

Title 23. Public Utilities and Regulated Industries

Chapter II. State Securities Department, Department of Commerce

Subchapter A. Generally

Part 304. Rules of the Credit Union Division

Subpart 1. Generally

23 CAR § 304-101. Definitions.

As used in this part and as an administrative interpretation of terms contained in the Arkansas credit union act, the following definitions shall apply:

(1) "Arkansas credit union act" means Acts 1971, No. 132, as amended;

(2)(A) "Contractual delinquency" means any amount due and owing to a credit union by a borrower which is unpaid.

(B) This constitutes a contractual delinquency regardless of the amount involved or the length of time unpaid.

(C) A loan or contract becomes a contractual delinquency on the day following the date on which the borrower is required, and fails, to make a payment.

(D) If a contract specifies both a due and delinquent date, the failure to make the required payment on the due date places the loan in a delinquent status.

(E) When the contract gives the credit union the right to increase the total contractual payment in order to provide for future tax or insurance requirements, the failure of the credit union to exercise this right does not result in a contractual delinquency, even though the amount which the borrower is required to pay is obviously insufficient to meet future tax or insurance requirements.

(F) When the contract requires that the borrower pay to someone other than the credit union all taxes, assessments, insurance premiums, etc., when they become due, the failure of the borrower to pay for such items does not create a contractual delinquency.

(G)(i) The purchase of a loan does not affect the previous delinquent status of such loan.

(ii) Any delinquency existing prior to purchase is included in any

subsequent computation of delinquency by the purchaser.

(iii) An exception to this rule is made in the case of a loan on which there exists a guaranty by the National Credit Union Administration.

(H) Any loan which is modified or refinanced while delinquent will continue to be classified as contractually delinquent unless after such modification or refinancing, the borrower has made all payments required for the next eight-month period following the modification or refinancing;

(3) "Insolvency" means a credit union which is deemed insolvent or bankrupt because:

(A) It cannot meet its obligations as they come due in the normal course of business; or

(B) Considering the credit union's assets and liabilities, that the assets, if made immediately available, net recoverable assets, would not be sufficient to discharge the credit union's obligations to its creditors and members;

(4)(A) "Modification" means an additional advance of funds to or for the benefit of a borrower by an institution for any purpose or the changing of any of the terms of the contract.

(B) When a new borrower assumes an existing debt of a loan and the old borrower is not relieved from liability, the loan is not considered to have been modified.

(C) If the old borrower is released from all liability in connection with the assumption of liability by a new borrower, the loan is considered to have been modified;

(5) "Risk assets" means, for the purpose of establishing the reserves required by Section 26 of the Arkansas credit union act, all assets except those following shall be considered risk assets:

(A) Cash on hand;

(B) Deposits and/or shares in federally insured banks, savings and loan associations, and credit unions to the limits of the federal insurance;

(C) Deposits and/or shares in federally insured banks, savings and loan associations, and credit unions in excess of the federal insured limit if the institution and

depositing credit union have entered into a written agreement which allows the depositing credit union to withdraw said funds immediately upon written notice;

(D) Assets which are insured by, fully guaranteed as to principal and interest by, or due from the United States Government, its agencies, the Federal National Mortgage Association, or the Government National Mortgage Association;

(E) Loans to students insured under the provisions of Title IV, Part B of the Higher Education Act of 1965, 20 U.S.C. § 1071 et seq., or similar state insurance programs;

(F) Loans insured under Title I of the National Housing Act, 12 U.S.C. § 1703, by the Federal Housing Administration;

(G) Common trust investments which deal in investments authorized under subdivision (5)(C) of this section;

(H) Prepaid expenses;

(I) Accrued interest on non-risk investments;

(J) Furniture and equipment;

(K) Land and buildings;

(L) Loans which are purchased from liquidating credit unions guaranteed by the National Credit Union Administration; and

(M) Loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding; and

(6) "Unimpaired capital and surplus" means any shares, unrestricted reserves, undivided earnings, and undistributed income less the principal balance due on any loan two (2) or more months delinquent.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-102. Organization.

(a) Persons desiring to organize a credit union under the provisions of the Arkansas credit union act, Acts 1971, No. 132, as amended, hereinafter referred to in this part as "Arkansas credit union act", shall submit two (2) copies of the proposed articles of

incorporation and bylaws to the State Credit Union Supervisor, together with a charter fee of twenty-five dollars (\$25.00).

(b) The supervisor may conduct an investigation to determine whether the proposed credit union meets the objectives of the Arkansas credit union act, and in that investigation may consider the following:

- (1) The number of potential members contained within the field of membership;
- (2) The stability of employment or membership in the association comprising the common bond of membership;
- (3) The economic characteristics of the proposed common bond;
- (4) Whether payroll deductions will be available;
- (5) The geographic boundaries of the proposed field of membership;
- (6) Whether the proposed credit union, in the opinion of the supervisor, can qualify for insurance of share accounts through the National Credit Union Administration;
- (7) Whether the proposed credit union, in the opinion of the supervisor taking into consideration subdivisions (b)(1) - (6) of this section, can return a profit by the end of its third year of existence; and
- (8) Applicants for a central credit union charter, whether an application for a new charter or an application to change an existing credit union charter to a central charter, have the additional burden of demonstrating to the supervisor that the persons sought to be served by the proposed central credit union charter have no access to existing central credit union services.

(c) If, at the conclusion of his or her investigation, the supervisor denies the charter, he or she must so inform the organizers of the proposed credit union, stating the reasons for his or her denial and granting the organizers leave to request a hearing within a reasonable length of time to show cause why their application should not be denied.

(d) The articles of incorporation, if approved, shall be the charter of the credit union.

(e) The supervisor shall prepare and maintain standard forms of articles of incorporation and bylaws, specimen copies of which may be obtained from the Credit Union Division.

(f) Approval of a proposed credit union may be conditioned upon that credit union being

granted insurance of members' share accounts through the National Credit Union Administration.

Authority. Arkansas Code §§ 23-35-202, 23-35-301.

23 CAR § 304-103. Amendments to bylaws and articles of incorporation.

(a) A five-dollar fee must be submitted to the State Securities Department with each proposed amendment.

(b) The filing of any amendment shall be on a form prescribed by the State Credit Union Supervisor.

Authority. Arkansas Code §§ 23-35-202, 23-35-302.

23 CAR § 304-104. [Reserved]

23 CAR § 304-105. Corporate powers.

Credit unions desiring to borrow from any source other than financial institutions and other credit unions pursuant to Section 5(i) of the Arkansas credit union act, mainly certificates of indebtedness or promissory notes to credit union members, may do so only if in compliance with the following:

- (1) The aggregate amount to be borrowed including certificate of indebtedness shall not exceed the amount as prescribed in Section 5(i) of the act;
- (2) The instruments shall be styled "Certificate of Indebtedness" or "Promissory Note" or "Certificate of Debenture";
- (3) The instruments shall state clearly on their face in bold type as follows:

"THE SATISFACTION OF THIS OBLIGATION OF _____
CREDIT UNION, EVIDENCED BY THIS (CERTIFICATE OF
INDEBTEDNESS) (PROMISSORY NOTE), IS NOT INSURED THROUGH

THE NATIONAL CREDIT UNION ADMINISTRATION (NCUA) OR ANY OTHER AGENCY OF THE STATE OR FEDERAL GOVERNMENT NOR IS LIFE SAVINGS INSURANCE PROVIDED. THIS OBLIGATION, REPRESENTING A DEBT OF THE CREDIT UNION, IS BACKED ONLY BY THE ASSETS OF _____ CREDIT UNION”;

(4) The instruments shall all be pre-numbered and chronologically serialized by year;

(5) The board of directors shall receive a report on the issuance of certificates at each monthly board meeting; and

(6) The supervisory committee in conducting its audits of the credit union shall ask for a verification of items of subdivision (2) of this section.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-106. Usurious contracts not permitted.

No provision of this part shall be construed to permit the execution of any contract which violates the provisions of Arkansas law prohibiting usury.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-107. [Reserved]

23 CAR § 304-108. Expulsion — Withdrawal from field of membership.

(a) Reducing a member's share balance below one (1) share through application of shares to meet obligations due the credit union or otherwise shall be considered expelling such member from the field of membership.

(b) Such expulsion shall not be allowed without compliance with Section 8 or Section 24 of the Arkansas credit union act.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-109. [Reserved]

23 CAR § 304-110. [Reserved]

23 CAR § 304-111. Official family.

(a) The officers and committee members shall serve a one-year term of office or until successors are chosen or duly qualified.

(b)(1) One (1) alternate member may be elected for the board of directors at the annual members' meeting by and from the members as provided in the bylaws of the credit union.

(2) The alternate may serve only if needed to make a quorum at any meeting of the board.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-112. [Reserved]

23 CAR § 304-113. Board of directors.

(a) The board of directors of each credit union shall at least annually carefully review the bond coverage in force in order to ascertain its adequacy in relation to the exposure and to the minimum requirements fixed by the State Credit Union Supervisor.

(b) All bonds must provide for faithful-performance-of-duty coverage for any officer, agent, or employee while that person is performing any of his or her duties as prescribed in:

- (1) The Arkansas credit union act;
- (2) The bylaws; or
- (3) This part.

(c)(1) No form of fidelity bond shall be used except those approved by the supervisor.

(2) Credit Union Blanket Bond, Standard Form No. 23 of the Surety Association of American, revised to May, 1950, plus Faithful Performance Rider, for use with this form to broaden Insuring Clause (A), Revised to May, 1950, shall be considered as the minimum coverage required and is hereby approved.

(3) Cumis Bond No. 578 or Cumis Bond No. 581 plus faithful-performance-of-duty are also approved.

(4) No other bond form may be used unless specifically approved in writing by the supervisor.

(d)(1) The schedule of coverage set forth in subsection (e) of this section shall not be deemed to cover cash funds of one thousand dollars (\$1,000) or more.

(2) When the cash fund is one thousand dollars (\$1,000) or more, additional coverage to the full amount of the fund will be required.

(e)(1) The following schedule shall be deemed as the minimum requirements only:

ASSETS				MINIMUM COVERAGE
\$ 0,000	to	\$ 5,000	.....	\$ 1,000
\$ 5,001	to	\$ 10,000	.....	2,000
\$ 10,001	to	\$ 20,000	.....	4,000
\$ 20,001	to	\$ 30,000	.....	6,000
\$ 30,001	to	\$ 40,000	.....	8,000
\$ 40,001	to	\$ 50,000	.....	10,000
\$ 50,001	to	\$ 75,000	.....	15,000
\$ 75,001	to	\$ 100,000	.....	20,000
\$100,001	to	\$ 150,000	.....	30,000
\$150,001	to	\$ 200,000	.....	40,000
\$200,001	to	\$ 300,000	.....	50,000
\$300,001	to	\$ 400,000	.....	60,000
\$400,001	to	\$ 500,000	.....	70,000

\$500,001	to	\$ 750,000	.....	85,000
\$750,001	to	\$1,000,000	.....	100,000
Over \$1,000,000			.....	100,000 plus \$50,000 for each additional million or fraction thereof of assets.

(2) It shall be the duty of the board of directors of each credit union to provide proper protection to meet any circumstance by obtaining adequate bond and insurance coverage in excess of the above minimum schedule.

(f)(1) The supervisor may require additional coverage for any credit union when, in his or her opinion, the surety bond in force is insufficient to provide adequate surety coverage.

(2) The board of directors of the credit union shall apply for such additional coverage within thirty (30) days after the date of written notice of such requirement.

(g) See 23 CAR § 304-112- Official Family - regarding the election of an alternate member of the board of directors.

(h) See 23 CAR § 304-117(k) - Loans to Members - regarding interest refunds or rebates.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-114. [Reserved]

23 CAR § 304-115. Credit committee.

(a) The credit committee shall have the authority to remove any loan officer by majority vote with or without cause.

(b)(1) The credit committee or loan officer shall maintain detailed minutes and records of all meetings.

(2) At a minimum, the minutes or other appropriate credit union documents should show and include the following:

- (A) Date of meeting;
- (B) Members present at the meeting;
- (C) Collateral or security offered on each loan;
- (D) Appraised value of collateral or security offered;
- (E) Specific action taken on each loan considered; and

(F) If a loan is disapproved, the reason or reasons for disapproval must be stated and the member notified in accordance with the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-116. Loans to members.

(a)(1) Every loan application shall reflect:

(A) All current obligations owed by the applicant, both secured and unsecured; and

(B) Loans for which the applicant is comaker or guarantor.

(2) Each loan application shall also reflect any extensions of credit to the applicant notwithstanding whether the extension has been drawn down by the member.

(b) Within the limits of the act and such further limits as may be imposed by the board of directors pursuant to the act and the bylaws, the credit committee or loan officer, in arriving at the terms of payment or amortization of an approved loan to a member, shall consider:

(1) The source of funds and the regularity and frequency of receipt of funds which the borrower proposes to utilize for the purpose;

(2) The borrower's other commitments and anticipated needs over the loan period; and

(3) The best interests of the credit union.

(c)(1) All loans shall provide for the payment of interest with each payment of principal.

(2) No loan shall provide for payment less frequently than at intervals of twelve (12) months.

(d)(1) No secured loan shall be made to any member if, upon making the loan, the member's aggregate indebtedness to the credit union will exceed ten percent (10%) of the credit union's assets.

(2) No unsecured loan shall be made to any member if, upon making that

loan, the member's aggregate indebtedness to the credit union, in the case of a credit union whose unimpaired capital and surplus is less than five thousand dollars (\$5,000), would exceed one hundred fifty dollars (\$150) or which, in the case of any other credit union, would exceed three thousand dollars (\$3,000) or three percent (3%) of the credit union's unimpaired capital and surplus, whichever is less.

(3) For purposes of this section, a member's aggregate indebtedness to the credit union shall include:

(A) The unpaid principal balance of all loans made to the member;

(B) The unpaid principal balance of all loans with the credit union for which the member is comaker; and

(C) Any credit amount extended to the member pursuant to an open end credit agreement, revolving credit plan, or the extension of a line of credit notwithstanding whether the member has actually received funds pursuant to any of the enumerated credit agreements.

(e)(1) A secured loan is one secured by collateral or the signature or signatures of comaker or comakers or guarantor or guarantors in the form of an endorsement of person or persons on behalf of the borrower which will serve as a source of recovery in the event of default by the borrower.

(2) The files of each credit union shall contain evidence of the value of the security pledged, if collateral, or evidence of the financial responsibility of the guarantor or comaker for each secured loan.

(3)(A) The files of the credit union shall also contain copies of financing statements and security agreements properly filed with the requisite governmental office to protect the credit union's security interest in the collateral or evidence of nonfiling chattel lien insurance.

(B) Loans not reflecting such filings shall be deemed unsecured.

(f)(1) Real estate loans made under authority of paragraph four of Section 16 of the credit union act shall not exceed sixty-six and two-thirds percent (66 2/3%) of the appraised value of the real estate as determined by an independent qualified real estate appraiser whose opinion is directed to the credit union, and the terms of such loans

shall not exceed ten (10) years if the assets of the credit union are seven hundred fifty thousand dollars (\$750,000) or less, nor twenty (20) years if the assets of the credit union are seven hundred fifty thousand one dollars (\$750,001) or more.

(2) Real estate mortgage loans shall be secured by a first lien only.

(3) A title opinion or title insurance reflecting good and merchantable title in the mortgagor and indicating that a mortgage recorded in the name of the credit union would be a first mortgage plus proof of casualty insurance covering improvements with the credit union named as loss payee, must be procured prior to a disbursement of funds.

(4) The credit union must also maintain a filed copy of the mortgage instrument.

(g)(1) An escrow account, clearly designated as such, must be maintained as a segregated bank account for the payment of real estate taxes and casualty insurance premiums, unless satisfactory proof of such payments is furnished to the board of directors.

(2) Complete detailed ledger accounts must be maintained for each escrow account.

(h) Real estate loans to members shall be made from surplus funds only, and the maximum individual loan shall be in ratio to total assets:

<u>TOTAL ASSETS</u>	<u>MAXIMUM LOAN</u>
Less than \$75,000	\$ 3,000.00
\$75,000 to \$187,500	5,000.00
\$187,501 to \$300,000	7,500.00
\$300,001 to \$500,000	10,000.00
\$500,001 to \$750,000	12,500.00
\$750,001 and over	10% of assets

(i) The aggregate amount of loans outstanding to credit union officials under authority of paragraph three (3) of Section 16 of the credit union act shall not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union.

(j) A loan may be made to a credit union official only if the borrower takes no part in the consideration of his or her application and does not attend any committee or board meetings while his or her application is under consideration.

(k)(1) The board of directors of a credit union may authorize an interest refund to all members who:

(A) Paid interest to the credit union during the dividend period; and

(B) Are members of record at the close of business on the last day of the dividend period.

(2)(A) Interest rebates or refunds are to be paid from the earnings of a credit union in excess of the expenses incurred.

(B) Such rebates shall be shown as a reduction of interest income.

(3) The amount of the interest refunded shall not exceed the amount of net income as of the date of the refund.

(4)(A) An interest refund may be authorized for all members who:

(i) Paid interest to the credit union during the period; and

(ii) Are members of record at the close of business of the period.

(B) The amount of the refund to each member shall be in proportion to the amount of interest paid by the member as determined by the application of a uniform percentage.

(l) The assignment of unearned wages, i.e., wages to be earned in the future, may be used as security only in an amount equal to an employee's last paycheck and then only if:

(1) The individual assignment is acknowledged in writing by the employer; and

(2) The assignment is executed by both the borrower and the borrower's spouse.

(m) Extensions of credit or credit extended pursuant to open end credit, a revolving credit plan, or a line of credit must be:

- (1) Segregated;
- (2) Clearly marked as such; and
- (3) Readily distinguishable from other loans.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-117. Supervisory committee.

(a)(1) The supervisory committee of each credit union shall make or cause to be made a minimum of two (2) audits under controlled conditions each calendar year.

(2) One (1) of the audits shall be a comprehensive annual audit covering the period elapsed since the last comprehensive annual audit.

(3) A report of each audit shall be promptly made to the board of directors of the credit union.

(4) If violations of the act or rules or violations of the requirements for share insurance promulgated by the National Credit Union Administration, if applicable, are found, or if the credit union is being operated in a manner which could result in suspension, liquidation, or filing of a bonding or National Credit Union Administration claim, a copy of the report shall be promptly forwarded to the State Credit Union Supervisor.

(5) A summary of each such report shall be submitted to the members at the annual meeting.

(b)(1) The audits shall contain a one hundred percent (100%) negative confirmation under controlled conditions with the auditor retaining all returned notes, comments, and a record of incorrect addresses.

(2) All accounts, including share, loan, certificate of indebtedness, and any other member accounts, shall be verified.

(c)(1) The supervisory committee shall be responsible for the preparation and maintenance of work papers used in the audits.

(2) These work papers shall be made available by the committee for review by the Credit Union Division examiners during the annual examination.

(d)(1) The supervisory committee is authorized to employ an outside party to conduct the audits described in subsection (a) of this section.

(2) The party so employed, however, must be a person who is independent of the operation of the credit union.

(3) The treasurer, assistant treasurer, manager, assistant manager, or other member of the official family other than members of the supervisory committee are specifically excluded.

(4) Nothing in this section shall prohibit the supervisory committee from conducting the required audits.

(e)(1) The supervisory committee shall conduct supplementary audits upon request of the supervisor.

(2) The committee also may conduct additional audits on its own initiative.

(f) For purposes of this section, "controlled conditions" means that the supervisory committee or its agent shall perform all steps of the verification completely independent of the employees of the credit union or the other members of the credit union's official family.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-118. [Reserved]

23 CAR § 304-119. Share accounts — Share certificate accounts.

(a) Definitions.

(1) As used in this section, "share account" means:

(A) **Regular share account.** An account which does not require the holder to maintain a minimum balance greater than the par value of a share or to give notice of intent to withdraw, except as may be imposed in accordance with the credit union's bylaws;

(B) **Notice account.** An account which, in addition to any notice which may be imposed pursuant to the credit union's bylaws, requires the holder to give written notice of the intent to withdraw;

(C) **Minimum balance account.** An account which requires the holder to maintain a specified balance in the account for at least an entire dividend period; and

(D) **Split-rate account.** An account which earns dividends at a different rate on the portion of the balance above a certain minimum requirement; and

(2) **Share certificate account.** An account that:

(A) Will earn dividends at a particular rate if held to maturity; and

(B) On which a penalty shall be assessed for the withdrawal of all or any portion of the principal amount prior to maturity.

(b) **Issuance of share accounts and share certificate accounts.**

(1) The board of directors, by amendment to the bylaws, may establish:

(A) Regular share accounts, notice accounts, minimum balance accounts, split-rate accounts, or any of those types of share accounts at varying dividend rates, and share certificate accounts at varying dividend rates and maturities, in conformance with this section;

(B) Additional terms and conditions concerning the issuance and maintenance of share accounts and share certificate accounts not inconsistent with the requirements of this part; and

(C) Penalties, in addition to those required by this part, to be imposed for failure to comply with any:

(i) Minimum balance, notice, or time requirement; or

(ii) Additional terms and conditions.

(2)(A) Share accounts and share certificate accounts offered shall be made available to all members on an equal basis.

(B) Special share certificate accounts may be established for funds deposited to the credit of, or in which the entire beneficial interest is held by, an individual pursuant to an individual retirement account agreement or Keogh plan as provided for by 23 CAR § 304-124.

(C) Such special share certificate accounts shall be made available on an equal basis to all members who qualify.

(D) No officer, director, member of the credit or supervisory committees, employee, or other official appointed or elected, shall be the holder of a share account or any type of share certificate account unless all qualifying members of the credit union are given an equal opportunity to become holders of such accounts.

(3) Share accounts and share certificate accounts shall be subject to any notice which may be imposed pursuant to the credit union's bylaws.

(c) Limitations on share accounts and share certificate accounts.

(1)(A) In addition to the general provisions of this part, the terms and conditions established by the board of directors concerning the issuance and maintenance of share accounts and share certificate accounts shall take into account the requirements set forth below.

(B) See also 23 CAR § 304-107.

(2) Share accounts.

(A) Notice accounts shall require a minimum of ninety (90) days' written notice of intent to withdraw except, however, the board of directors may provide that the written notice requirement for all similar type notice accounts may be waived at the end of the dividend period, but only if the funds withdrawn pursuant to this waiver have remained in the account for at least the required notice period.

(B) Minimum balance accounts must be maintained at or above the minimum balance established for an entire dividend period.

(C) Split-rate accounts shall have one (1) or more minimum balance requirements.

(3) Share certificate accounts.

(A) In determining the dividend rate to be paid, different qualifying periods and minimum amount requirements shall be taken into account.

(B) Qualifying periods shall not be less than ninety (90) days nor more than six (6) years.

(C) The lowest minimum amount requirement for share certificates shall

be five hundred dollars (\$500) or more.

(D)(i) Upon maturity, share certificate accounts may be automatically renewed at the same terms and conditions as initially issued, or as may be otherwise provided for in accordance with a written agreement between the holder and the credit union.

(ii) Notice of any such renewal, changes in the terms and conditions, or expiration of the qualifying period, in addition to the disclosure requirements set forth in subsection (k), shall be provided at least ten (10) days prior to the expiration of the qualifying period.

(E)(i) In case of early withdrawal of the principal amount which reduces the balance below the minimum amount requirement, the account shall be canceled and a penalty pursuant to subsection (d) of this section shall be imposed upon the entire amount evidenced by the share certificate account.

(ii) If the minimum amount requirement continues to be met, a penalty pursuant to subsection (d) of this section shall be imposed upon the amount withdrawn, and not upon the remaining balance, and either:

(a) An appropriate notation may be made on the account indicating the amount and date of the withdrawal and the remaining balance; or

(b) The account may be canceled and a new account issued.

(iii) A share certificate account holder may withdraw any and all dividends previously paid on the share certificate account without incurring a penalty.

(d) Penalty provisions.

(1)(A) Penalties imposed shall be on the actual dividends earned, and shall not be imposed on the principal amount held in a share account or share certificate account.

(B) In assessing any applicable penalty, however, the amount of the penalty may be deducted from the principal amount if the dividends upon which the penalty is assessed have been previously withdrawn.

(2) The board of directors may establish a penalty to be imposed for failure to comply with any balance or notice requirement of a share account other than a regular

share account.

(3) If a penalty is imposed, the penalty shall require that the dividend rate paid on the remaining balance in the share account be reduced to at least the rate paid on regular share accounts for the same period.

(4) The board of directors shall establish a penalty to be imposed on the withdrawal of funds from a share certificate account before maturity.

(5) The penalty shall require:

(A) A reduction in the dividend rate to an amount not in excess of the rate paid on regular share accounts from the date of issuance or, if the share certificate account has been renewed, from the date of renewal on the amount withdrawn; and

(B) A forfeiture in an amount at least equal to the lesser of:

(i) All dividends for ninety (90) days on the amount withdrawn; or

(ii) All dividends on the amount withdrawn since the date of issuance or renewal.

(e) **Exceptions to the penalties.** Penalties shall not be applied if:

(1) The withdrawal is made subsequent to the death of any owner of the share account or share certificate account;

(2) The share account or share certificate account is:

(A) Part of a pension plan which qualified or qualified for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code of 1954; and

(B) Withdrawal is made to effect distribution of the funds evidenced by such account following the participant's death or disability or upon attaining not less than fifty-nine and one-half (59 1/2) years of age; or

(3) Such withdrawal is made as a result of the voluntary or involuntary liquidation of the credit union issuing the account.

(f) **Rate specified or contracted for in advance.**

(1) A credit union may specify or contract for the dividend rate expected to be paid on share accounts and share certificate accounts.

(2) Any such agreement shall provide that dividends will be paid at the specified or contracted rate only in the event there are sufficient earnings available for

that dividend period.

(3) Credit unions shall not pay dividends in excess of available earnings.

(4) If specified or contracted for, the dividend rate shall:

(A) For regular share accounts, be expressed as a single dividend rate;

and

(B) For the remaining types of share accounts and share certificate accounts, be expressed as:

(i) A percentage, or part thereof, above or below the dividend rate declared for regular share accounts; or

(ii) A single dividend rate.

(g) Maximum dividend rates.

(1) A credit union may pay a maximum dividend, expressed as annual rate, as follows:

(A) Seven percent (7%) on a share account;

(B) Seven and three-quarters percent (7 3/4%) on a share certificate account except as provided for below;

(C) Eight percent (8%) on a share certificate account which represents an investment of retirement accounts funds pursuant to 23 CAR § 304-124;

(D) A rate determined by money market conditions on a share certificate account of one hundred thousand dollars (\$100,000) or more; or

(E) In the case of a share certificate account of ten thousand dollars (\$10,000) or more having a fixed or minimum term or qualifying period of twenty-six (26) weeks, the maximum dividend rate, which shall not be compounded during the term or qualifying period and may be rounded off only by rounding down, shall be:

(i) One quarter of one percent (.25%) above the discount rate, auction average on a discount basis, for twenty-six (26) weeks United States Treasury bills issued on or immediately prior to the date of the purchase of the share certificate if such discount rate is less than eight and three-quarters percent (8 3/4%);

(ii) Nine percent (9%) if such discount rate is not less than eight and three-quarters percent (8 3/4%) and not more than nine percent (9%); or

(iii) Equal to the discount rate if such discount rate exceeds nine percent (9%).

(2) No rate shall exceed that allowed by the Arkansas Constitution.

(h) **Dividend periods.**

(1) The board of directors may vary dividend periods for share accounts and share certificate accounts.

(2) Share certificate accounts which mature between dividend periods shall be entitled to dividends at the rate declared for that type of certificate at the close of the last dividend period before maturity.

(3) The board of directors shall set aside sufficient earnings and shall pay those share certificate accounts at maturity.

(i) **Dividends calculated on par value or dollar amount.** A credit union may calculate dividends to be paid on share accounts and share certificate accounts either upon the:

(1) Par value of shares; or

(2) Actual value held in the share accounts and share certificate accounts.

(j) **Advertising.** In addition to the advertising requirements established in the rules and regulations of the National Credit Union Administration, 12 C.F.R. pt. 740, and elsewhere in this part, the following shall apply to every advertisement, announcement, or solicitation relating to share accounts and share certificate accounts:

(1) Where a dividend rate is specified or contracted for:

(A) Any terms and conditions concerning required minimum balance, notice, or time period necessary to earn the dividend at the rate shall be stated;

(B)(i) A clear and conspicuous notice shall be included indicating that the specified or contracted rate shall not be paid if available earnings are insufficient.

(ii) Such notice shall state "Federal and State regulations prohibit payment of dividends in excess of available earnings";

(C) The basis upon which dividends are calculated; and

(D) A clear and conspicuous notice stating that federal and state regulations prohibit the compounding of dividends during the qualifying period shall be

included in the case of share certificates issued pursuant to subdivision (g)(1)(E) of this section;

(2)(A) Where a penalty will be imposed for failure to comply with any term or condition, a clear and conspicuous notice shall be included.

(B) Such notice shall state: "A substantial penalty is required for failure to comply with these requirements."; and

(3)(A) Where a percentage yield achieved by compounding dividends during one (1) year is stated, the annual rate of dividends without the effect of compounding shall be stated with equal prominence, together with a reference to the basis of compounding and the basis for calculating dividends, either on par value or actual value.

(B) The percentage yield based on the effect of grace periods shall not be stated.

(k) **Disclosures.**

(1) At the time that a credit union issues any share account or share certificate account, the holder of the account shall be provided, to the extent applicable, with a written statement setting forth the following:

(A) Any minimum balance, notice requirement, or time requirement which must be met for the share account or share certificate account to earn dividends at a particular rate, and any additional terms and conditions;

(B) The basis of compounding, the basis upon which dividends will be paid, and the effect of withdrawal prior to the close of a dividend period;

(C) That federal and state regulations prohibit payment of dividends in excess of available earnings, and in the case of share certificates issued pursuant to subdivision (g)(1)(E) of this section, that federal and state regulations prohibit the compounding of dividends during the qualifying period;

(D) Any penalty imposed for the failure to comply with balance, notice, time requirement, or any additional terms and conditions;

(E) The terms and conditions upon which the funds in the share account or share certificate account may be withdrawn without penalty;

(F) Any provisions relating to automatic renewal of share certificate accounts;

(G) The disposition of a share certificate account if it is not renewed; and

(H) Membership in the credit union will terminate upon maturity of a share certificate account, unless renewed, if the holder does not have, establish, or otherwise make provision for a share account or share certificate account in addition to the share certificate account which is maturing.

(2)(A) A credit union need not provide a written disclosure statement in connection with the renewal of an existing account.

(B) Notice must be sent to affected account holders of any change in any provision required to be disclosed.

(3)(A) A copy of a standard disclosure statement for each class or type of account offered by a credit union shall be provided upon request.

(B) If accounts other than regular share accounts are offered, a listing of the accounts available shall:

(i) Be prominently displayed in the credit union's offices; and

(ii) Indicate that a copy of a standard disclosure statement for each class or type of account is available upon request.

(l) Lien on shares.

(1) The lien described in Section 19(2) of the credit union act may be exercised or foreclosed by the board of directors, but only after default by the borrower of his or her obligations to the credit union and after the borrower has been given an opportunity to be heard.

(2) Thirty (30) days' written notice of this hearing, setting forth the time, place, and date for such hearing shall be forwarded to the member at his or her last and best known address by the board of directors together with notice that unless the member is present at the hearing, the lien as above described will be foreclosed and the member's shares will be utilized by the credit union to discharge the member's unpaid and defaulted obligations to the credit union.

(m) Share drafts.

(1) Definitions as used in this section include:

(A) "Payable through bank" means a bank that has been designated to make presentment of a share draft to the credit union for payment;

(B) "Share draft" means a negotiable or non-negotiable draft used to withdraw shares from a share draft account;

(C) "Share draft account" means any regular account from which the credit union has agreed that shares may be withdrawn by means of a share draft or other order; and

(D) "Truncation" means the original share draft is not returned to the member.

(2)(A) A credit union may provide its members with share drafts.

(B) The board of directors shall determine, prior to requesting approval to implement the share draft program, that the members' use of share drafts is economically and operationally feasible for the credit union.

(3)(A) A credit union must submit a written request to operate a share draft program to the State Credit Union Supervisor at least sixty (60) days prior to the proposed date of implementation.

(B) The request shall include:

(i) An official copy of the minutes of the board of directors authorizing a request for approval to implement the share draft program;

(ii) All background documentation which supports the board of directors' decision that the members' use of share drafts is economically and operationally feasible for the credit union;

(iii) A statement that the forms and procedures to be used have been reviewed by legal counsel;

(iv) A statement that the board of directors has determined appropriate bond coverage is in force; and

(v) A statement of operational specifications which expressly provides for:

(a) Identification of the payable through bank;

- (b) Truncation;
- (c) Establishing a share draft account agreement with each member which outlines the credit union's and member's responsibilities;
- (d) Recording of share overdrafts and giving members notification of such overdrafts should they occur;
- (e) Encoding each share draft with the routing and transit number of the payable through bank, the share draft account number, and the serial number of the share draft in accordance with standards required for use in a clearing system utilizing magnetic ink character recognition devices;
- (f) Preprinting the name of the payable through bank and the name of the credit union on the share draft;
- (g) A method for each member using share drafts to maintain a record of share drafts drawn;
- (h) Submission of a periodic statement of account, no less frequently than quarterly, to each member who has a share draft account which shall include for each share draft processed the serial number, date of payment, and the amount of payment;
- (i) Establishing responsibility for detection of unauthorized or forged drafts;
- (j) Procedures for processing stop payment orders;
- (k) Procedures for providing members with copies of paid drafts should copies be requested;
- (l) Procedures for retaining paid drafts or copies of paid drafts on file for a period of five (5) years or as required by state law, whichever is greater;
- (m) The fees, if any, to be charged, provided such fees shall not exceed the direct and indirect costs of providing the service;
- (n) The credit union is open to the membership at least seven and one-half (7-1/2) hours per day for five (5) days a week;
- (o) The credit union has at least one (1) full-time employee who works in the credit union a minimum of forty (40) hours per week; and

(p) The credit union has an adequate accounting system to handle share drafts.

(4)(A) A credit union may not commence operating a share draft program until it has received written approval from the supervisor, which may limit a member participating for a period not to exceed one (1) year.

(B) Approval will not be given if:

(i) The requirements of subdivision (m)(3) of this section have not been met;

(ii) The supervisory committee has not fulfilled its statutory requirements as specified in the act; or

(iii) The management of the credit union has demonstrated through prior performance its inability to handle the additional activity the share draft program will generate.

(5)(A) The credit union shall notify the supervisor, in writing, at least sixty (60) days in advance of its proposed implementation date of any modification relating to:

(i) The payable through bank;

(ii) Truncation procedures;

(iii) The share draft agreement; or

(iv) Any material modification not previously reviewed and approved by the supervisor.

(B) Implementation of a modification is contingent upon written approval of the supervisor.

(C) The credit union shall immediately notify the supervisor as to any matter affecting the information provided pursuant to subdivisions (m)(3)(B)(i) - (iv) of this section.

(6) If a share draft program or a request for modification is not approved, or the share draft program is approved for limited member participation, the supervisor will provide to the requester a written notice setting forth the basis for such action.

(7) A credit union shall not waive the rights to require notice as set forth in the bylaws, but may guarantee payment of a share draft provided that:

(A) A specific guarantee authorization is obtained for the share draft from the credit union; and

(B) The guarantee authorization is immediately noted on the share draft account to prevent the withdrawal of shares needed to pay the guaranteed share draft.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-120. [Reserved]

23 CAR § 304-121. [Reserved]

23 CAR § 304-122. [Reserved]

23 CAR § 304-123. Trust accounts.

Upon resolution of the board of directors, a credit union may offer its members a pension or profit-sharing plan described under § 401(d) or § 408(a) of the Internal Revenue Code of 1954.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-124. Disappearance.

Evidence of mailing at least once a year to last known address of member must be kept for the five-year period or until letter returned marked "address unknown" and each letter kept for five (5) years.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-125. Investments.

(a)(1) Investments made pursuant to Section 25 of the Arkansas credit union act shall be safe and sound investments.

(2) Such investments, however, may be of the type to be defined as risk assets for purposes of computing the regular reserve requirement contained in Section 26 of the Arkansas credit union act.

(b) Investments shall be subject to the provisions of any agreement between the credit union and the National Credit Union Administration relating to valuation of reserves as a condition precedent for National Credit Union Administration insurance of members' share accounts.

(c) No investment may be shown on the books of the credit union at more than the cost or market value, whichever is less.

(d)(1) Upon authorization of its board of directors, or a duly authorized and appointed executive committee, a credit union may invest its funds in loans to other credit unions in the total amount not exceeding thirty-three and one-third percent (33 1/3%) of its shares and unimpaired surplus.

(2) The terms of such loans shall not exceed one (1) year.

(e) Prior to making such loans, the credit union shall require the borrowing credit union to furnish the following:

(1) A current financial and statistical report;

(2) A certified copy of the resolution of the board of directors or the executive committee authorizing such borrowing; and

(3) A certificate from the secretary of the credit union that:

(A) The persons negotiating the loan and executing the note are officers of the credit union and are authorized to act in its behalf; and

(B) Such borrowing does not exceed the maximum borrowing power of the borrowing credit union.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-126. Reserve allocations.

(a) Credit unions shall establish and maintain such reserves as may be required:

(1) By the act;

(2) By regulation; or

(3) In special cases, by the State Credit Union Supervisor on his or her finding that the reserves of the credit union concerned are insufficient.

(b) The treasurer shall transfer to a reserve to be known as the regular reserve:

(1) At the close of business each month all entrance fees, fines, and transfer fees collected during the month;

(2) At the close of each fiscal year the transfer to the regular reserve required by paragraph one (1) of Section 26 of the act; and

(3) Recoveries on items previously charged to the regular reserve.

(c)(1) A credit union may charge to its regular reserve losses on uncollectable loans to members and losses on uncollectable loans to other credit unions, including unrecovered costs of collection.

(2) No other charges may be made against the regular reserve unless specifically authorized by the Arkansas credit union act or unless prior written approval is given by the supervisor.

(d)(1) The regular reserve of each credit union shall be supplemented by a special reserve to be known as the Special Reserve for Delinquent Loans, which shall be equal to the excess of the sum of ten percent (10%) of the unpaid balances of loans delinquent more than two (2) months and less than six (6) months, plus twenty-five percent (25%) of the unpaid balances of loans delinquent from six (6) months to less than twelve (12) months, and plus eighty percent (80%) of the unpaid balances of loans delinquent twelve (12) months or more over the balance in the regular reserve.

(2) The transfer to the Special Reserve for Delinquent Loans shall be made on the last day of the dividend period from undivided earnings before any distribution of dividends or upon request of the supervisor.

(3) The maintenance of a Special Reserve for Delinquent Loans shall not eliminate the necessity for making the transfer required by paragraph one (1) of Section 26 of the credit union act.

(4) In the event the required transfer to the Special Reserve for Delinquent Loans exceeds the balance of undivided earnings, only the balance of undivided

earnings shall be transferred to the Special Reserve for Delinquent Loans.

(e) If at the end of the dividend period the amount in the Special Reserve for Delinquent Loans exceeds the amount required by subsection (d) of this section, the board of directors of the credit union may authorize the transfer of the excess to undivided earnings.

(f)(1) If a credit union has amended its bylaws to provide for other than annual dividend periods, a computation of the reserve requirement must be made at each dividend date and a provision for allocation to the regular reserve must be entered on the credit union's books.

(2) The actual transfer to the regular reserve should be made at the end of the fiscal year based upon the annual gross earnings of the credit union or before payment of any dividend.

(g) To compute the requirements of subsection (d) of this section, the following procedure shall be utilized:

(1) Determine the number of installments due from the due date of the first installment to the current date;

(2)(A) Determine the number of installments paid.

(B) If full installments are made with each payment, count the number of installments paid.

(C) If any installments paid are more or less than the scheduled level payment, it may be necessary to total the payments and divide by the amount of the scheduled level payment to determine the number of full payments that have been made.

(D) A partial installment missed is considered a whole installment missed;

(3)(A) Subtract the number of installments paid from the number of installments due.

(B) The difference will be the number of delinquent installments; and

(4)(A) An installment is not due until after its due date.

(B) Therefore, on a loan repayable monthly the actual number of full months of delinquency is one (1) less than the number of delinquent installments.

(C) The same principle applies to loans with repayment terms more frequently than monthly.

(D) As an example, the following illustration is to be analyzed for delinquency as of the close of business on December 31:

Terms: \$60.00 per month (includes principal and interest at 5/6 of 1% per month on the unpaid balance) beginning April 30:

Date	Amount Loaned	Total Paid	Interest	Principal	Balance
March 31	\$600.00				\$600.00
April 30		\$ 60.00	\$ 5.00	\$ 55.00	545.00
May 31		30.00	4.54	25.46	519.54
Aug. 31		25.00	12.99	12.01	507.53
Nov. 30		60.00	12.69	47.31	460.22
	Total paid 12/31	\$175.00			

Step 1 - Number of installments due: 4/30 to 12/31 (incl.) = 9 installments due

Step 2 - Actual installment paid: \$175.00 + \$60.00 = 2.91; 2 installments paid (a partial installment missed is considered a whole installment missed).

Step 3 - Number of delinquent installments: 9 - 2 = 7 delinquent installments

Step 4 - Full months delinquency is one less than the number of delinquent installments. 7 - 1 = 6 months delinquent.

The loan is 6 months delinquent and, therefore, will be classified in the 6 to less than 12 months delinquent classification.

This method can be used for level and non-level payment loans. (See 23 CAR § 304-102(1), definition of "contractual delinquency.")

(h)(1) Any loan that is contractually delinquent for sixteen (16) or more months shall be charged to the regular reserve.

(2) Nothing contained herein shall prohibit the board of directors from charging to the regular reserve any loan deemed by them to be uncollectable prior to the expiration of the sixteen-month period.

(i) If at the end of the fiscal year, a ten percent (10%) gross income transfer to the regular reserve would cause the reserve to exceed seven and one-half percent (7 1/2%) of the outstanding loan and risk assets of the credit union, the following computation should be used as an example in computing the correct reserve contribution:

Gross Income for 1975	\$ 20,000.00
Loans Outstanding 12/31/75	100,000.00
Loans to other credit unions 12/31/75	50,000.00
Total Loans & Risk Assets 12/31/75	150,000.00

Amount in Reserve 12/31/75 Prior to year-end contribution \$11,000.00

7-1/2% X 150,000.00 = \$11,250.00

Amount of gross income needed to bring the reserve to 7-1/2% of the outstanding 250.00

loans and risk assets

10% of \$2,500.00 = \$250.00 which represents the amount needed to bring the reserve to 7-1/2% of the outstanding loans and risk assets.

The \$2,500.00 is then subtracted from the gross income of \$20,000.00 leaving a balance of \$17,500.00 which is the basis for the 5% contribution.

\$17,500.00 X 5% =	<u>875.00</u>
Total Contribution needed	<u>\$1,125.00</u>

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-127. [Reserved]

23 CAR § 304-128. [Reserved]

23 CAR § 304-129. [Reserved]

23 CAR § 304-130. [Reserved]

23 CAR § 304-131. Fees.

(a) The scale of annual fees shall be as follows:

<u>TOTAL ASSETS</u>	<u>MAXIMUM FEE</u>
\$500,000 or less	6 cents per \$1,000
Over \$500,000 and	\$30.00 plus 4 cents per \$1,000 in excess of \$500,000

not over \$1,000,000

Over \$1,000,000 \$50.00 plus 2 cents per \$1,000 in excess of \$1,000,000

(b) The fee for each annual examination is eighty dollars (\$80.00) for each examiner day or forty dollars (\$40.00) per half day or part thereof and, in addition, each credit union shall pay the actual travel, meal, and lodging expenses of such examiners from Little Rock and return.

(c)(1) The fee will be prorated if more than one (1) examination is made on an examination trip.

(2) The fee for each proposed amendment to the articles of incorporation and bylaws is five dollars (\$5.00).

(d) All checks in payment of fees shall be made payable to the State Securities Department.

Authority. Arkansas Code §§ 23-35-202, 23-35-203, 23-35-302.

23 CAR § 304-132. [Reserved]

23 CAR § 304-133. Examinations.

(a) All credit unions shall be subject to surprise examinations.

(b)(1) The Credit Union Supervisor may immediately suspend the operations of any credit union whose books and records are not immediately available upon request for inspection and examination by the Credit Union Division examiners.

(2) Such suspension shall be in accordance with the provisions of Section 37 of the Arkansas credit union act.

(c)(1) When filing its annual report each February 1, each credit union shall pay to the division, for the preceding calendar year, an annual supervision fee in accordance with the graduated scale set forth in 23 CAR § 304-132(a) on the basis of assets as of December 31 of each preceding year, but such fee shall not be less than ten dollars

(\$10.00).

(2) No such annual fee shall be payable by a credit union with respect to the year in which it is organized or the year in which final distribution is made in liquidation of the credit union or the articles of incorporation are otherwise cancelled.

(d)(1) Credit unions in liquidation may be examined prior to or following completion of liquidation.

(2) The fee for such examination shall be the same as for each annual examination as provided in 23 CAR § 304-132(b).

Authority. Arkansas Code §§ 23-35-202, 23-35-203, 23-35-205.

23 CAR § 304-134. [Reserved]

23 CAR § 304-135. [Reserved]

23 CAR § 304-136. Conversion.

The conversion of a state-chartered credit union to a federally-chartered credit union or a federally-chartered credit union to a state-chartered credit union shall be governed by the applicable regulations of the National Credit Union Administration.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-137. [Reserved]

23 CAR § 304-138. [Reserved]

23 CAR § 304-139. [Reserved]

23 CAR § 304-140. Administration.

(a) Any interested person may petition the State Credit Union Supervisor for the

issuance, amendment, or repeal of any rule by submitting such petition in writing together with a complete and concise statement of the petitioner's interest in the subject matter and the reasons for the petition.

(b) Such petition shall be submitted to the State Securities Department, Credit Union Division.

Authority. Arkansas Code § 23-35-202.

23 CAR § 304-141. [Reserved]

23 CAR § 304-142. [Reserved]

23 CAR § 304-143. [Reserved].