal insurance, Commissioner Gary Preszler opposed the effort for two reasons:

- 1) there were problems with the state insurance fund at the time; and
- 2) there was no viable alternative insurance provider.

Today, that same regulator supports alternative insurance for two reasons: 1) there is a viable alternative insurance provider; and 2) the continued intrusion of the NCUA to regulate all credit unions regardless of charter and to take away state's rights.

The issue of alternative share insurance is gaining momentum nationally as well. I offer the following four activities to illustrate this momentum.

First, the Western Roundtable of Credit Unions, which is a working group of 13 state associations, has reported that 41 of the nation's top 100 credit unions support moving to alternative forms of insurance.

Secondly, the topic is high on the list of those being considered by the CUNA State Issues Subcommittee.

Thirdly, the CUNA Renaissance Commission is considering the role of private share insurance as a means of enhancing the value of the state charter. From testimony delivered to them, they have learned that the shift to a reliance on federal share insurance has had the effect of limiting the innovative growth of credit unions where progressive state policies have been preempted in the interest in creating a singular uniformity within the credit union community.

By example, member business lending was a casualty of this mentality when the federal insurer required all federally insured credit unions to adhere to a single standard for member business lending.

Fourth and finally, in August, the Federal Deposit Insurance Corporation (FDIC) released its "Option Paper" which asks the banking community to consider the role of the private sector in administering insurance programs. The paper raises the following issues: a) the concept of a private/Federal partnership, b) the fixed-percentage capitalization funding and pricing model, c) greater coverage limits, d) coinsurance and e) the concept of "narrow banks." These matters are certain to receive legislative attention in the year ahead.

Not only has there been increased interest in alternative insurance in state legislatures and in the nation, but also NASCUS members have increasingly been looking at it.

In 1998 the NASCUS Government Relations Committee formed the Alternative Share Insurance Task Force comprised of NASCUS state regulators and members of the NASCUS Credit Union Council and the NASCUS Foundation for the Preservation of Dual Chartering.

The NASCUS Task Force was formed to: 1) gather information on historical and current alternative share insurance programs; 2) analyze the components of their success and failures; and 3) begin to devise a formula by which states would have a road map to develop and implement an alternative share insurance program in coordination with existing share insurance programs. In September 1999, we prepared the Alternative Share Insurance White Paper, a copy of which is included with these prepared comments.

By way of conclusion, I want to discuss the NASCUS accreditation program and the supervision of alternatively insured state chartered credit unions. At the present time, 23 state agencies have earned the prestigious designation of NASCUS accreditation. Of these, four states supervise credit unions that are alternatively insured. The state supervisors in these states are closely involved in the examination of their credit unions by the private insurer.

By example, they join the private insurer in concurrent or joint examinations of privately insured credit unions. They receive information routinely from the private insurer regarding the privately insured credit unions in their state and are apprised of activity that might affect the private insurance fund or that indirectly affects the member credit unions under their state's supervision. NASCUS accredited states are effective supervisors of their state chartered credit unions, whether they are alternatively or federally insured. In fact, one accredited state allows credit unions to be uninsured – the state of Idaho!

Clearly, your decision about share insurance is an important one and the Task Force is to be commended for its discussion of the issue.

I am pleased to be here as a resource for the Task Force on behalf of Maryland Commissioner Mary Louise Preis.

NASCUS remains available and eager to furnish any support we can as the Task Force moves forward.

Thank you for your attention. We would be glad to answer any questions or provide expanded details to the Task Force.

B

NASCUS
ALTERNATIVE SHARE INSURANCE WHITE PAPER
Prepared by Mary Martha Fortney
Vice President of Government Relations and Accreditation

PURPOSE:

The Alternative Share Insurance Study Group (ASISG) was formed to:

- 1) gather information on historical and current alternative share insurance programs; and
- 2) begin to devise an approach which, if followed by state regulators and state trade groups, would lead to the implementation of an alternative share insurance program in those states.

REPORT

information on historical and current alternative share insurance programs

For the first fifty years of the Credit Union Movement in the United States, credit union share accounts were uninsured. In the late '50s, state coverage began to emerge in Illinois in 1956 and Massachusetts in 1961, and by the mid '70s, 22 state or private funds were in place.

In September, 1970, the National Credit Union Share Insurance Fund (NCUSIF) was established by Congress to provide share insurance for federal credit unions and state chartered credit unions that chose to participate.

When Congress enacted the NCUSIF Title to the Federal Credit Union Act, Congress envisioned an NCUSIF which was very similar to the Federal Deposit Insurance Corporation (FDIC) and the Federal Savings and Loan Insurance Corporation (FSLIC). Congress directed participating credit unions to pay annual premiums for the insurance.

As a result of large share growth in the early eighties, the equity of the NCUSIF became dangerously low and, in 1984, with the support of the credit union movement and the administrator of the NCUSIF, Congress revised the NCUSIF funding formula. This revised funding methodology required credit unions to deposit one percent of their insured shares into the NCUSIF the first year of the new plan, and bring up their deposit to one percent annually thereafter. Additionally, the NCUSIF was given the authority to "assess" participating credit unions to keep the fund at a 1% level.

This funding methodology was successful in keeping the NCUSIF at the highest reserved fund among the deposit insurance funds during and through the savings and loan crises.

During this same period, state or cooperatively established insurance funds gained prevalence among state chartered credit unions which chafed at the prospect of federal oversight. The peak of private share insurance funds came in 1984 when there were approximately 38 states where alternative insurance existed. This represented a total of 18 different alternative share insurance corporations. Approximately 12-15 percent of state chartered credit unions were privately insured in the mid-eighties.

Following state share insurer failures in Ohio and Maryland in 1985 and in Rhode Island in 1991, and the subsequent legislative requirements in several states that all state chartered credit unions had to be federally insured, the credit union industry came to be left with three alternative share insurance funds. The private insurance alternative provided by American Share Insurance (ASI) is available for state-chartered credit unions in 9 states, the PROSAD-COOP available for credit unions chartered by the Territory of Puerto Rico, and the Maryland Insurance Fund is available for state chartered credit unions in Maryland.

SHARE INSURANCE ALTERNATIVES:

Our analysis of share insurance alternatives reveals there are either stabilization funds or guarantee funds. There are two types of each – cooperative and regulated. Each alternative is briefly summarized as to its purpose, how the purpose is achieved, how it is advertised, who administers the program, and who funds the program.

COOPERATIVE STABILIZATION FUND

PURPOSE:

Instill member confidence by assuring there are no reports of losses by members

HOW PURPOSE IS ACHIEVED:

The fund is used to make up the difference between shares and assets available when the institution is liquidated

HOW ADVERTISED:

Generally the presence of the fund is not advertised and these funds are generally invisible to the members. The message that cooperatives send is “no member of a cooperative has ever lost money”.

ADMINISTERED BY:

These funds are administered by an association of the cooperatives

FUNDED BY:

These programs are funded by voluntary contributions from the cooperatives

REGULATED STABILIZATION FUND

PURPOSE:

Instill member confidence by assuring there are no reports of losses by members

HOW PURPOSE IS ACHIEVED:

The fund is used to make up the difference between assets available when the institution is liquidated

The fund, at its option, may chose to broker liquidity if the cooperative becomes illiquid but the capital of the fund can not be used to create this liquidity

HOW ADVERTISED:

Cooperatives advertise that the "members' shares are protected by the fund"

ADMINISTERED BY:

These funds are administered by a government agency

FUNDED BY:

These programs are funded by required premium payments and the fund is reinsured, within limits, by the government

COOPERATIVE GUARANTEE FUND

PURPOSE:

Instill member confidence by guaranteeing that the principal and interest of a member's shares will be returned to them, within limits, in the event the cooperative fails.

HOW PURPOSE IS ACHIEVED:

The fund is used to make up the difference between assets available for distribution and the member's share balance, within limits, in the event the cooperative becomes insolvent.

The fund, at its option, may use the capital of the fund to create this liquidity

HOW ADVERTISED:

The presence of the fund is advertised and these funds are generally very visible to the members. The message that is advertised is that "members' shares are guaranteed, up to a limit."

ADMINISTERED BY:

These funds are administered by an insurance company. Historically, these companies have been owned by the participating cooperatives

FUNDED BY:

These programs are funded by:

- a) premiums
- b) are underwritten by a contracted obligation from the participants that they will keep the fund solvent, within limits; and
- c) a reinsurance contract with a notable re-insurer.

REGULATED GUARANTEE FUND

PURPOSE:

Instill member confidence by guaranteeing that the principal and interest of a members' shares will be returned to them, within limits, in the event the cooperative fails.

HOW PURPOSE IS ACHIEVED:

The fund is used to make up the difference between asset distribution and the member's share balance, within limits, in the event the cooperative becomes insolvent

The fund, at its option, may chose to broker liquidity if the cooperative becomes illiquid and may use the capital of the fund create liquidity

HOW ADVERTISED:

The presence of the fund is advertised and these funds are generally very visible to the members. The message that is advertised is that "members' shares are guaranteed, up to a limit."

ADMINISTERED BY:

These funds are administered by an agency of the government

FUNDED BY:

These programs are:

- a) funded by premiums;
- b) underwritten by a contracted obligation from the participants that they will keep the fund solvent, without limits; and
- c) are "reinsured" by law, by the government

Current Alternative Share Insurance in Force

SHARE INSURANCE STATE LAWS:

One consideration to be determined is whether state or federal laws will need to be changed to offer share insurance alternatives to credit unions. The following tables represent the findings of our research.

TABLE 1

The following shows states which, by law, allow private insurance alternative, albeit some may require the state regulator to approve the provider. Also noted are the number of privately insured credit unions and their asset size in each of those states. (Table prepared in September 1999.)

State	Number of Privately Insured Credit Unions	Total Assets
Alabama	2	\$210,000,000
California	17	\$1,417,369,951
Colorado	0	\$0
Idaho	22	\$116,135,839
Illinois	49	\$1,500,012,018
Indiana	23	\$876,916,023
Kentucky	0	\$0
Maryland	5	\$84,570,214
Massachusetts	0	\$0
Montana	15	\$470,152,026
Nevada	7	\$659,622,000
New Hampshire	0	\$0
New Jersey	0	0
New Mexico	0	\$0
Ohio	121	\$1,288,068,388
Oregon	0	\$0
Pennsylvania	0	\$0
Puerto Rico	161	\$4,434,679,835

TABLE 2 PRIVATE INSURANCE STATUS BY STATE
STATE REQUIRE FEDERAL INSURANCE PRIVATE INSURANCE IN STATE

ALABAMA	NO	YES
ALASKA	YES	NO
ARIZONA	YES	NO
ARKANSAS	YES	NO
CALIFORNIA	NO	NO
COLORADO	NO	YES
CONNECTICUT	YES	NO
FLORIDA	YES	NO
GEORGIA	NO	YES
HAWAII	YES	NO
IDAHO	NO	YES
ILLINOIS	NO	YES
INDIANA	NO	YES
IOWA	YES	NO
KANSAS	YES	NO
KENTUCKY	NO	YES
LOUISIANA	YES	NO
MAINE	YES	NO
MARYLAND	NO	YES
MASSACHUSETTS	NO	YES
MICHIGAN	YES	NO
MISSISSIPPI	YES	NO
MISSOURI	YES	NO
MONTANA	NO	YES
NEVADA	NO	YES
NEW HAMPSHIRE	NO	LAW SILENT
NEW JERSEY	NO	YES
NEW MEXICO	NO	YES
NORTH CAROLINA	YES	NO
NORTH DAKOTA	YES	NO
OHIO	YES	YES
OREGON	NO	YES
PENNSYLVANIA	NO	YES
PUERTO RICO	NO	NO
RHODE ISLAND	YES	NO
TENNESSEE	YES	NO
TEXAS	YES	NO
UTAH	YES	NO
VERMONT	YES	NO
VIRGINIA	YES	YES
WASHINGTON	YES	YES
WEST VIRGINIA	YES	NO
WISCONSIN	YES	NO

Begin to devise an approach which, if followed by state regulators and state trade groups, would lead to the implementation of an alternative share insurance program in those states

Supporters of share insurance alternatives believe the value of having a share insurance alternative is paramount to the vitality of the dual chartering system. The dual chartering system has been the laboratory for innovative development of financial products and services in the credit union system throughout its history. Supporters of alternative insurance feel that the reluctance of the federal share insurance fund to allow innovative risk on a national basis among credit unions poses a risk that credit unions will not be able to respond to changes in the competitive environment that is the financial services industry. In particular, as the Internet continues to lower the barriers of entry into the financial services industry and non-traditional entrants are creating a whole new competitive environment, it is even more important that credit unions have a full palate of opportunities to meet those new competitors. This just does not exist with the closely held regulatory and insurer structure that is the NCUSIF.

On top of this, the “new “ value of share insurance in today’s economy is drastically reduced. Today’s workforce does not hold share (deposit) insurance in the same regard as do those consumers who actually experienced the depression. It has been argued that share (deposit) insurance is a disincentive to save because the cost of the insurance (which is passed on to the depositors) is greater than the value placed on the insurance by depositors. This is compounded by the fact that the insurance level is greater than what most consumers accumulate, at least in their early earning years. This is one reason why other forms (uninsured) of savings and investment have grown so much over the last twenty years. This speaks to the need for credit unions to have an alternative form of deposit taking which an alternate form of share insurance would facilitate.

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C

Credit Union Supervisory and State Regulatory Structures

*A Comparative Study and Reference Source for
State Credit Union Supervisory Agencies 2000-2001*

Provided by NASCUS and CUNA Mutual Group

Table 21
Examining Procedures & Areas of Emphasis: Insurance

<i>State</i>	<i>Require Federal Insurance? (39)</i>	<i>Authorize Private Insurance? (40)</i>	<i>Private Insurance Companies in State? (40)</i>	<i>Name of Insurance Companies (40)</i>	<i>Can State Law Be Read to Authorize Private Share & Deposit Insurance? (41)</i>
Alabama	Y	Y	Y	American Share Insurance	Y-Code of Alabama, Titles, Chapter 17, (d)
Alaska	Y	N			Y-Sec. 06.45.250. Insurance of member accounts. A CU organized under this chapter shall, under regulations adopted by the commissioner, participate in insurance of member accounts under programs offered by the National CU Administration board or a program of comparable insurance approved by the commissioner. A regulation, 3 AAC 03.240, requires federal insurance.
Arizona	Y	N			N
Arkansas					
California					
Colorado					
Connecticut	Y	N			N
Florida	Y	N			N
Georgia	N	N	Y	Excess Share Insurance has been approved to offer insurance for amounts in excess of NCUSIF coverage.	Y-Section 7-1-666, Financial Institutions Code of Georgia, Annot.
Hawaii	Y	N			N
Idaho	N	Y	Y	American Share Insurance	N/A
Illinois	N	Y	Y	American Share Insurance	Y- Section 305/8
Indiana	N	Y	Y	American Share Insurance	Y-28-7-1-31.5
Iowa	Y	N			N
Kansas	Y	N			Y-KSA 17-2246
Kentucky	N	Y	N		Y-#KRS 290.405
Louisiana	Y	Y	Y	ASI (excess only)	Y-LSA-R.S. 6:644(B)(8) appears to allow private share insurance; however, our legal staff has interpreted it to include excess share insurance only.
Maine	Y	N			N
Maryland	N	Y	Y	CU Insurance Corporation	Y- #Financial Institutions 6-601

State	Require Federal Insurance? (39)	Authorize Private Insurance? (40)	Private Insurance Companies in State? (40)	Name of Insurance Companies (40)	Can State Law Be Read to Authorize Private Share & Deposit Insurance? (41)
Massachusetts	N	Y	Y	The Massachusetts Credit Union Share Insurance Corporation (excess insurance)	N
Michigan	Y	N			N
Minnesota	Y	N			N
Mississippi	Y	N			N
Missouri	Y	N			N
Montana					
Nebraska					
Nevada	N	Y	Y	ASI	Y-NRS 678.755
New Hampshire					
New Jersey	N	Y	N		Y
New Mexico					
New York					
North Carolina	Y	N			Y-G.S. §54-109.78(a)
North Dakota	Y	N			N
Ohio					
Oklahoma	N	Y	N		Y-2010 B last sentence
Oregon	N	Y	N		Y-ORS 723.582
Pennsylvania	N	Y	N		Y-Section 304(a)(6) of the CU Code
Puerto Rico	N	N			N
Rhode Island	Y	N	N		N
South Carolina					
Tennessee					
Texas	Y	Y	N		Y-Texas Finance Code 15.410
Utah	Y	N		Except for excess insurance	N
Vermont	Y	N	N		N
Virginia	N	Y	N		Y-Section 6.1-225.26 of the Code of Virginia.
Washington	Y	Y	N		Y-RCW 31.12.408
West Virginia	Y	N	N		N
Wisconsin	Y	N			N

Table 22
Examining Procedures & Areas of Emphasis: Insurance

State	Distribution of CUs by Insurer (42)			Difference Between Insurance Review & Exam by Your Department (43)	Should There Be a Difference?(43)
	NCUSIF	Other Approved Insures	Not Insured At All		
Alabama	85	2		N	Y
Alaska	2			Y	
Arizona	29			N	N-While both focus on safety and soundness, the Department conducts a full-scope examination while NCUA may perform a limited examination focusing on areas of significant risk to the insurance fund.
Arkansas					
California					
Colorado	79		1	Y	
Connecticut	All			N	The insuring agency (NCUA) will only go in jointly with our department and we will issue the report.
Florida	100%			Y	
Georgia	100%	<5%		Y	
Hawaii	3			Unknown- we do not know what an insurance review would encompass.	
Idaho	24	22	1	Y	
Illinois	424	47		Y	
Indiana	38	23		Y	
Iowa	196/100%			Y	
Kansas	112			Y	
Kentucky	100%			N	Y- Insurance review should only focus on the risk to the insurance fund.
Louisiana	64			N	NCUA does not conduct independent examinations of our CUs.
Maine	13			N	N
Maryland	6	5		N	N- Examinations are performed-not insurance reviews.
Massachusetts	All			Y	
Michigan	100%			Y	
Minnesota	100%			N	
Mississippi	36			Y	
Missouri	All			Y	
Montana					
Nebraska					
Nevada	4	8		Y	
New Hampshire					
New Jersey	27			Y	

State	Distribution of CUs by Insurer (42)			Difference Between Insurance Review & Exam by Your Department (43)	Should There Be a Difference?(43)
	NCUSIF	Other Approved Insures	Not Insured At All		
New Mexico					
New York					
North Carolina	116			Y	
North Dakota	All			N	Very little difference, if any.
Ohio					
Oklahoma	All 28			Y	
Oregon	All 28			N	Y
Pennsylvania	90			Y	
Puerto Rico		157		N	
Rhode Island	17			N	
South Carolina					
Tennessee					
Texas	100%			N	Y
Utah	98			Y	
Vermont	39			Y	
Virginia	74			Y	
Washington	101			Y	
West Virginia	100%			N	N
Wisconsin	350			Y	

Contact NASCUS For More Information

Brian Knight
Director State Regulatory Relations
(703) 528-8689
brian@nascus.org

Mary Martha Fortney
NASCUS Vice President
Government Relations & Accreditation
(703) 528-8688
marymartha@nascus.org

NASCUS
1655 N. Fort Myer Drive
Suite 300
Arlington, Virginia 22209

ASI vs NCUSIF Comparison Chart

Primary Share Insurance

ASI		NCUA (NCUSIF)
POLICY SPECIFICS		
DEPOSIT REQUIREMENT	1.0% to 1.3% of total shares, depending upon the credit union's CAMEL rating.	1% of insured shares.
COVERAGE	\$250,000 <u>per account</u> , regardless of the number of accounts held by a member.	\$100,000 of coverage <u>per member</u> , excluding retirement and joint accounts in trust.
INSURANCE EXAMINATION FEE	None.	Administrative expenses for the NCUA examination of state chartered credit unions are collected through an overhead transfer fee assessed of the NCUSIF (increased 10/19/00).
APPLICATION FEE	None.	Federal insurance applicants are charged \$170.00 plus \$63.00 per hour.
MONITORING AND EXAMINATION	Underwriting and analysis personnel review all members' performance monthly. Additionally, better than 50% of insured credit union shares are examined on-site annually.	Credit unions are monitored through the 5300 quarterly and semi-annual call reporting process. Federal charters are examined annually, and state charters based upon their impact to the insurance fund.
CREDIT UNION LIABILITY LIMITS	Liability beyond the deposit is contractually limited to a maximum of 3% of assets. A credit union's liability to the fund cannot reduce their net capital below 4% of assets.	By law, NCUA is required to deplete all capital within insured credit unions before it can seek assistance from the U.S. Treasury. This, in effect, places unlimited liability upon the capital of an NCUA-insured credit union.
RISK-BASED PREMIUMS	Risk-based premiums are assessed to credit unions reporting less than 4% net capital. This premium is collected and redistributed to all others within the fund. The process encourages credit unions with difficulties to recover quickly.	None. However, NCUA can deploy prompt correction actions or liquidate or merge credit unions based on its net capital ratio.
MEMBER BUSINESS LOANS	Member business loans are governed by state statutes. ASI limits member business loans to one borrower to no more than 20% of net capital.	Member business loans are limited by a factor of capital up to a maximum of 12.25% of assets, unless the credit union receives a regulatory waiver.
PROMPT CORRECTIVE ACTION	Member credit unions are required to maintain a minimum of 4% net capital. Other requirements are determined by state statutes.	Affects all federally insured credit unions. Specific regulations govern credit unions falling below net capital levels of 7%.



Information *Program Comparison*

ASI		NCUA (NCUSIF)
STRUCTURE		
OWNERSHIP	ASI is structured much like a credit union with members determining the leadership, focus and philosophy of the program.	A federal government agency. Leadership, focus and philosophy is politically determined and influenced by the President and Congress.
BOARD OF DIRECTORS	Directors are elected by insured credit unions to a three-year term. A majority may not represent insured credit unions.	Directors are nominated by the President and confirmed by the Senate. The chairman serves at the pleasure of the President.
PRIMARY ROLE	ASI is an insurer only, and serves no explicit regulatory function.	NCUA serves a dual role: federal regulator and insurer.
PHILOSOPHY	Views its mission as being a business partner of its insured credit unions, with a vested interest in their success.	Primary purpose is to assure the safety of the National Credit Union Share Insurance Fund.
ADVISORY COUNCIL	An 11-person advisory council represented by insured members. This council addresses issues including pricing, examinations, legislative initiatives, products, and services and operations.	No formal credit union body offers input or suggestions; instead, it relies upon credit union comments on proposed regulations and trade association dialogue.
PERFORMANCE		
EQUITY RATIO	The corporation's equity ratio has continually been higher than its federal counterpart. At December 31, 1999 the ratio was 1.64% or \$1.64 for each \$100 of insured shares.	Currently reports an equity ratio of about 1.30% or \$1.30 for each \$100 of insured shares.
LOSS RECORD <i>(since 1990)</i>	Losses have averaged approximately \$.01 per \$1,000 of insurance in force. In a quarter century of operation, the company has paid out less than 1/20 of the total capital and reserves currently in the fund.	The NCUSIF loss experience ratio has approximated \$.24 per \$1,000 of insurance in force.
PREMIUMS ASSESSED	None historically.	Three premiums since 1984.
DIVIDENDS	None paid.	NCUSIF has paid a dividend every year since 1995.

AMERICAN SHARE INSURANCE
 5656 Frantz Road, Dublin, Ohio 43017 • 614.764.1900 • FAX 614.764.1493 • 1.800.521.6342 WATS
 E-mail: mail@americanshare.com • Web Site: www.americanshare.com



Letter from Attorney General of Maryland to the Governor

CARMEN M. SHEPARD
DONNA HILL STATON
Deputy Attorneys General



RICHARD E. ISRAEL
KATHRYN M. ROWE
SANDRA J. COHEN
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 14, 2001

The Honorable Parris N. Glendening
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: Senate Bill 377 and House Bill 399

Dear Governor Glendening:

In our letter of April 19, 2001 we advised that Senate Bill 377 and House Bill 399, identical bills which reform and revise the law governing credit unions, could be signed into law. However, we noted that a U. S. citizenship requirement for members of a credit union's supervisory committee and credit committee raised a substantial issue of whether the State was discriminating against aliens in violation of the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution. As the citizenship requirement was considered severable, it was suggested that the bills could be signed and that the constitutional issue could be addressed in a subsequent letter. After reviewing the matter further, we have concluded that the citizenship requirement violates the Equal Protection Clause.

Senate Bill 377 and House Bill 399 require that a credit union incorporated under the laws of Maryland have a supervisory committee. P. 37, line 18. The supervisory committee is responsible for ensuring that the credit union's officials meet required financial reporting objectives and establish practices and procedures to safeguard the members' assets. P. 40, line 16. The bills provide that a credit union's bylaws may establish a credit committee. P. 52, line 22. The credit committee exercises certain supervisory powers over loans and loan officers. P. 54, line 2. For both committees, there is a requirement that the members be United States citizens. P. 38, line 11 and p. 53, line 7. The issue is whether the State's exclusion of aliens from these committees violates the Equal Protection Clause.

In relevant part, the Fourteenth Amendment to the Federal Constitution provides that no state may deny to any person within its jurisdiction the equal protection of the law. Article 24 of the Maryland Declaration of Rights has been understood to include a similar limitation. *State of Maryland v. The Good Samaritan Hospital of Maryland*, 299 Md. 310, 326-327 n. 7 (1984), appeal dismissed 469 U.S. 802 (1984). As a general rule, the Equal Protection Clause merely requires that

The Honorable Parris N. Glendening
May 14, 2001
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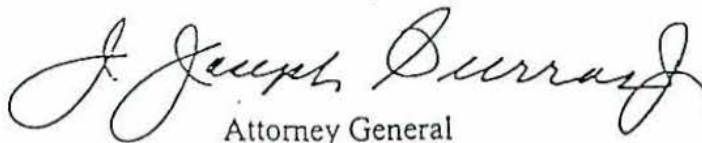
a classification have a rational basis. However, a distinction which adversely affects a suspect class or impinges on a fundamental right protected by the Constitution is subject to strict judicial scrutiny. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 17 (1973). It is well established that the term "person" in the Equal Protection Clause includes lawfully resident aliens. *Graham v. Richardson*, 403 U.S. 365, 371 (1971). Moreover, a classification based on alienage is inherently suspect and is subject to close judicial scrutiny. *Graham*, 403 U.S. at 372, *Nyquist v. Mauclet*, 432 U.S. 1, 7 (1977), *Bernal v. Fainter*, 467 U.S. 216, 219 n. 5 (1984).

In order to survive strict judicial scrutiny, a law must advance a compelling state interest by the least restrictive means. *Bernal*, 467 U.S. at 219. Although strict scrutiny is not applied when a restriction on aliens primarily serves a political function, *Cabell v. Chavez-Salido*, 454 U.S. 432, 439 (1982), the political-function exception is narrowly construed. *Bernal*, 467 U.S. at 222 n. 7. Thus, laws which restrict lawfully resident aliens in economic matters are subject to strict judicial scrutiny. *Cabell*, 454 U.S. at 439. Applying this test, the Supreme Court has struck down State laws which have excluded aliens from various occupations. *Bernal*, 467 U.S. at 219-220. Although the State may have a compelling interest in ensuring that the financial affairs of credit unions are supervised by individuals with financial acumen, excluding aliens from serving on a credit union's supervisory committee or credit committee does not advance this interest in any obvious way.

As the Federal Constitution confers on Congress broad powers over immigration and naturalization, it has been recognized that the Federal government is not subject to a strict limitation under the Fifth Amendment such as applies to the states under Fourteenth Amendment. *Mathews v. Diaz*, 426 U.S. 67, 84-87 (1976) and *Nyquist*, 432 U.S. at 7, n. 8. However, Congress has not exercised this broad power to bar aliens from serving on the supervisory committee or credit committee of a Federal credit union. 12 U.S.C.A. §§1761, 1761c and 1761d. And it has imposed no such requirement on these positions in State credit unions. Compare 12 U.S.C. §1427(a) and 12 CFR §915.7(b) which require the directors of federal home loan banks to be U.S. citizens.

In conclusion, it is our view that the requirement in Senate Bill 377 and House Bill 399 that members of the supervisory committee and credit committee of a State-chartered credit union be United States citizens violates the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution. However, as noted in our earlier letter, we think that this requirement is severable. Moreover, if the bills are signed into law, the U.S. citizenship requirement could be deleted in next year's bill making technical changes in the revised credit union law.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Joseph Curran".

Attorney General

JJCjr./REI/ss
SpSB377

The Honorable Parris N. Glendening
May 14, 2001
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cc: Joseph C. Bryce
Secretary of State
Karl Aro
The Honorable John C. Astle
The Honorable Maggie L. McIntosh
Tamela D. Burt
Thomas L. Gounaris