



STATE OF ALABAMA
ALABAMA CREDIT UNION ADMINISTRATION

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KAY IVEY
GOVERNOR

SARAH H. MOORE
ADMINISTRATOR

NOTICE OF INTENDED ACTION TO AMEND ACUA REGULATIONS

The Administrator of the Alabama Credit Union Administration (ACUA), having obtained unanimous approval of the ACUA Board to promulgate amended regulations, hereby gives notice of the intended action to amend existing regulations.

An executive summary and full text of the amendments to the regulations are included herein.


A copy is also on file with the Alabama Secretary of State's Office.

Interested persons may present applicable data, views or arguments concerning the amended regulations being promulgated, in writing, by correspondence to the following address:

Alabama Credit Union Administration
Attention: Sarah H. Moore, Administrator
100 North Union Street, Suite 650
Montgomery, Alabama 36104

The deadline for comment is October 15, 2018, and thereafter, the amended regulations will become effective.

Dated this the 11th day of September, 2018.

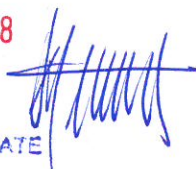


Sarah H. Moore
Administrator, Alabama Credit Union Administration

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EXECUTIVE SUMMARY OF PROPOSED AMENDED REGULATIONS, AUGUST 27, 2018

Section	Current	Source/Reference	Summary of Proposal
<p>Section 2- Loans “Part 1. Loan Policies”</p>	<p>ACUA’s regulation requires appraisals on real estate collateral over \$150,000 by a state licensed or certified appraisal and for real estate collateral over \$ 1 million, requires a certified appraiser. The current regulation goes into a certain level of detail about appraiser qualifications and references a staff appraiser for values on collateral less than \$150,000.</p> <p>Currently, federally insured institutions must comply with NCUA Rules and Regulations; however ACUA has 2 privately-insured credit unions which are not covered by NCUA Regulation Part 722.</p>	<p>NCUA Rules and Regulations, Part 722 and ACUA’s knowledge and expertise to simplify the regulation to achieve safety and soundness objectives.</p>	<p>Changes title to Part 1. Loan and Appraisal Policies.</p> <p>Provides regulatory relief for credit unions by increasing the value of a real estate loan threshold from \$150,000 to \$250,000 for when an appraisal must be obtained by a State certified or licensed appraiser.</p> <p>Deleted the different requirements for different real estate types. Combined into one - \$250,000.</p> <p>Reformatted/reorganized to distinguish between Loan Policy and Appraisal Policy requirements, generally.</p> <p>2(a). Changed to \$250,000 and for all real estate not just first mortgage residential.</p> <p>2(b). Deleted; no need to define appraiser licenses in ACUA regs.</p> <p>2(c). Deleted; refers to transactions and is encompassed in new 13(a).</p> <p>2(d). Deleted; replaced with item 14.</p> <p>2(e). Deleted; replaced with 13(a).</p> <p>2(f). Deleted; replaced with 13(a).</p>

EXECUTIVE SUMMARY OF PROPOSED AMENDED REGULATIONS, AUGUST 27, 2018

Section	Current	Source/Reference	Summary of Proposal
			<p>2(g). No change; new item 13(b).</p> <p>2(h). No change; new item 13(c).</p> <p>2(i). Deleted; removed as it addresses appraisal standards on one specific item.</p> <p>2(j). No change; new item 13(d).</p> <p>2(k). No change; new item 13(e).</p> <p>Part 1, item 13. Policy must comply with requirements of FIRREA. The policy must also require:</p> <p>13(a). For all loans over \$250,000 collateralized by real estate, obtain a written appraisal on the real estate from either a State certified or licensed appraiser;</p> <p>13(b). The appraisal shall, at a minimum, conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP);</p> <p>13(c). Appraisals shall be written and contain sufficient information and analysis to support the credit union's decision to engage in the transaction; and;</p>

EXECUTIVE SUMMARY OF PROPOSED AMENDED REGULATIONS, AUGUST 27, 2018

Section	Current	Source/Reference	Summary of Proposal
			<p>13(d). Appraisals should be based upon market value meaning the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus;</p> <p>13(e). ACUA reserves the right to require an appraisal under this part, regardless of the loan amount or value of the real estate collateralizing a loan, whenever the agency believes it is necessary to address safety and soundness concerns.</p> <p>14. For real estate loans less than \$250,000, the valuation of the collateral must be supported by a written estimate of market value performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimate of value for the type and amount of credit being considered.</p>
<p>Section 10 “Quorum; board meeting participation</p>	<p>(A) A majority of the Credit Union Board of the ACUA shall constitute a quorum for the transaction of any business.</p>	<p>Ala. Code § 5-17-56 was amended during the 2018 Legislative Session to address the</p>	<p>Delete regulation in its entirety</p>

Section	Current	Source/Reference	Summary of Proposal
<p>through use of conference telephone or similar communications equipment; compliance with sunshine law.”</p>	<p>(B) Any action required or permitted to be taken by the Credit Union Board of the ACUA may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to such action.</p> <p>(C) Any meeting of the members of the Credit Union Board or the ACUA, whether formal or informal, whether or not an official vote is taken, must be open to the public, except where the character or good name of a person or a lawsuit is involved. The right to public access is extended to the entire process from public policy discussion and formulation through adoption and enforcement. The only exception would be the Chairman of the Credit Union Board of the ACUA calling the board members into executive session where the character or good name of a person or lawsuit would be discussed. No vote may take place in executive session. The open meeting must reconvene upon completion of the executive session</p>	<p>subjects contained in this regulation.</p> <p>Regulation is not in accordance with Open Meetings Act.</p>	

EXECUTIVE SUMMARY OF PROPOSED AMENDED REGULATIONS, AUGUST 27, 2018

Section	Current	Source/Reference	Summary of Proposal
	and any matters requiring a vote now be taken.		
Add New Section 15 “Procedural Requirements for Confidential Regulatory Reports and Communications”	None	Ala. Code § 5-17-60 provides that confidential regulatory reports are the property of ACUA and restricts disclosure of these reports and related communications. Regulatory reports and communications are also restricted from disclosure by ACUA and federal regulations. This regulation will direct credit unions on how to comply with governing laws and regulations.	“Procedural Requirements for Confidential Regulatory Reports and Communications” – Establish a new regulation setting forth the procedures for credit unions to comply with the requirements of Ala. Code § 5-17-60, Section 14 ACUA Regulations and/or 12 C.F.R. § 792.01 <i>et seq.</i> (<i>Touhy</i> regulations) for confidential regulatory reports and communications.
Section 17 “Mergers and Acquisitions and Charter Conversions” – Conversion Application Documents Filed with the Administration	“The conversion application filed with the Administration should contain the following: . . . 5. Proposed articles of incorporation and bylaws for the state credit union, including an opinion of counsel that the articles and bylaws are in compliance with Title 5, Chapter 17, <u>Code of Alabama</u> , 1975.	These are not a necessary requirement for conversion to a state-chartered credit union; ACUA supplies form Bylaws and a charter that may be used by the converting credit union	Amend existing Regulation 17 applicable to conversions to remove the requirement for articles of incorporation and an opinion of counsel: 5. Proposed articles of incorporation and bylaws for the state credit union, including an opinion of counsel that the articles and bylaws are in compliance with Title 5, Chapter 17, <u>Code of Alabama</u>, 1975.

EXECUTIVE SUMMARY OF PROPOSED AMENDED REGULATIONS, AUGUST 27, 2018

Section	Current	Source/Reference	Summary of Proposal
<p>Regulation 1705.2 Field of Membership Expansion, Definitions. “Well- Defined Area”</p>	<p>Well-Defined Area: The same county and counties contiguous to the county in which the <u>main office</u> or a <u>branch office</u> of the credit union is located.</p>	<p>ACUA recognizes technology advances require fewer brick and mortar locations in order to serve members. See Ala. Code § 5-17-45.</p>	<p>Amend ACUA Regulation 1705.2 as follows: “The same county and counties contiguous to the county in which the main office, a branch office, or existing field of membership of the credit union is located.</p>

Edited Section 2. Loans (See executive summary for details of edits)**Part I. Loan and Appraisal Policies**

Both federally insured and privately insured state-chartered credit unions in Alabama, other than the corporate credit union that is subject to other specific regulations, are required to have written loan policies that specify, at a minimum, the following for each type loan offered:

1. Collateral requirements including protection of security interests, filing of UCC's; titles; insurance for collateral with credit union named as loss payee or mortgagee;
2. Loan to value parameters; credit reports; adequate determination of the financial capacity of the borrower(s) and co-borrower(s) for repayment of the loan;
3. Maximum loan amount; purpose; complete credit application;
4. Maximum maturity limits for each type of loan, whether secured or unsecured;
5. Interest rate or basis; terms by type; indices for variable rate products; controls to monitor rate changes; review of file maintenance reports; due date changes; extension agreements;
6. Risk-based pricing measures, if applicable; risk-based lending measures, if applicable;
7. Indirect lending underwriting standards, parameters and monitoring measures;
8. Subprime lending underwriting standards, parameters and monitoring measures;
9. Employee and official loan underwriting standards and parameters, and monitoring measures;
10. Credit card underwriting standards and parameters, and monitoring measures;
11. Overdraft privilege program underwriting standards, monitoring measures;
12. Home Equity Lines of Credit; requirements for use of current tax assessments in lieu of appraisal;
13. Appraisal policy in accordance with FIRREA standards. The policy must also require:
 - (a) A written appraisal on all loans collateralized by real estate over \$250,000 from either a State certified or licensed appraiser;
 - (b) The appraisal shall, at a minimum, conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP);
 - (c) Appraisals shall be written and contain sufficient information and analysis to support the credit union's decision to engage in the transaction; and,
 - (d) Appraisals should be based upon market value meaning the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus;
 - (e) ACUA reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

14. All loans collateralized by real estate less than \$250,000, the valuation must be supported by a written estimate of market value performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimate of value for the type and amount of credit being considered;
15. Collection policies, practices, procedures and delinquency control measures.

Furthermore, every credit union's loan policy or other Board approved policy must address self-dealing, non-preferential treatment and conflicts of interests to include a statement that no official or employee of a state-chartered credit union, or immediate family member of an official or employee, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union. Compensation includes non-monetary items, except those of nominal value. Immediate family member means a spouse or other family member living in the same household. Official means any member of the Board of Directors, Supervisory Committee or Credit Committee.

Section 10. Quorum; board meeting participation through use of conference telephone or similar communications equipment; compliance with sunshine law.

Section is Deleted.

New Section 15. Procedural Requirements for Confidential Regulatory Reports and Communications.

Introduction:

This regulation is to provide direction to state-chartered credit unions on the requirements of the Alabama Credit Union Administration ("ACUA" or the "Administration") for how state-chartered credit unions should treat confidential regulatory reports or communications that are covered by state or federal law or regulation (Ala. Code § 5-17-60, Section 14 ACUA Regulations, and/or the *Touhy* regulations under 12 C.F.R. § 792.01 *et seq.*).

Confidential Regulatory Reports or Communications include the following:

- Reports of Examination;
- Any non-public regulatory actions, Letters of Understanding and Agreement; Cease and Desist Orders or other documentation of regulatory action;
- Communications, including email or letters, between the Administration and/or NCUA and the Credit Union in response to any Report of Examination or other regulatory action (whether or not public);
- Reports created by the Credit Union in response to supervision or regulation by the Administration;
- Meeting minutes of the Credit Union discussing supervision by the Administration;
- Any other records documenting examination or supervision; and,

- Any other communications, oral or written, regarding Credit Union supervision or examination by the Administration between the Administration (including any employee, officer or director of the Administration) and the Credit Union (including any employee, officer or director of the Credit Union).

Rights to Confidential Regulatory Reports and Communications:

- Confidential regulatory reports or communications that are prepared solely by the Administration are covered by state law and are the property of the Administration.
- Confidential regulatory reports or communications that are prepared solely by the National Credit Union Administration (“NCUA”) are covered by federal law and are the property of NCUA.
- Confidential regulatory reports or communications that are prepared jointly by the Administration and NCUA are covered by both state and federal law and are jointly the property of the Administration and NCUA.
- An individual has no right to confidential regulatory reports or communications when such individual is no longer serving the credit union in a position through which he or she is entitled to receive the information under Ala. Code §5-17-60.
- Confidential regulatory documents, information and communications may not be furnished or disclosed to any person not authorized under the law to receive this information.

Restrictions on Use of Confidential Regulatory Reports and Communications:

- A Credit Union may not use or disclose to any third party any confidential regulatory reports or communications in support of its actions or business decisions.
- It is the responsibility of the Credit Union to create and maintain its own records in support of business decisions made, such as through committee minutes, board packets, and other materials to support its business decisions and shall not rely on the Administration as an outsourced record keeper for the Credit Union.

What is Required:

A Credit Union may not disclose confidential regulatory reports and communications in violation of state or federal law, whether in response to legal process or in order for the Credit Union to support its business decisions.

In the event a Credit Union receives legal process (such as a court order, discovery request or subpoena), seeking to require a Credit Union to disclose Confidential regulatory reports or communications, the Credit Union must take the appropriate action to comply with Ala. Code §

5-17-60, Section 14 ACUA Regulations and/or the *Touhy* regulations in 12 C.F.R. § 792.01. To comply with its duties to ACUA, a Credit Union must do the following:

- Immediately notify the Administration of the legal process.
- Evaluate the Credit Union’s responsibilities under federal law and take any action required by federal law, such as notice to NCUA.
- Evaluate the legal duty and responsibility of the Credit Union to respond to the request. The Administration expects all of its regulated Credit Unions receiving legal process for confidential regulatory reports or communications to respond appropriately, *in consultation with legal counsel and ACUA and NCUA*, in a way that reflects the laws (state and federal) that apply to confidential regulatory reports and communications, including the laws which prohibit disclosure.

The Credit Union must keep the Administration informed on an ongoing basis of any efforts to compel the Credit Union to disclose the confidential regulatory reports or information, following the Credit Union’s initial response to the discovery request, subpoena or other information request.”

Section 17. Mergers and Acquisitions and Charter Conversions

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Conversion Application Documents Filed with the Administration

The conversion application filed with the Administration should contain the following:

1. Cover letter, including the name of the contact person at the credit union, and a brief description of the credit union’s business, including any out-of-state operations;
2. Resolution of the Board of Directors authorizing the pursuit of an Alabama state charter;
3. Copy of materials filed with NCUA, if federally insured;
4. Copy of credit union’s current charter and bylaws; and,
5. Proposed ~~articles of incorporation and~~ bylaws for the state credit union, ~~including an opinion of counsel that the articles and bylaws are in compliance with Title 5, Chapter 17, Code of Alabama, 1975.~~

The Administration will request reports of examination directly from NCUA or the out of state regulator.

Edited 1705.2 Definitions

Unless the context indicates otherwise, the following definitions are used in this regulation.

Minimum Size Group:

If Employee Group, 2 individuals

If Association Group, 2 individuals

If Employee Group is closely related to the credit union's primary field of membership, as stated in the credit union's bylaws, no minimum.

Eligible Association Group

Associations whose activities reflect common loyalties, mutual benefits, and mutual interests and employees of such association members. To be eligible, the association should hold regular membership meetings or it should sponsor other activities that provide for contact among members.

Membership is not limited to only real persons but business entities are eligible for membership, as are the employees of such business entities.

Well-Defined Area

The same county and counties contiguous to the county in which the main office ~~or~~ a branch office, or existing field of membership of the credit union is located.

Association – A group of persons with substantially common activities, loyalties, purposes, and mutual benefits or interests. The group must be a bona fide association, having a Board of Directors or other executive body, bylaws or a constitution, and should hold regular meetings, of its natural person membership. Organizations of association members, who qualify individually for membership, may qualify separately for membership.

Employee Group – A group sharing an employer/employee relationship with a common entity, including subsidiaries, parent, affiliates, and entities operating under the same general control or ownership group. Individuals under contract to an enterprise may be considered to be with the employee group of that entity. Organizations of employees, who individually qualify for membership, may qualify for membership as separate entities.

Field of Membership (FOM) – The group or groups of individuals and/or organizations defined by each credit union, for whom that credit union is designated to provide service according to the credit union's by-laws.

Low Income Designation – Those members who make less than 80% of the average for all wage earners as established by the Bureau of Labor Statistics or those members whose annual household income falls at or below 80% of the median household income for the nation as established by the Census Bureau or those members otherwise defined as low-income by the ACUA and NCUA.

A state-chartered credit union may apply for a low-income designation with ACUA and NCUA subject to the conditions outlined in NCUA's Rules & Regulations Parts 741.204 and 701.34.

Geographic Area – A discernable, clearly defined, geographic area, which is subject to specific identification or survey.

Geographic Based Group – A credit union Field of Membership group defined according to a geographic area.

Multiple Group (MG) – A credit union Field of Membership comprised of more than one group, which may include one or more geographic area-based group(s).

Multiple Select Group (MSG) – A credit union Field of Membership comprised of more than one select group.

Occupational Group – A group of individuals who pursue the same specific defined occupation, but are not necessarily employed by the same employer or related employer.

Overlap – The condition where a group proposed to be added to the Field of Membership of a credit union includes persons who are also eligible for some other credit union due to membership in the group. The term overlap includes any credit union, which has an office in the area of a proposed geographic area and any employee group with a significant business operation in such geographic area.

Overlap Protection – The giving of a credit union specific right to service members and deny the right to another credit union or credit unions seeking to include those same members within its Field of Membership.

Select Group (SG) – Any group, other than geographic based, designated for inclusion within a credit union's Field of Membership.

Single Select Group (SSG) – A credit union Field of Membership comprised of only one select group.