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ALABAMA CREDIT UNION ADMINISTRATION

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H. GREG MCCLELLAN
ADMINISTRATOR

NOTICE OF INTENDED ACTION TO AMEND ACUA REGULATIONS

The Administrator of the Alabama Credit Union Administration (ACUA), 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: H. Greg McClellan, Administrator
100 North Union Street, Suite 650
Montgomery, Alabama 36104

The deadline for comment is **October 1, 2021**. Thereafter, the amended regulations will be submitted to the ACUA Board and upon approval, will become effective January 1, 2022.

Dated this the 1st day of September, 2021.

For 

H. Greg McClellan
Administrator, Alabama Credit Union Administration

Section 2. Loans

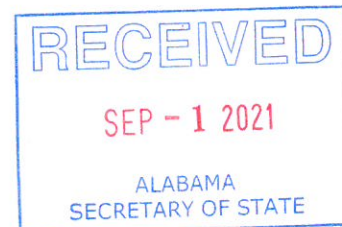
Part III. Limits of Indebtedness and Concentration of Credit

(a) No credit union shall make a loan to any one member which, when combined with his/her other closely related interests, would cause total loans to that member to exceed:

1. Ten percent of net worth of the credit union, if such loans are not secured, or
2. Twenty percent of net worth of the credit union, if such loans in excess of 10 percent of net worth are fully secured.
3. Particular loan limits, including but not limited to, participation loan limits, will be judged by NCUA standards currently defined in NCUA Regulation § 701.22(b)(5)(ii)-(iv).
4. In addition to the limits set forth above, the aggregate member business loan limit of a credit union's worth of a credit union's worth of net member business loan balance shall be limited to the lesser of 1.75 times the actual net worth of the credit union, or 1.75 times the minimum net worth required under Section 1790d(c)(1)(A) of the Federal Credit Union Act.

No loans which would exceed the limitation set forth in (a) (1) shall be made unless duly authorized and approved in accordance with the credit union's bylaws by either the elected Credit Committee, appointed loan committee or board of directors, with such authorization and approval being recorded in minutes of the meeting at which the authority was given.

Author: H. Greg McClellan, Administrator
Statutory Authority: Code of Alabama, Sections 5-17-46 & -47 (2016)
History: [4-2-2020]
Amended: Filed September 1, 2021
Effective: January 1, 2022



Section 2. Loans

Part V. Participation Loans

~~Part 701.22 of~~ NCUA Regulations § 701.22 establishes the requirements the ACUA will apply equally to both privately insured or and federally insured credit unions in regard to the purchase of a participation in a loan. This sSection 2 shall applyies only to either a privately insured or federally insured credit union’s purchase of a loan participation where the borrower is not a member of that credit union and where a continuing contractual obligation between the seller of a loan participation and the purchaser of a loan participation is contemplated. This sSection does shall not apply to a-corporate credit unions, as that term is defined in NCUA Regulation § 704.2.

A state-chartered credit union ~~must~~ shall provide prior notification to the Administrator of the ~~Alabama Credit Union Administration~~ ACUA when any credit union’s ~~B~~board of ~~D~~directors approves a new (initial) participation lending program between such credit unions and ~~other~~ another financial organizations institution.

Loan participations are defined in NCUA Regulation § 701.22, and the retention of such loans by the originating lender are specifically set forth in NCUA Regulation § 701.22(b)(3). Any loan participation interest purchased by a credit union that does not satisfy these requirements shall be classified as a “purchase of assets” and shall be governed by NCUA Regulation § 741.8, which requires approval by NCUA under certain circumstances before acquiring such loans. Any state-chartered credit union purchasing a participation interest in a loan that fails to meet the requirements set forth in NCUA Regulation § 701.22(b)(3) shall obtain approval from the NCUA in accordance with NCUA Regulation § 741.8(a) and (c).

Authors: H. Greg McClellan, Administrator
Statutory Authority: Code of Alabama, Sections 5-17-46 & -47 (2016)
History: [5-9-2005]
Amended: Filed September 1, 2021
Effective: January 1, 2022



Section 3. Investments

Note: ~~The~~ Corporate state-chartered credit unions shall comply with the provisions of NCUA's Rules & Regulations Part 704 concerning investments and applicable state law.

Non-corporate State-chartered credit unions shall comply with the provisions of NCUA Regulation Part 704 concerning investments and applicable state law.

~~The Board of Directors of each Alabama state-chartered credit union~~ Each state-chartered credit union's board of directors shall establish written investment policies consistent with the applicable provisions of the Code of Alabama, and other applicable laws and regulations, including and sound business practices. Policies should shall be reviewed and modified as required, but not less frequently than annually. Board minutes should shall document a review of the policy and any amendments thereto.

At a minimum, the written policy shall address the following:

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- (j) Credit unions with assets in excess of \$10,000,000 must comply with generally accepted accounting principles for reporting requirements; and

- (k) Investments in Subordinated Debt (as such term is defined in NCUA Regulation § 702.402) issued by a federally insured or privately insured credit union shall be governed by NCUA Regulations § 701.25 and Part 702, as well as ACUA Regulations covered in (a) through (j) of this Section 3. A credit union's policy on investments in Subordinated Debt shall specifically incorporate the requirements set forth in NCUA Regulations § 701.25 and Part 702. This policy shall be developed and approved by the credit union's board of directors prior to initiating any investment in Subordinated Debt issued by a credit union. In addition to the foregoing, privately insured credit unions shall also comply with any requirements promulgated by its respective private insurer in connection with investments in Subordinated Debt.

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Authors: H. Greg McClellan, Administrator
Statutory Authority: Code of Alabama, Sections 5-17-46 & -47 (2016)
History: [5-9-2005]
Amended: Filed September 1, 2021
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Section 4. Limits on Loans and Investments in Credit Union Service Organizations

This Section shall establish when a state-chartered credit unions in Alabama can primarily serving natural persons (hereinafter referred to as “natural-person credit unions”) may invest in and make loans to Credit Union Service Organizations (CUSO’s). Corporate CUSOs shall be governed by NCUA Regulation Part 704. All CUSOs are subject to review by the ACUA, normally as part of the examination of the credit union. Access to the CUSO’s financial statements, books and records of the CUSO and the ability to review the CUSO’s internal controls, as deemed necessary by ACUA in carrying out its responsibilities under the Code of Alabama, must be provided at the request of the Administrator and/or state examiners. CUSOs shall make their financial statements, books, records and any other documents related to internal controls available to the Administrator and/or state examiners upon request.

Authors: H. Greg McClellan, Administrator
Statutory Authority: Code of Alabama, Sections 5-17-46 & -47 (2016)
History: [4-2-2020]
Amended: Filed September 1, 2021
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Section 4. Limits on Loans and Investments in Credit Union Service Organizations

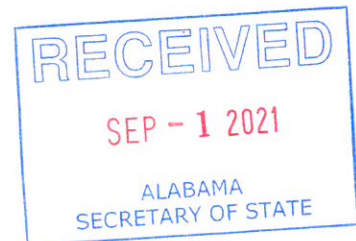
General Requirements

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The total amount of funds ~~either~~ invested in and/or loaned to a ~~credit union service organization~~ CUSO shall not exceed 4% of “unimpaired capital.” As used herein, “unimpaired capital” shall be defined as shares, deposits, and undivided earnings as of its most recent calendar year-end financial report. A credit union must first receive written approval from the Administrator when ~~either~~ the investment in, loan to or combination of both exceeds 2% of unimpaired capital (shares, deposits, and undivided earnings) as of the most recent calendar year-end financial report.

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Authors:	H. Greg McClellan, Administrator
Statutory Authority:	Code of Alabama, Sections 5-17-46 & -47 (2016)
History:	[4-2-2020]
Amended:	Filed September 1, 2021
Effective:	January 1, 2022



Section 4. Limits on Loans and Investments in Credit Union Service Organizations

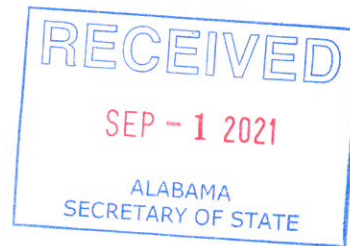
General Requirements

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For purposes of parity, state-chartered CUSOs shall be permitted to offer the same pre-approved activities as those allowed for federal CUSOs by the NCUA. In order for a state-chartered credit union to invest in and/or loan to a CUSO that offers ~~an unpreapproved~~ a non-preapproved activity or service, the credit union must first receive approval of the Administrator of the ACUA. The request must include a full explanation of and complete documentation of the activity or service and how that activity or service is associated with routine credit union operations. The Administrator will act on the request within thirty (30) days after receipt.

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Authors:	H. Greg McClellan, Administrator
Statutory Authority:	Code of Alabama, Sections 5-17-46 & -47 (2016)
History:	[4-2-2020]
Amended:	Filed September 1, 2021
Effective:	January 1, 2022



Section 4. Limits on Loans and Investments in Credit Union Service Organizations

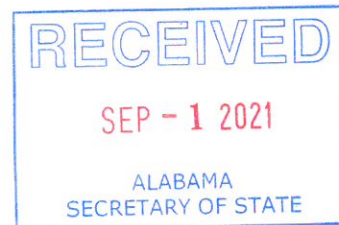
General Requirements

....

Where a credit union is denied approval to invest in and/or loan to a CUSO, an amount in excess of because such investment and/or loan would exceed an amount greater than 2% of such credit union's unimpaired capital and surplus, the credit union may appeal to the ACUA Board of the Alabama Credit Union Administration within thirty (30) calendar days after receipt of the Administrator's written letter disapproving such request. The ACUA Board shall fix a date, time, and place for hearing the appeal within sixty (60) days after it is filed, and shall notify the credit union or its attorney of record at least thirty (30) calendar days prior to the date of the hearing.

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Authors:	H. Greg McClellan, Administrator
Statutory Authority:	Code of Alabama, Sections 5-17-46 & -47 (2016)
History:	[4-2-2020]
Amended:	Filed September 1, 2021
Effective:	January 1, 2022

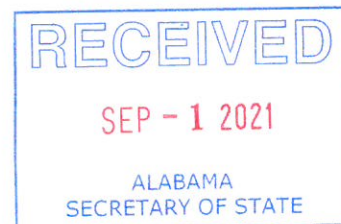


Section 6. Reserves; Surplus

Pursuant to Section 5-17-19(a) of the Code of Alabama, 1975, ~~provides that Alabama~~ both state-chartered natural person and corporate credit unions are required to maintain “such regular reserves as are required to be [maintained] by the credit union in order to maintain insurance of member accounts under the provisions of Title II of the Federal Credit Union Act.” Both federally insured and privately insured state-chartered natural person credit unions shall maintain such reserves in accordance with NCUA Regulation Part 702. State-chartered corporate credit unions shall maintain such reserves in accordance with NCUA Regulation Part 704.

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Authors:	H. Greg McClellan, Administrator
Statutory Authority:	Code of Alabama, Sections 5-17-46 & -47 (2016)
History:	[3-29-21]
Amended:	Filed September 1, 2021
Effective:	January 1, 2022



Section 7. Minimum Fidelity Requirements

- (a) ~~Any state-chartered credit union which makes application for federal insurance of its accounts pursuant to Title II of the Federal Credit Union Act or such private insurance carrier must comply with the requirements of~~ Both federally insured and privately insured state-chartered credit unions shall comply with the requirements of NCUA Regulation Part 713 and possess the minimum fidelity bond coverage outlined set forth therein. A federally insured state-chartered credit union whose fidelity bond coverage is terminated shall provide formal, written ~~notification~~ notification to the Administrator and the NCUA Regional Director immediately upon receipt of notice of such termination. A privately insured state-chartered credit union ~~must~~ shall provide formal, written ~~notification~~ notification to the Administrator and the private insurer immediately upon receipt of notice of such termination.
- (b) The ACUA Administrator, in his or her discretion, may require additional coverage when it is determined that a federally or privately insured credit union's current coverage is inadequate. The federally or privately insured credit union must purchase any additional coverage requested by the Administrator within 30 days of receiving notice from the Administrator.
- (c) Corporate credit unions shall comply with NCUA Regulation § 704.18 in lieu of NCUA Regulation Part 713.
- (d) Federally insured credit unions and privately insured credit unions shall be held to the same standards with respect to minimum fidelity bond coverage.

Authors: H. Greg McClellan, Administrator
Statutory Authority: Code of Alabama, Sections 5-17-46 & -47 (2016)
History: Effective April 2, 2020
Amended: Filed September 1, 2021
Effective: January 1, 2022

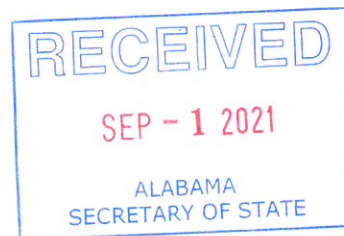


Section 10. Maximum Borrowing Authority for a State-Chartered Credit Unions

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- (e) Borrowing Limits for Corporate Credit Unions. Corporate credit unions shall adhere to the requirements set forth in NCUA Regulation § 704.9. A corporate credit union may borrow up to 10 times its total capital.
- (1) Secured borrowings. A corporate credit union may borrow on a secured basis for liquidity purposes, but the maturity of the borrowing shall not exceed 180 days. Only a corporate credit union with Tier 1 capital in excess of five percent (5%) of its moving daily average net assets (DANA) may borrow on a secured basis for nonliquidity purposes, and the outstanding amount of secured borrowing for nonliquidity purposes shall not exceed an amount equal to the difference between the corporate credit union's Tier 1 capital and five percent (5%) of its moving DANA.
- (2) Exclusions. Borrowings from the Central Liquidity Facility and borrowed funds created by the use of member reverse repurchase agreements are excluded from the limit in paragraph (e)(1) of this Section.
- (f) A state-chartered credit union may only issue Subordinated Debt (as such term is defined in NCUA Regulation § 702.402) if it meets the eligibility requirements set forth in NCUA Regulation § 702.401 through § 702.414, including, without limitation, Appendix A to Subpart D of NCUA Regulation Part 702 – Disclosure and Acknowledgement Form. Issuance of Subordinated Debt requires prior approval of the NCUA and ACUA for federally insured credit unions, and by the ACUA and the approved private insurer for privately insured credit unions.

Authors: H. Greg McClellan, Administrator
Statutory Authority: Code of Alabama, Sections 5-17-46 & -47 (2016)
History: [4-2-2020]
Amended: Filed September 1, 2021
Effective: January 1, 2022



Section 1705.4

No Overlap Protection for Geographic Area Based Field(s) of Membership

Overlap protection will not be afforded any credit union to serve a geographic area. Applications for additional geographic ~~are area based on~~ Fields of Membership by other credit unions will not be denied because of overlaps between or among geographic ~~are~~ area Fields of Membership.

Authors: H. Greg McClellan, Administrator
Statutory Authority: Code of Alabama, Sections 5-17-46 & -47 (2016)
History: [5-9-2005]
Amended: Filed September 1, 2021
Effective: January 1, 2022



Section 1705.51 **Field of Membership Expansion Approval May be Appealed**

~~A credit union or any other person may appeal the granting of any Field of Membership expansion by written appeal delivered to the administrator with sixty (60) days after discovery or ninety (90) days after issuance of an order of approval, whichever is later.~~

~~In the event of an appeal, the Administrator shall hold a hearing not later than sixty (60) days after the filing of an appeal. The Administrator shall render a decision regarding an appeal within ten (10) days after the hearing.~~

~~The Administrator's decision may be appealed by written notice delivered to the Administrator within 30 days after the decision is rendered. The Credit Union Board of the Alabama Credit Union Administration shall then determine if a second hearing is appropriate within 10 days after the filing of the appeal of the Administrator's decision. If the ACUA Board so determines, a second hearing may be scheduled before that Board with 30 days after filing of the second appeal. If a second hearing is not schedule, the parties will be given the opportunity to file written documents supporting their positions.~~

A credit union or any other person may appeal the approval of any Field of Membership expansion by delivering a formal, written appeal to the Administrator within thirty (30) calendar days after the date of such approval. The notice of appeal shall contain a brief statement of the pertinent facts upon which the appeal is based. The ACUA Board shall fix a date, time, and place for hearing the appeal within sixty (60) calendar days after it is filed, and shall notify the credit union, its attorney of record or any other person filing such appeal thereof at least thirty (30) calendar days prior to the date of the hearing.

Authors:	H. Greg McClellan, Administrator
Statutory Authority:	Code of Alabama, Sections 5-17-46 & -47 (2016)
History:	[5-9-2005]
Amended:	Filed September 1, 2021
Effective:	January 1, 2022

