

2002

# Mountain America Financial Services, Inc. v. G. Edward Leary, as the Commissioner of the Utah Department of Financial Institutions : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

J. Bruce Reading; Scott N. Rasumssen; Scalley & Reading; Attorneys for Appellee.

Perri Ann Babalis; Bryce H. Pettey; Assistant Attorneys General; Mark L. Shurtleff; Attorney General; Attorneys for Appellant.

---

## Recommended Citation

Brief of Appellant, *Mountain America Financial Services v. Leary*, No. 20020438 (Utah Court of Appeals, 2002).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/3824](https://digitalcommons.law.byu.edu/byu_ca2/3824)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

---

IN THE UTAH COURT OF APPEALS

---

MOUNTAIN AMERICA FINANCIAL	)	
SERVICES, INC.,	)	
	)	Case No. 20020438-CA
Petitioner/Appellee,	)	
	)	
vs.	)	
	)	
G. EDWARD LEARY, as the	)	Priority No. 15
Commissioner of the Utah Department	)	
of Financial Institutions,	)	
	)	
Respondent/Appellant.	)	

---

BRIEF OF APPELLANT

G. EDWARD LEARY, COMMISSIONER OF UTAH DEPARTMENT  
OF FINANCIAL INSTITUTIONS

---

ON APPEAL FROM AN ORDER OF THE THIRD DISTRICT COURT  
STATE OF UTAH, JUDGE GLENN IWASAKI

---

J. BRUCE READING #2700  
SCOTT N. RASMUSSEN #5226  
SCALLEY & READING, P.C.  
Attorneys for Appellee  
261 East 300 South, Suite 200  
Salt Lake City, UT 84111  
Telephone: (801) 531-7870

PERRI ANN BABALIS #5658  
BRYCE H. PETTEY #2593  
Assistant Attorneys General  
MARK L. SHURTLEFF #4666  
Attorney General  
Attorneys for Appellant  
160 East 300 South, 5<sup>th</sup> Fl.  
P. O. Box 140874  
Salt Lake City, UT 84114-0874  
Telephone: (801) 366-0375

**FILED**  
Utah Court of Appeals

**AUG 27 2002**

**Paulette Stagg**  
Clerk of the Court

---

IN THE UTAH COURT OF APPEALS

---

MOUNTAIN AMERICA FINANCIAL	)	
SERVICES, INC.,	)	
	)	Case No. 20020438-CA
Petitioner/Appellee,	)	
	)	
vs.	)	
	)	
G. EDWARD LEARY, as the	)	Priority No. 15
Commissioner of the Utah Department	)	
of Financial Institutions,	)	
	)	
Respondent/Appellant.	)	

---

BRIEF OF APPELLANT

G. EDWARD LEARY, COMMISSIONER OF UTAH DEPARTMENT  
OF FINANCIAL INSTITUTIONS

---

ON APPEAL FROM AN ORDER OF THE THIRD DISTRICT COURT  
STATE OF UTAH, JUDGE GLENN IWASAKI

---

J. BRUCE READING #2700  
SCOTT N. RASMUSSEN #5226  
SCALLEY & READING, P.C.  
Attorneys for Appellee  
261 East 300 South, Suite 200  
Salt Lake City, UT 84111  
Telephone: (801) 531-7870

PERRI ANN BABALIS #5658  
BRYCE H. PETTEY #2593  
Assistant Attorneys General  
MARK L. SHURTLEFF #4666  
Attorney General  
Attorneys for Appellant  
160 East 300 South, 5<sup>th</sup> Fl.  
P. O. Box 140874  
Salt Lake City, UT 84114-0874  
Telephone: (801) 366-0375

## TABLE OF CONTENTS

JURISDICTIONAL STATEMENT .....	1
ISSUES PRESENTED AND STANDARDS FOR REVIEW .....	1
DETERMINATIVE STATUTORY PROVISIONS .....	2
ADMINISTRATIVE RULES .....	4
STATEMENT OF THE CASE .....	5
STATEMENT OF FACTS .....	6
SUMMARY OF ARGUMENT .....	10
ARGUMENT .....	10
I. The Legislature Has Expressly Delegated Authority to the Commissioner to Regulate the Types of Activities in Which CUSOs Can Engage. ....	10
II. The Statutes and Rules that Apply to Credit Unions Apply to Their Subsidiaries. ....	15
A. Rule 331-23-1(2) Embodies the General Policy of the Department that Subsidiaries of Financial Institutions Comply with the Same Restrictions as Their Parents. ....	16
B. CUSOs Cannot Engage in Loan Making Activities Without Restrictions. ....	17
III. The Utah Credit Union Act, Specifically Utah Code Ann. § 7-9-20, Applies to Credit Union Service Organizations. ....	20
A. CUSOs Are Funded with the Capital of Stockholder Credit Unions Which are Subject to the Requirements of Utah Code Ann. § 7-9-26. ...	20
1. Section 7-9-26(3)(e) Does Not Allow Credit Unions to Invest Capital in CUSOs that Make Loans Because CUSOs that Make Loans Do Not Strengthen Credit Unions. ....	21



2.	Section 7-9-26(3)(f) Does Not Authorize Credit Unions to Invest Capital in CUSOs that Make Loans Because Such Investments Are Not Reasonable and Prudent. . . . .	22
B.	Tracing the Capital Received by CUSOs From Credit Unions Is Not The Same As Piercing the Corporate Veil. . . . .	23
1.	Piercing the Corporate Veil Only Applies in Situations Where Liability Is Imposed. . . . .	24
2.	The Department has Not Disregarded the Separate Corporate Identity of MAFS. . . . .	25
C.	Requiring CUSOs Engaged in Credit Union-like Activities to Comply With the Provisions of the Credit Union Act Is Necessary to Protect the Safety and Soundness of Credit Unions. . . . .	26
IV.	Utah Code Ann. § 7-9-20(7)(b)(ii) Limits the Amount that Credit Union Service Organizations Can Loan Out in Member-Business Loans. . . . .	26
	CONCLUSION . . . . .	28

## **ADDENDA**

ADDENDUM A - 1995 Utah Code Annotated, Title 7, Chapter 9

ADDENDUM B - 2001 Utah Code Annotated Supplement, Title 7, Chapter 9

ADDENDUM C - Court's Findings of Fact and Conclusions of Law

ADDENDUM D - Commissioner's Order

## TABLE OF AUTHORITIES

### STATE CASES

<i>America First Credit Union v. Department of Financial Institutions</i> , 2001UT App 272 ¶13 .....	19
<i>Esquivel v. Labor Commission of Utah</i> , 2000 UT 66 ¶ 13, 7 P.3d 777 .....	1, 2
<i>Richardson v. Matador Steak House</i> , 948 P.2d 347 (Utah 1997) .....	24
<i>Salt Lake City Corp. v. James Constructors, Inc.</i> , 761 P.2d 42 (Utah App.1988) .....	24
<i>Utah Bankers Association v. Utah Department of Financial Institutions</i> , 888 P.2d 714 (Utah App. 1994) .....	16

### FEDERAL ADMINISTRATIVE RULE

12 C.F.R. §712.1-§712.3 .....	14
-------------------------------	----

### STATE STATUTES

Utah Code Ann. § 7-1-102 (1995 and Supp. 2001) .....	2, 10, 11
Utah Code Ann. § 7-1-103(31)(1995 and Supp. 2001) .....	2, 11
Utah Code Ann. § 7-1-317 (1995) .....	9
Utah Code Ann. § 7-1-318 (1995 and Supp. 2001) .....	9
Utah Code Ann. § 7-1-501(5)(1995 and Supp. 2001) .....	3, 11
Utah Code Ann. § 7-1-706 (1995 and Supp. 2001) .....	6
Utah Code Ann. § 7-1-714 (1995) .....	6
Utah Code Ann. § 7-9-1 (1995 and Supp. 2001) .....	2, 6

Utah Code Ann. § 7-9-20 (1995 and Supp. 2001) .....	1, 3, 8, 9, 10, 20, 23, 26, 27, 28
Utah Code Ann. § 7-9-26 (1995 and Supp. 2001) .....	4, 19, 20, 21, 22, 23, 25, 26, 27
Utah Code Ann. § 78-2a-3(2)(b)(i)(1996) .....	1

## ADMINISTRATIVE RULES

Utah Admin. Code R331-23-1 (1997) .....	4, 16
Utah Admin. Code R337-4-1 (1997) .....	12
Utah Admin. Code R337-4-2 (1997) .....	4, 12, 18
Utah Admin. Code R337-4-3 (1997) .....	5, 18

## **JURISDICTIONAL STATEMENT**

This matter is on appeal from the District Court's review of an informal adjudicative proceeding of the Utah State Department of Financial Institutions. The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(b)(i) (1996).

## **ISSUES PRESENTED AND STANDARDS FOR REVIEW**

ISSUE 1. Does the Utah Credit Union Act, specifically Utah Code Ann. § 7-9-20, apply to Credit Union Service Organizations?

### Standard of Review

This is a matter of statutory interpretation reviewed by the Court. Matters of statutory construction are reviewed for correctness. Esquivel v. Labor Comm'n of Utah, 2000 UT 66 ¶ 13, 7 P.3d 777.

ISSUE 2. Was the District Court correct in ruling that the statutes and rules that apply to credit unions do not apply to their wholly owned subsidiaries, specifically Credit Union Service Organizations?

### Standard of Review

This is a matter of statutory interpretation reviewed by the Court. Matters of statutory construction are reviewed for correctness. Esquivel v. Labor Comm'n of Utah, 2000 UT 66 ¶ 13, 7 P.3d 777.

ISSUE 3. Was the District Court correct in ruling that Utah Code Ann. § 7-9-20(7)(b)(ii) does not limit the amount a Credit Union Service Organization can loan out in

member-business loans?

### Standard of Review

This is a matter of statutory interpretation reviewed by the Court. Matters of statutory construction are reviewed for correctness. Esquivel v. Labor Comm’n of Utah, 2000 UT 66 ¶ 13, 7 P.3d 777.

### **DETERMINATIVE STATUTORY PROVISIONS**

The statute determinative on appeal is the Utah Credit Union Act, Utah Code Ann. §§ 7-9-1 through 54 (1995 & Supp. 2001) (attached as Addendum A (1995) and Addendum B (2001)). Specific key provisions are:

#### **Utah Code Ann. § 7-1-102(1)(a)(b) and (g)**

(1) The Legislature finds it is in the interest of the citizens of this state, and is the purpose of this title, to:

(a) supervise, regulate, and examine persons, firms, corporation, associations, and other business entities furnishing depository, lending, and associated financial services in this state:

(b) protect the interests of shareholders, members, depositors, and other customers of financial institutions operating in this state;

....

(g) provide to the Commissioner of Financial Institutions sufficient powers and responsibilities to carry out these purposes.

#### **Utah Code Ann. § 7-1-103(31)**

As used in this title:

....

(31) “Service corporation” or “service organization” means a corporation or other business entity owned or controlled by one or more financial institutions that is engaged or proposes to engage in business activities related to the business of financial institutions.

**Utah Code Ann. § 7-1-501(5)**

The following persons and institutions are subject to the jurisdiction of the department and are subject to supervision and examination by the department as provided in this title and the rules of the department:

....  
(5) all service corporations and service organizations . . .

**Utah Code Ann. § 7-9-20(7)(b)(ii)**

(ii) Beginning March 24, 1999, a credit union may not extend a member-business loan to a person:

(A)(I) if the person is a business entity, unless at least one individual having a controlling interest in that business entity has been a member of the credit union for at least six months prior to the date of the extension of the member-business loan; or

(II) if the person is an individual, unless the individual is a member of the credit union for at least six months prior to the date of the extension of the member-business loan; or

(B) if as a result of the extension of the member-business loan, the total amount outstanding for all member-business loans that the credit union has extended to that person at any one time exceeds the lesser of

- (I) 10% of the credit union's capital and surplus; or
- (II) \$250,000.

**Utah Code Ann. § 7-9-20(7)(c)**

(c) (i) Beginning March 24, 1999, a credit union may not extend a member-business loan if as a result of that member-business loan the credit union's aggregate member-business loan amount calculated under Subsection (7)(c)(ii) at any one time exceeds 1.25 times the sum of:

(A) the actual undivided earnings; and

(B) the actual reserves other than the regular reserves.

(ii) For purposes of Subsection (7)(c)(i), the aggregate member-business loan amount of a credit union equals:

(A) the sum of the total amount financed under all member-business loans outstanding at the credit union; minus

(B) the amount of the member-business loans described in Subsection (7)(c)(ii)(A):

- (I) that is secured by share or deposit savings in the credit union; or

(II) for which the repayment is insured or guaranteed by, or there is an advance commitment to purchase by an agency of the federal government, a state, or a political subdivision of the state.

**Utah Code Ann. § 7-9-26(3)(e) and (f)**

(3) The credit union by action of its board of directors may invest its funds as follows

....

(e) in shares, stocks, loans, or other obligations of any organization, corporation, or association, if the membership or ownership of the organization, corporation, or association is primarily confined or restricted to credit unions, and if the purpose for which it is organized is to strengthen or advance the development of credit unions or credit union organizations; and

(f) in other investments that are reasonable and prudent.

**ADMINISTRATIVE RULES**

**Utah Admin. Code R331-23-1 (1997)**

(1) The Department of Financial Institutions enacts this rule under authority granted by Sections 7-1-301, 7-3-19, and Section 7-8-20.

(2) The rule applies to all loans and extensions of credit made by banks and industrial loan corporations chartered in the state and their subsidiaries.

(3) The rule is intended to prevent one person from borrowing an unduly large amount of a given bank's or industrial loan corporation's funds, thereby exposing the bank's or industrial loan corporation's depositors, creditors and stockholders to excessive risk.

(4) The rule provides exceptions to the general lending limits set forth in Sections 7-3-19 and 7-8-20.

(5) The rule does not apply to loans made by a bank or an industrial loan corporation to a subsidiary. The rule does not apply to an extension of credit that is subject to, or expressly exempted from, a federal statute or regulation limiting the amount of total loans and credit that may be extended to any person or group of persons.

**Utah Admin. Code R337-4-2 (1997)**

(1) "Capital and surplus" means shares, deposits, reserves, and undivided

earnings.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Credit union service organization" means an organization which provides any of the following services to its stockholder credit unions:

- (a) Data processing services;
- (b) Promotion marketing and general management support services;
- (c) Access to sophisticated accounting systems;
- (d) Non-profit debt counseling services;
- (e) Management training and education to credit union personnel;
- (f) Services related to processing, selling, or servicing mortgage loans;
- (g) Credit card services;
- (h) Automated teller machine services;
- (i) Insurance agency services;
- (j) Discount brokerage services;
- (k) Shared branch facilities; and
- (l) Other services that are commonly associated with the routine operations of the credit unions.

#### **Utah Admin. Code R337-4-3 (1997)**

A credit union by action of its board of directors may form or invest, or both, in a "credit union service organization" as defined in this rule if:

- (1) The credit union has capital and surplus of \$500,000 or more.
- (2) The total investments in, or loans to all service organizations may not exceed 5% of the capital and surplus of the credit union.
- (3) The services performed by the "credit union service organization" are limited primarily to credit union members and stockholder credit unions.
- (4) The commissioner has been given 30 days prior written notice of the proposed investment:

- (a) containing pro formas statements describing the benefits the service organization will create for the credit union or such other information satisfactory to the department, to show that the investment will not represent an unreasonable risk to the safety and soundness of the credit union;
- (b) within that time the commissioner has not issued an order disapproving the acquisition.

#### **STATEMENT OF THE CASE**

This is a case of first impression under the Utah Credit Union Act, Utah Code



Ann. §§ 7-9-1 to -54 (Supp. 2001). In March 2000, pursuant to Utah Code Ann. § 7-1-706 (1995), Mountain America Financial Services (“MAFS”) requested a ruling from the Commissioner of Financial Institutions (“Commissioner”) as to whether MAFS properly made two member-business loans to members of Mountain American Credit Union (“MACU”) (R. 6-11). The Commissioner ruled that the loans were in violation of the Utah Credit Union Act (R. 12-14).

MAFS appealed the Commissioner’s Order to the Third Judicial District Court pursuant to Utah Code Ann. § 7-1-714 (1995) (R. 1-5). MAFS filed a Motion for Summary Judgment as the means of resolving this appeal before the District Court. (R. 61-62). Third District Judge Glenn Iwasaki granted MAFS’s Motion for Summary Judgment (“Court Order”) (attached as Addendum C) and found that Credit Union Service Organizations (“CUSO”) are not subject to the Utah Credit Union Act, thus overturning the Commissioner’s ruling (R. 146-147). The Commissioner now appeals the District Court’s Order (R. 150-152).

## **STATEMENT OF FACTS**

1. Mountain America Credit Union (“MACU”) is a credit union and a corporation organized under the laws of the State of Utah. Memorandum Decision, dated November 5, 2001, ¶ 3 (R.132-139).

2. MACU is operating within the State of Utah, and is subject to the terms of the Utah Credit Union Act, Utah Code Ann. § 7-9-1. Commissioner’s Findings, Conclusions and Order Denying Request, dated June 9, 2000, ¶ 3 (R. 12-14).

3. Mountain America Financial Services (“MAFS”) is a credit union service organization (hereinafter “CUSO”) and a for-profit corporation, organized under the laws of the State of Utah. Court Order of May 6, 2002, Findings of Fact and Conclusions of Law ¶¶ 1-2 (R. 140-145).

4. MAFS is a wholly-owned subsidiary of MACU. Court Order of May 6, 2002, Findings of Fact and Conclusions of Law ¶ 3 (R. 140-145).

5. G. Edward Leary is the Commissioner of the Utah Department of Financial Institutions (“Commissioner”). Court Order of May 6, 2002, Findings of Fact and Conclusions of Law ¶ 4 (R. 140-145).

6. In February, 2000, MAFS extended two member-business loans to members of Mountain America Credit Union. Court Order of May 6, 2002, Findings of Fact and Conclusions of Law ¶ 9 (R. 140-145). The first loan was in the amount of \$768,750 and the second was in the amount of \$525,000. Commissioner’s Findings, Conclusions and Order Denying Request, dated June 9, 2000, ¶ 9 (R. 12-14).

7. These loans were made prior to seeking approval of the Commissioner. Commissioner’s Findings, Conclusions and Order Denying Request, dated June 9, 2000, ¶¶ 9 and 10 (R. 12-14).

8. On or about March 15, 2000, MAFS delivered a letter to the Commissioner stating that MAFS had extended the two loans to Mountain America Credit Union members and requested a ruling from the Commissioner as to whether MAFS could properly make member-business loans to members of MACU. Court Order of May 6,

2002, Findings of Fact and Conclusions of Law ¶ 9 (R. 140-145).

9. On or about June 9, 2000, the Commissioner issued his Findings, Conclusions and Order Denying Request (“Commissioner’s Order”) (attached as Addendum D) , wherein the Commissioner ruled that the MAFS loans were made in violation of the Utah Credit Union Act. Court Order of May 6, 2002, Findings of Fact and Conclusions of Law ¶ 10 (R. 140-145).

10. In reaching this conclusion, the Commissioner ruled that “A CUSO is a wholly owned subsidiary of one or more credit unions. As a result, any legal limitation imposed on a credit union applies equally to a “subsidiary” because the financial statement of the subsidiary is consolidated in the financial statement of the parent.” Commissioner’s Findings, Conclusions and Order Denying Request, dated June 9, 2000, ¶ 6 (R. 12-14).

11. The Commissioner thus determined that the Credit Union Act applies to CUSOs. Commissioner’s Findings, Conclusions and Order Denying Request, dated June 9, 2000, ¶ 12 (R. 12-14).

12. The Commissioner’s Order was based upon Utah Code Ann. § 7-9-20(7)(Supp. 2000), which sets forth limitations on the amount of money a credit union can extend in member-business loans. Commissioner’s Findings, Conclusions and Order Denying Request, dated June 9, 2000, ¶ 7 (R. 12-14).

13. The Commissioner ruled that pursuant to Utah Code Ann. § 7-9-20(7)(b)(ii)(B)(Supp. 2000) the amount that a credit union can loan to an individual or

single entity is limited to the lesser of 10% of the credit union's capital and surplus or \$250,000. Both loans in question exceeded the \$250,000 limit and thus violated the Utah Credit Union Act. Court Order of May 6, 2002, Findings of Fact and Conclusions of Law ¶ 8 (R. 140-145).

14. Additionally, under Utah Code Ann. § 7-9-20(7)(c)(i)(Supp. 2000) the aggregate amount that a credit union may have outstanding in all member-business loans is 1.25 times the sum of actual undivided earnings and actual reserves other than regular reserves. Commissioner's Findings, Conclusions and Order Denying Request, dated June 9, 2000, ¶ 7 (R. 12-14).

15. The aggregate amount that Mountain America Credit Union is allowed for member-business loans is \$26,662,056. Mountain America Credit Union reported in its December 1999 CALL report<sup>1</sup> that it had member-business loans of \$45,088,966 outstanding. Commissioner's Findings, Conclusions and Order Denying Request, dated June 9, 2000, ¶ 8 (R. 12-14).

16. Mountain America Credit Union has exceeded its aggregate loan limitation by \$18,426,910, and, therefore, has violated the Utah Credit Union Act. Commissioner's Findings, Conclusions and Order Denying Request, dated June 9, 2000, ¶ 8 (R. 12-14).

---

<sup>1</sup> A CALL report is a report of the financial condition, as of a given date, of a financial institution under the jurisdiction of the Department. See, Utah Code Ann. §§ 7-1-317 and 318 (Supp. 2001). A wholly-owned CUSO's books and records are consolidated with the credit union's books and records on the CALL report.

## SUMMARY OF ARGUMENT

The District Court erred when it granted MAFS's Motion for Summary Judgment and ruled that the Utah Credit Union Act does not apply to Credit Union Service Organizations. The following arguments support the Department's position.

First, the Utah Legislature delegated specific authority to the Commissioner to regulate CUSOs and the Commissioner has done this through rule-making.

Second, the rules that apply to credit unions apply to their wholly-owned CUSOs, and it is clear that CUSOs cannot enter into loan-making activity without limitations and regulation.

Third, the Utah Credit Union Act, specifically Section 7-9-20(7), which sets forth lending limits, applies to CUSOs and thus limits the amount the CUSO can loan out in member-business loans.

## ARGUMENT

### **I. The Legislature Has Expressly Delegated Authority to the Commissioner to Regulate the Types of Activities in Which CUSOs Can Engage.**

The purpose of the Financial Institutions Act, as set forth in Utah Code Ann. § 7-1-102, is to:

- (a) supervise, regulate, and examine persons, firms, corporations, associations, and other business entities furnishing depository, lending, and associated financial services in this state;
- (b) protect the interests of shareholders, members, depositors, and other customers of financial institutions operating in this state.

Utah Code Ann. § 7-1-102 (a) and (b).

To carry out these purposes, the Commissioner of Financial Institutions has been given “sufficient powers and responsibilities to carry out these purposes.” Utah Code Ann. § 7-1-102(g). One of the most significant of these powers is that of regulating all financial institutions operating in the State of Utah. This power ensures that all financial institutions are run in such a way that the financial institution’s shareholders, members, depositors, and other customers are protected.

One type of financial institution that is regulated by the Commissioner is a Credit Union Service Organization (“CUSO”). Utah Code Ann. § 7-1-501(5) states:

The following persons and institutions are subject to the jurisdiction of the department and are subject to the supervision and examination by the department as provided in this titles and rules of the department:

....

(5) all service corporations and service organizations.

As defined in Utah Code Ann. § 7-1-103(31), a “‘service corporation’ or ‘service organization’ means a corporation or other business entity owned or controlled by one or more financial institutions that is engaged or proposes to engage in business activities related to the business of financial institutions.” CUSOs are corporations that are owned by one or more credit unions, and are engaged in business activities related to the business of credit unions and are thus regulated by the Commissioner.

MAFS has argued that the Utah State Legislature has been virtually silent on the issue of CUSOs. This is not true. The legislature has expressly delegated authority to the Commissioner to regulate loans made by state chartered depository institutions and to promulgate rules consistent with these purposes. Rule 337-4-1 et. seq. of the Utah

Administrative Code was adopted by the Department to specifically address the issue of CUSOs, to “define ‘credit union service organizations’ and to outline the procedures and requirements for establishing these organizations.” Utah Admin. Code R337-4-1(3) (1992).

In addition to authorizing CUSOs, Utah Admin. Code R337-4-1 et. seq. specifically defines the types of activities that CUSOs may engage in. Utah Admin. Code R337-4-2(3) defines a credit union service organization as:

- (3) “Credit union service organization” means an organization which provides any of the following services to its stockholder credit unions:
- (a) Data processing services;
  - (b) Promotion marketing and general management support services;
  - (c) Access to sophisticated accounting systems;
  - (d) Non-profit debt counseling services;
  - (e) Management training and education to credit union personnel;
  - (f) Services related to processing, selling, or servicing mortgage loans;
  - (g) Credit card services;
  - (h) Automated teller machine services;
  - (i) Insurance agency services;
  - (j) Discount brokerage services;
  - (k) Shared branch facilities; and
  - (l) Other services that are commonly associated with the routine operations of the credit unions.

Only those enumerated activities are permitted activities of a CUSO.<sup>2</sup>

---

<sup>2</sup> Federally chartered credit unions are also permitted to invest in CUSOs. The following activities and services are pre-approved for federal CUSOs:

- (a) Checking and currency services:
- (1) Check cashing;
  - (2) Coin and currency services; and
  - (3) Money order, savings bonds, travelers checks, and

- 
- purchase and sale of U.S. Mint commemorative coins services;
- (b) Clerical, professional and management services:
- (1) Accounting services;
  - (2) Courier services;
  - (3) Credit analysis;
  - (4) Facsimile transmissions and copying services;
  - (5) Internal audits for credit unions;
  - (6) Locator services;
  - (7) Management and personnel training and support;
  - (8) Marketing services;
  - (9) Research services; and
  - (10) Supervisory committee audits;
- (c) Consumer mortgage loan origination;
- (d) Electronic transaction services:
- (1) Automated teller machine (ATM) services;
  - (2) Credit card and debt card services;
  - (3) Data processing;
  - (4) Electronic fund transfer (EFT) services;
  - (5) Electronic income tax filing;
  - (6) Payment item processing;
  - (7) Wire transfer services; and
  - (8) Cyber financial services;
- (e) Financial counseling services:
- (1) Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation, and other personnel benefit plans;
  - (2) Estate planning;
  - (3) Financial planning and counseling;
  - (4) Income tax preparation;
  - (5) Investment counseling; and
  - (6) Retirement counseling;
- (f) Fixed asset services:
- (1) Management, development, sale, or lease of fixed assets; and
  - (2) Sale, lease or servicing of computer hardware or software;
- (g) Insurance brokerage or agency:
- (1) Agency for sale or insurance;
  - (2) Provision of vehicle warranty programs; and
  - (3) Provision of group purchasing programs;



Rule 337-4-3(3) states that “the services performed by the ‘credit union service

---

- (h) Leasing:
  - (1) Personal property; and
  - (2) Real estate leasing of excess CUSO property;
- (i) Loan support services:
  - (1) Debt collection services;
  - (2) Loan processing, servicing, and sales; and
  - (3) Sale of repossessed collateral;
- (j) Record retention, security and disaster recovery services:
  - (1) Alarm-monitoring and other security services;
  - (2) Disaster recovery services;
  - (3) Microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services;
  - (4) Provision of forms and supplies; and
  - (5) Record retention and storage;
- (k) Securities brokerage services;
- (l) Shared credit union branch (service center) operations;
- (m) Student loan origination;
- (n) Travel agency services;
- (o) Trust and trust-related services;
  - (1) Acting as administrator for prepaid legal service plans;
  - (2) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and
  - (3) Trust services.
- (p) Real estate brokerage services.
- (q) CUSO investments in non-CUSO services providers. In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO’s investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

12 C.F.R. §712.1-§712.3.

Note that the federal rule does not permit federally chartered CUSOs to issue loans, including member-business loans to members of their parent credit union.

organization’ are limited primarily to credit union members and stockholder credit unions.” This language indicates that the purpose of a CUSO is to provide services to credit unions and their members. CUSOs do not have members.

The rights of a CUSO are no greater than the rights of a credit union who is the parent of the CUSO, except to the extent as authorized by statute or rule. The rights of a credit union cannot become greater because it has a CUSO, thus limitations applied to credit unions pursuant to the Utah Credit Union Act apply equally to the CUSOs. Specifically, the Utah Credit Union Act applies to CUSOs. If the Utah Credit Union Act, and the limitations contained therein, do not apply to CUSOs, then the CUSO is not subject to the jurisdiction of the Department. In turn, the CUSO would not be subject to regulation, and the Department cannot ensure the safety and soundness of the CUSO. This was not the intent of the Legislature.

To be a CUSO, the organization must provide services to its stockholder credit union from the list outlined in Rule 337-4-2(3). That list does not include making member-business loans. By virtue of the Commissioner’s rule making authority, coupled with the language of Rule 337-4-1 et. seq., the law is not silent on the issue of CUSOs and their inability to make member-business loans. In fact, the law is perfectly clear that CUSOs cannot exceed the legal limitations placed on credit unions.

## **II. The Statutes and Rules that Apply to Credit Unions Apply to Their Subsidiaries.**

Generally, regulations imposed on a parent are not automatically imposed on

subsidiaries. The regulations that would be imposed on the subsidiary would depend on the nature of the activities to be engaged in by the subsidiary. However, in cases where the subsidiary is seeking to engage in the same activities as the parent corporation, the subsidiary is subject to the same restrictions as the parent. See, Utah Admin. Code R331-23-1. CUSOs, especially when they are engaged in member-business lending, are engaged in the same activities as their parent credit union. As a result, CUSOs are subject to the same restrictions as credit unions. There are two compelling reasons why CUSOs should comply with the provisions of the Utah Credit Union Act when making loans. First, subsidiaries of other types of financial institutions are required to comply with the same restrictions as their parents. Second, the case of Utah Bankers Ass'n v. Utah Dept. of Financial Institutions, 888 P.2d 714 (Utah App. 1994), upon which CUSOs rely for authority to engage in loan making activities, does not authorize CUSOs to engage in member-business lending without restrictions.

**A. Rule 331-23-1(2) Embodies the General Policy of the Department that Subsidiaries of Financial Institutions Comply with the Same Restrictions as Their Parents.**

The Department has a long standing policy of requiring subsidiaries of financial institutions to comply with the same requirements and regulations as the parent corporation when the subsidiary is engaged in making loans. Utah Admin. Code R331-23-1(2) reflects this general policy, applying the same restrictions to subsidiaries of banks and industrial loan corporations (“ILCs”) as are applied to the banks and ILCs themselves. While it is true that Rule 331-23-1 does not identify credit unions, it does

manifest the Department's policy that subsidiaries of lending institutions comply with the same regulations as the parent when making loans.

At least one explanation as to why credit unions are not mentioned in Rule 331-23-1 is that the current situation with MACU and MAFS is the first time, to the Department's knowledge, that a subsidiary of a credit union has engaged in member-business lending. Prior to this occasion, the possibility of a CUSO making a loan had not been considered. Indeed, there seems to be an underlying assumption in the relevant statutes and regulations that CUSOs are not financial institutions engaged in lending.

The only legal authority for the proposition that CUSOs can make loans is the Utah Bankers case, as discussed below. The Utah Bankers case only addressed the situation in *dicta* so it would have been illogical for the Department to promulgate regulations to control an activity that was not occurring. When MAFS requested a ruling regarding member-business lending, the Department sought to impose the same requirements on credit unions as it has imposed on all other financial institutions; that when making loans, subsidiaries must comply with the same limitations as the parent corporation.

**B. CUSOs Cannot Engage in Loan Making Activities Without Restrictions.**

In this instance, a credit union, using capital of the credit union, has established a CUSO. The CUSO is seeking to utilize the capital of the credit union to engage in activities that would not be permitted for the credit union, namely, making member-

business loans in excess of \$250,000. However, the only apparent legal authority for a CUSO to make loans is from the case of Utah Bankers. In Utah Bankers, the court held that under Utah Admin. Code R337-4-2, as it existed at the time, CUSOs were allowed to provide the routine services of credit unions, which included lending. Id. at 718-719. However, this ruling does not mean that CUSOs can provide loans without limitations.

First, the conclusion in Utah Bankers that a CUSO can engage in lending is a misreading of Rule 337-4-2. The court in Utah Bankers found the authorization for CUSOs to make loans in Rule 337-4-2(3)(l) which states that CUSOs can provide “other services that are commonly associated with the routine operations of the credit unions.” (Emphasis added). Making loans is not a service that is “associated” with the routine operations of a credit union, it is one of the fundamental or core activities of a credit union. The stated purpose of a CUSO is to provide services to a credit union to facilitate a credit union’s business, the purpose is not to conduct the actual business of a credit union. Rule 337-4-2(3).

Second, even if Utah Bankers authorizes a CUSO to make loans, the CUSO must still comply with the requirements of Rule 337-4-1 et.seq. Rule 337-4-2(3) defines CUSOs as organizations that provide services “to its stockholder credit unions.” Utah Admin. Code R337-4-3(3) makes a slight expansion of this principle to allow CUSOs to provide services to members of the stockholder credit unions. There is no authority in Utah Bankers, statute, or administrative rule for a CUSO to make loans to persons who are not members of the stockholder credit unions. It has been suggested that the use of

the word “primarily”<sup>3</sup> in Rule 337-4-3(3) allows CUSOs to make loans outside of the membership of the stockholder credit union. However, to allow a CUSO to make loans outside of the membership of the stockholder credit union would destroy any sort of limitation that the word was meant to impose.

Third, Utah Code Ann. § 7-9-26(1) requires that “the capital and surplus of the credit union shall be loaned to the members[.]” As the capital being utilized by MAFS to make loans comes from MACU, these funds would have to be used to make loans to members of MACU. This is supported by the recent Utah Court of Appeals decision, America First Credit Union v. Department of Financial Institutions, 2001 UT App 272 ¶ 13, which held that loans made with the capital and surplus of a credit union must be made to the members of the credit union.

Finally, to argue that Utah Bankers provides CUSOs with the authority to make any and all loans the CUSO desires is inaccurate. The court in Utah Bankers said that the routine operations of the credit unions include making loans. Id. at 719. While true, this statement over-simplifies the requirements of a credit union to make a loan. One of the routine operations of credit unions is to make loans, but these loans are made within a highly regulated environment. A credit union cannot just make any loan, the loan must comply with the relevant limitations. If CUSOs are to be allowed to engage in the routine

---

<sup>3</sup> Rule 337-4-3(3) states that “the services preformed by the ‘credit union service organization’ are limited primarily to credit union members and stockholder credit unions.” (Emphasis added).

operations of credit unions, they should also be required to comply with the specific limitations that a credit union would be subject to. These limitations are contained in the Utah Credit Union Act.

**III. The Utah Credit Union Act, Specifically Utah Code Ann. § 7-9-20, Applies to Credit Union Service Organizations.**

The Utah Credit Union Act applies to CUSOs when CUSOs act as lenders because the capital that has been invested in the CUSO and is being utilized by the CUSO when making loans is capital of a credit union. CUSOs are funded by the stockholder credit unions. Therefore, regardless of whether the actions of the CUSO were “imputed” to the credit union, the simple fact would be that the credit union’s money would be used in a manner that would result in the credit union being in violation of the Utah Credit Union Act. In order to avoid such violations, the provisions of the Utah Credit Union Act need to be applied to CUSOs to protect the parent credit unions. Additionally, if credit union capital is used in a manner inconsistent with the Utah Credit Union Act, the safety and soundness of the credit union is at risk.

**A. CUSOs Are Funded with the Capital of Stockholder Credit Unions Which are Subject to the Requirements of Utah Code Ann. § 7-9-26.**

CUSOs are generally formed either by individual credit unions or by groups of credit unions with a common purpose, such as shared branch services. The capital used to form CUSOs comes from the stockholder credit unions. Utah Code Ann. § 7-9-26(3) controls the ways that credit unions can invest the capital of the credit union.

Specifically, Sections 7-9-26(3)(e) and (f) are relevant to the investment of credit union

capital in a CUSO which is making loans.

1. **Section 7-9-26(3)(e) Does Not Allow Credit Unions to Invest Capital in CUSOs that Make Loans Because CUSOs that Make Loans Do Not Strengthen Credit Unions.**

Section 7-9-26(3)(e) allows credit unions to invest in organizations, corporations or associations whose membership or ownership is primarily confined to credit unions and whose organizational purpose is to strengthen or advance the development of credit unions or credit union organizations. CUSOs would generally fall into this category because the services CUSOs provide are designed to strengthen credit unions.

Under Rule 337-4-2(3), CUSOs are authorized to provide a number of services “to its stockholder credit union[.]” The enumerated services can all be said to strengthen the stockholder credit union. These enumerated services can be grouped generally into services that facilitate the internal functions of the credit union or services that allow credit unions to more easily provide services to credit union members. Two of the services allow CUSOs to provide insurance agency and discount brokerage services, services not traditionally associated with financial institutions, directly to members of the credit union. Rule 337-4-2(3)(i) and (j).

However, while Rule 337-4-2(3) does identify a number of activities in which a CUSO can participate on behalf of the credit union, nothing in Rule 337-4-1 et. seq. suggests that a CUSO was meant to engage in the activities that are unique to credit unions and other financial institutions, such as maintaining accounts for deposits and withdrawals and lending. There is no mention in Rule 337-4-1 et. seq. of a CUSO being



able to engage in the core functions of a credit union. It is especially important to note that Rule 337-4-2(3)(k), which is the open-ended provision of Rule 337-4-2(3), only allows other services that are “commonly associated with the routine operations of the credit unions.” (Emphasis added.) This provision does not authorize the CUSO to engage in the unique core functions of credit unions.

Additionally, a CUSO engaging in the core functions of a credit union would not strengthen a credit union. Rather, the CUSO would in fact be replacing the credit union. Since the CUSO would not be engaging in activities under Rule 337-4-2(3) which are permissible by rule, nor does the business of making loans otherwise seem to strengthen credit unions, an investment by a credit union in a CUSO which is engaged in making loans would not be authorized under Section 7-9-26(3)(e).

**2. Section 7-9-26(3)(f) Does Not Authorize Credit Unions to Invest Capital in CUSOs that Make Loans Because Such Investments Are Not Reasonable and Prudent.**

Section 7-9-26(f) is a “catch-all” provision which authorizes other investments by credit unions that are “reasonable and prudent”. An investment in a corporation that could improve the internal functions of the credit union or otherwise help the credit union provide better service to its customers would be an investment that would be reasonable and prudent. For example, investments in corporations that would provide accounting services, data processing services, or even automatic teller services would be investments that are reasonable and prudent. These are all services which CUSOs are authorized to provide under Rule 337-4-2(3).

Investing in a CUSO that makes loans without being subject to any manner of loan limitation is not the type of investment that could be considered “reasonable and prudent”. A CUSO making loans does not in any way facilitate the functions of a credit union. Nor are loans made without any limitations the kind of economic investment that would be considered to be reasonable and prudent. Credit unions have long had specific provisions governing the types and amounts of loans that can make. These limitations are designed to protect the safety and soundness of the credit union. To allow a credit union to invest capital in a CUSO that is permitted to make loans without any limitations, is not an investment which would be “reasonable and prudent”.

The only way that loans made by a CUSO could be considered reasonable and prudent is if they comply with the limitations on loans made by credit unions contained in Utah Code Ann. § 7-9-20(7). The regulations dealing with loan limitations are designed to serve a number of functions. One of those functions is to help ensure the safety and soundness of credit unions. To allow a CUSO to make loans using credit union capital which is not subject to the loan limitations of Section 7-9-20(7), subjects the capital of the credit union to unacceptable risk or loss. Such investments are not reasonable and prudent and therefore violate the provisions of Section 7-9-26(3)(f).

**B. Tracing the Capital Received by CUSOs From Credit Unions Is Not The Same As Piercing the Corporate Veil.**

Appellee has argued that the Department sought to inappropriately pierce the corporate veil by disregarding the separate corporate identity of MAFS from MACU.

However, the Department's actions do not constitute a piercing of the corporate veil. First, the "corporate veil theory" is a judicially created doctrine that is mainly used to protect a parent company or other stockholder from liability for a subsidiary's actions. Richardson v. Matador Steak House, 948 P.2d 347 (Utah 1997). The Department has not sought to impose liability on MACU for the actions of MAFS. Second, even if the doctrine of piercing the corporate veil applies outside of liability situations, the Department has not disregarded the separate corporate identity of MAFS.

**1. Piercing the Corporate Veil Only Applies in Situations Where Liability Is Imposed.**

The Utah Supreme Court has stated that "[p]iercing the corporate veil has to do with making persons liable who otherwise would be shielded from personal liability because of the existence of a corporation." Richardson v. Matador Steak House, 948 P.2d 347, 348 n.1 (Utah 1997). The Utah Court of Appeals has also explained the purpose of the corporate veil, noting that the "purpose of such separation is to insulate the stockholders from the liabilities of the corporation, thus limiting their liability to only the amount that the stockholders voluntarily put at risk." Salt Lake City Corp. v. James Constructors, Inc., 761 P.2d 42, 46 (Utah App. 1988). The Department is not attempting to make MACU liable for any debts or other obligations of MAFS. Nor is the Department attempting to increase any existing liability that MACU would have with respect to the activities of MAFS. The Department is fulfilling its responsibility to ensure that the capital from a credit union is being used in a manner consistent with the

requirements of the Utah Credit Union Act.

The Department has the responsibility to enforce the provisions of Title 7 of the Utah Code. Accordingly, the Department has a duty to ensure that investments of credit unions comply with the requirements of Utah Code Ann. § 7-9-26. In this case, since MACU has already invested credit union capital into MAFS, the Department has a duty to supervise the activities of MAFS to ensure that MAFS engages in appropriate activities. Absent such supervision of MAFS and other CUSOs, the Department would be unable to ensure that credit unions are maintaining their safety and soundness and are acting in accordance with the requirements of the Utah Credit Union Act. Such supervision is not a piercing of the corporate veil, but a necessary act required of the Department by the provisions of the Utah Credit Union Act, in order to protect the safety and soundness of the parent credit union.

**2. The Department has Not Disregarded the Separate Corporate Identity of MAFS.**

The Department has not disregarded the separate corporate identity of MAFS as a wholly-owned subsidiary of MACU. As noted above, this would only occur if the Department had treated MAFS as a part of MACU and made MACU liable for the debts of MAFS. “Disregarding” of the separate corporate identity suggests an “upstream” process where the identity of the subsidiary is disregarded. This is the opposite of what the Department has done. Instead, the Department is simply tracing the money from the parent, down through the subsidiary, to ensure that credit union capital is not used in a

manner which would cause the credit union to violate the Utah Credit Union Act. This “tracing” of capital is not a piercing of the corporate veil, nor a disregard of separate corporate status, it is merely enforcement of the provisions of the Utah Credit Union Act.

**C. Requiring CUSOs Engaged in Credit Union-like Activities to Comply With the Provisions of the Credit Union Act Is Necessary to Protect the Safety and Soundness of Credit Unions.**

CUSOs must comply with the provisions of the Utah Credit Union Act when engaging in “credit union-like” activities. Such compliance is necessary to ensure the safety and soundness of the parent credit unions, and to ensure that the parent credit unions are not in violation of the Utah Credit Union Act. If CUSOs engage in credit union-like activities such as member-business lending, without complying with any relevant provisions of the Utah Credit Union Act, the safety and soundness of the credit union is at risk. If the safety and soundness of the credit union is at risk, the credit union members are at risk of losing their money on deposit with their credit union.

Accordingly, such investments are not “reasonable and prudent” under Utah Code Ann. § 7-9-26(3)(f). This would mean that the investment violates Section 7-9-26(3) which clearly outlines the approved types of investments for credit unions. This would then result in the parent credit union being in violation of the Utah Credit Union Act, exposing it to action by the Department.

**IV. Utah Code Ann. § 7-9-20(7)(b)(ii) Limits the Amount that Credit Union Service Organizations Can Loan Out in Member-Business Loans.**

As noted above, CUSOs must be subject to the Utah Credit Union Act in order to

prevent the stockholder credit unions from being in violation of the Utah Credit Union Act and to protect the safety and soundness of the parent credit unions. This in turn, protects the members of the public who are members of the credit union. Specifically, Utah Code Ann. § 7-9-20(7)(b)(ii) applies to CUSOs and limits the amount that a CUSO can loan an individual as a member-business loan so as to protect the safety and soundness of the parent credit union and to prevent the parent credit union from being in violation of the Utah Credit Union Act.

A loan by a CUSO is an extension of credit using the capital of the parent credit union which have been invested in the CUSO. As already noted, if a CUSO makes loans outside the limitations of Section 7-9-20(7), the investment in the CUSO by the parent credit union would not qualify as an investment that is “reasonable and prudent” as required by Section 7-9-26(3)(f). This would make the investment by the credit union unauthorized. Additionally, loans outside of the limitations of Section 7-9-20(7) would affect the safety and soundness of the parent credit union by placing credit union capital at undue risk.

Accordingly, if a CUSO is to be allowed to make loans, the CUSO must comply with at least three specific requirements contained in Section 7-9-20(7). These requirements are the membership requirement of Section 7-9-20(7)(b)(ii)(A), which states that an individual must be a member of the credit union for at least 6 month prior to a member-business loan being extended to that individual; the individual loan limit of Section 7-9-20(7)(b)(ii)(B), which is the lesser of 10% of the credit union’s capital and


surplus or \$250,000; and the total credit limit for member business loans contained in Section 7-9-20(7)(c), which is 1.25 times the sum of the actual undivided earnings and the actual reserves other than the regular reserves. These three requirements are designed to ensure that the credit unions fulfill their traditional function of providing services to members of the credit union and that these services are provided in a manner that does not put the safety and soundness of the credit unions at risk, thereby protecting the members of the public who are members of the credit union.

### CONCLUSION

The District Court erred when it granted Mountain America Financial Service's Motion for Summary Judgment and concluded that Credit Union Service Organizations are not subject to the Utah Credit Union Act.

G. Edward Leary, Commissioner of the Utah Department of Financial Institutions, respectfully requests that this Court overturn the District Court's Order granting MAFS's Motion for Summary Judgment, which vacated the Commissioner's Order subjecting CUSOs to the Utah Credit Union Act, and uphold the Order of the Commissioner.

DATED this 27<sup>th</sup> day of August, 2002.

  
PERRI ANN BABALIS  
Assistant Attorney General

## CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed, postage prepaid, two (2) true and correct copies of the Brief of Appellant, this 27<sup>th</sup> day of August, 2002, to the following:

J. BRUCE READING  
SCOTT N. RASMUSSEN  
WILLIAM G. WILSON  
SCALLEY & READING, P.C.  
261 EAST 300 SOUTH, SUITE 200  
SALT LAKE CITY, UT 84111

KEVIN G. GLADE  
RAY, QUINNEY & NEBEKER  
36 SOUTH STATE, SUITE 1400  
SALT LAKE CITY, UT 84111

Pessi Ann Batalis



# **ADDENDUM A**

tion,' and the Industrial Loan Guaranty Corporation, the repeal by this act of Title 7, Chapter 8a, Industrial Loan Guaranty Corporation, and the repeal by this act of Title 7, Chapter 20, Thrift Institutions in Possession of Commissioner, do not create, alter, eliminate, or otherwise affect any legal right, claim, or defense that exists, whether or not asserted, as of May

31, 1994, in connection with the creation, operation, supervision, or financial condition of the Industrial Loan Guaranty Corporation or the thrift institutions referenced in Title 7, Chapter 21, Thrifts Settlement Financing. The adjudication of any of these rights, claims, or defenses is subject to Title 7 as it was before this enactment."

## CHAPTER 9

### CREDIT UNIONS

Section		Section	
7-9-1.	Title.		value — Ownership required for membership — Dormant accounts.
7-9-2.	Description of credit unions.	7-9-26.	Loans to members — Investment officers — Investments.
7-9-3.	Definitions.	7-9-27.	Dividends — Interest refunds.
7-9-4.	Repealed.	7-9-28.	Loan application approval or disapproval.
7-9-5.	Powers of credit unions.	7-9-29.	Allowance account for loan losses.
7-9-6.	Formation of corporation to conduct credit union — Approval of commissioner.	7-9-30.	Reserve requirements — "Risk assets" defined.
7-9-7.	Forms furnished by commissioner.	7-9-31.	Minor shareholders — Shares held in trust.
7-9-8.	Repealed.	7-9-32.	Joint accounts — Accounts providing for payment to designated person on death of owner or owners.
7-9-9.	Amendment of articles of incorporation.	7-9-33.	Lien and right of set off of credit union.
7-9-10.	Filing amendment.	7-9-34.	Tax exemption of credit unions.
7-9-11.	Bylaws and amendments to be approved.	7-9-35.	Repealed.
7-9-12.	Contents of bylaws.	7-9-36.	Dissolution.
7-9-13.	Fiscal year.	7-9-37.	Transfer of members of dissolved, merged, consolidated, transferred or acquired credit union.
7-9-14.	Meetings.	7-9-38.	Repealed.
7-9-15.	Appeals from board of directors or committees.	7-9-39.	Merger.
7-9-16.	Members — Eligibility — Liability — Grounds for closing account — Denial of membership.	7-9-40.	Repealed.
7-9-17.	Membership officer — Appointment — Eligibility — Function — Appeals from.	7-9-41.	Publication of applications and reports — Hearing and notice on application to form community or regional credit union.
7-9-18.	Expulsion of member.	7-9-42.	Record requirements.
7-9-19.	Payments to expelled members — Liability of member not relieved by expulsion.	7-9-43.	Board of Credit Union Advisors.
7-9-20.	Board of directors — Powers and duties — Loan limitations.	7-9-44.	Corporate central credit union.
7-9-21.	Executive officers — Election — Power — Terms.	7-9-45.	Insurance of shares and deposits.
7-9-22.	Credit committee — Credit manager — Loan officers and assistants.	7-9-46.	Foreign credit unions — Authorization to do business in state — Supervision — Examination — Actions to prevent unauthorized business.
7-9-23.	Supervisory committee — Duties — Suspension or removal of officer, director, or credit committee member.	7-9-47.	Repealed.
7-9-24.	Compensation of directors, committee members and president — Expense reimbursement.	7-9-48.	Disclosure of share and deposit insurance.
7-9-25.	Shares — Number unlimited — Subscription and payment — Par	7-9-49.	Limitation of personal liability of directors and committee members.
		7-9-50.	General limitation on liability.

**7-9-1. Title.**

This chapter is known as the “Utah Credit Union Act.”

**History:** C. 1953, 7-9-1, enacted by L. 1981, ch. 16, § 10; 1994, ch. 200, § 70.

**Repeals and Reenactments.** — Laws 1981, ch. 16, § 1 repealed former §§ 7-9-1 to 7-9-25, 7-9-27, 7-9-28, and 7-9-30 to 7-9-31 (Utah Code Annotated 1953; 1959, ch. 16, §§ 1, 2; 1959, ch. 17, § 1; 1961, ch. 19, §§ 1 to 4; 1961, ch. 20, § 1; 1967, ch. 17, §§ 1 to 10; 1969, ch. 18, § 9.103 (2) (a); 1973, ch. 9, §§ 1 to 9; 1975, ch. 45, §§ 1 to 8; 1977, ch. 17, §§ 1 to 9; 1977, ch. 19, § 5), relating to credit unions.

Laws 1981, ch. 16, § 10 enacted present §§ 7-9-1 to 7-9-46 and former § 7-9-47. Former §§ 7-9-26 and 7-9-29 were repealed by Laws 1970, ch. 1, § 2 and Laws 1975, ch. 150, § 1, respectively.

**Amendment Notes.** — The 1994 amendment, effective June 1, 1994, made stylistic changes.

**Cross-References.** — Group life insurance for credit unions, § 31A-22-507.

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d Building and Loan Associations § 4.

**C.J.S.** — 12 C.J.S. Building and Loan Associations, Savings and Loan Associations, and

Credit Unions § 1 et seq.

**Key Numbers.** — Building and Loan Associations ⇨ 1 et seq.

**7-9-2. Description of credit unions.**

A credit union is a cooperative, non-profit association, incorporated under this chapter to encourage thrift among its members, to create sources of credit at fair and reasonable rates of interest, and to provide an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition.

**History:** C. 1953, 7-9-2, enacted by L. 1981, ch. 16, § 10.

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d Building and Loan Associations § 4.

**C.J.S.** — 12 C.J.S. Building and Loan Associations, Savings and Loan Associations, and Credit Unions § 4.

**Key Numbers.** — Building and Loan Associations ⇨ 1.

**7-9-3. Definitions.**

As used in this chapter:

(1) “Capital and surplus” means shares, deposits, reserves, and undivided earnings.

(2) “Corporate credit union” means any credit union organized pursuant to any state or federal act for the purpose of serving other credit unions.

(3) “Deposits” means that portion of the capital paid into the credit union by members on which a specified rate of interest will be paid.

(4) “Immediate family” means parents, spouse, surviving spouse, children, and siblings of the member.

(5) “Limited field of membership” means persons belonging to a group or persons designated as eligible for credit union membership who:

(a) have a similar interest, profession, occupation, or formal association with an identifiable purpose;

(b) reside within an identifiable neighborhood, community, rural district, or county;

(c) are employed by a common employer;

(d) are employed within a defined business district, industrial park or shopping center;

(e) are employed by the credit union; or

(f) are members of the immediate family of persons within the above groups.

(6) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts from which owners are permitted to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to other persons or to the owner.

(7) "Shares" means that portion of the capital paid into the credit union by members on which dividends may be paid.

**History:** C. 1953, 7-9-3, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 106.

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d Building and Loan Associations § 4.

**C.J.S.** — 12 C.J.S. Building and Loan Asso-

ciations, Savings and Loan Associations, and Credit Unions § 2.

### 7-9-4. Repealed.

**Repeals.** — Laws 1994, ch. 200, § 88 repeals § 7-9-4, as last amended by Laws 1984, ch. 66, § 17, restricting the use of "credit union" in names, effective June 1, 1994.

### 7-9-5. Powers of credit unions.

In addition to the powers specified elsewhere in this chapter, a credit union may:

(1) make contracts;

(2) sue and be sued;

(3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and equipment as the directors consider necessary or incidental to the operation and business of the credit union, but the value of the real property may not exceed 7% of credit union assets, unless approved by the commissioner;

(4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in whole or in part, necessary or incidental to its operation;

(5) incur and pay necessary and incidental operating expenses;

(6) require an entrance or membership fee;

(7) receive the funds of its members in payment for shares, share certificates, deposits, deposit certificates, share drafts, NOW accounts, and other instruments;

(8) allow withdrawal of shares and deposits, as requested by a member orally to a third party with prior authorization in writing, including, but not limited to, drafts drawn on the credit union for payment to the member

or any third party, in accordance with the procedures established by the board of directors, including, but not limited to, drafts, third-party instruments, and other transaction instruments, as provided in the bylaws;

- (9) charge fees for its services;
- (10) extend credit to its members, at rates established in accordance with the bylaws or by the board of directors;
- (11) extend credit secured by real estate;
- (12) make loan participation arrangements with other credit unions, credit union organizations, or financial organizations in accordance with written policies of the board of directors, if the credit union that originates a loan for which participation arrangements are made retains an interest of at least 10% of the loan;
- (13) sell and pledge eligible obligations in accordance with written policies of the board of directors;
- (14) engage in activities and programs of the federal government or this state or any agency or political subdivision of the state, when approved by the board of directors and not inconsistent with this chapter;
- (15) act as fiscal agent for and receive payments on shares and deposits from the federal government, this state, or its agencies or political subdivisions not inconsistent with the laws of this state;
- (16) borrow money and issue evidence of indebtedness for a loan or loans for temporary purposes in the usual course of its operations;
- (17) discount and sell notes and obligations;
- (18) sell all or any portion of its assets to another credit union or purchase all or any portion of the assets of another credit union;
- (19) invest funds as provided in this title and in its bylaws;
- (20) maintain deposits in insured depository institutions as provided in this title and in its bylaws;
- (21) hold membership in corporate credit unions organized under this chapter or under other state or federal statutes, and hold membership or equity interest in associations and organizations of credit unions, including credit union service organizations;
- (22) declare and pay dividends on shares, contract for and pay interest on deposits, and pay refunds of interest on loans as provided in this title and in its bylaws;
- (23) collect, receive, and disburse funds in connection with the sale of negotiable or nonnegotiable instruments and for other purposes that provide benefits or convenience to its members, as provided in this title and in its bylaws;
- (24) make donations for the members' welfare or for civic, charitable, scientific, or educational purposes as authorized by the board of directors or provided in its bylaws;
- (25) act as trustee of funds permitted by federal law to be deposited in a credit union as a deferred compensation or tax deferred device, including, but not limited to, individual retirement accounts as defined by Section 408, Internal Revenue Code;
- (26) purchase reasonable disability insurance, including accidental death benefits, for directors and committee members through insurance companies licensed in this state as provided in its bylaws;
- (27) provide reasonable protection through insurance or other means to protect board members, committee members, and employees from liability

arising out of consumer legislation such as, but not limited to, truth-in-lending and equal credit laws and as provided in its bylaws;

(28) reimburse directors and committee members for reasonable and necessary expenses incurred in the performance of their duties;

(29) participate in systems which allow the transfer, withdrawal, or deposit of funds of credit unions or credit union members by automated or electronic means and hold membership in entities established to promote and effectuate these systems, if the participation is not inconsistent with the law and rules of the department, and if any credit union participating in any system notifies the department as provided by law;

(30) issue credit cards and debit cards to allow members to obtain access to their shares, deposits, and extensions of credit;

(31) provide any act necessary to obtain and maintain membership in the credit union;

(32) exercise incidental powers necessary to carry out the purpose for which a credit union is organized;

(33) undertake other activities relating to its purpose as its bylaws may provide;

(34) engage in other activities, exercise other powers, and enjoy other rights, privileges, benefits, and immunities authorized by rules of the commissioner; and

(35) act as trustee, custodian, or administrator for Keogh plans, individual retirement accounts, credit union employee pension plans, and other employee benefit programs.

**History:** C. 1953, 7-9-5, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 108; 1989, ch. 267, § 37; 1994, ch. 200, § 71.

**Amendment Notes.** — The 1994 amendment, effective June 1, 1994, rewrote Subsection (10) after “members,” which read “at rates established by the board of directors and establish indexes for variable rate loans based on the credit union’s cost of funds, rates paid on accounts, or other appropriate factors they may

determine”; in Subsection (21), inserted “hold membership or equity interest” and “including credit union service organizations”; and, in Subsection (30), deleted “if any such issuance is not inconsistent with the law and rules of the department” after “extensions of credit.”

**Federal Law.** — Section 408 of the federal Internal Revenue Code, referred to in Subsection (25), is 26 U.S.C. § 408.

#### COLLATERAL REFERENCES

**A.L.R.** — Authority of credit union to engage in “share-draft” business, 14 A.L.R.4th 1355.

### 7-9-6. Formation of corporation to conduct credit union — Approval of commissioner.

(1) Ten or more incorporators belonging to the same group of 200 persons or more having a limited field of membership may, with the approval of the commissioner, form a corporation to conduct a credit union under the provisions of this chapter and under the provisions of Title 16, Chapter 10a, Utah Revised Business Corporation Act, and under the provisions of Title 7, Chapter 1. The provisions of this chapter take precedence over conflicting provisions of other state law governing the formation of the corporation and governing the duties and obligations of the corporation, and of its officers and stockholders or shareholders.

(2) Except for regional and community groups, the commissioner may grant the approval referenced in Subsection (1) when satisfied that the proposed field of operation is favorable to the success of the credit union and that the standing of the proposed membership will give assurance that its affairs will be administered in accordance with this chapter.

(3) The commissioner may grant approval to financially viable applicants, unless he finds that to do so would result in a substantial adverse financial impact on an existing credit union having the same or substantially the same limited field of membership.

**History:** C. 1953, 7-9-6, enacted by L. 1981, ch. 16, § 10; 1992 (3rd S.S.), ch. 6, § 4. **Amendment Notes.** — The 1992 (3rd S.S.) amendment, effective July 1, 1992, substituted “Title 16, Chapter 10a, Utah Revised Business Corporation Act” for “the Utah Business Corporation Act” and “Title 7, Chapter 1” for “Chapter 1” in the first sentence of Subsection (1).

### **7-9-7. Forms furnished by commissioner.**

The commissioner shall furnish all forms and blanks necessary for the formation of the credit union.

**History:** C. 1953, 7-9-7, enacted by L. 1981, ch. 16, § 10.

### **7-9-8. Repealed.**

**Repeals.** — Laws 1994, ch. 200, § 88 repeals § 25, relating to fees for filing articles of incorporation, effective June 1, 1994.

### **7-9-9. Amendment of articles of incorporation.**

(1) The articles of incorporation may be amended at meetings of the shareholders called for that purpose.

(2) A notice of a meeting called for that purpose shall be given by mailing a copy thereof to each member at least 10 days prior to the date of the meeting or by giving notice as provided by the articles of incorporation and the bylaws of the credit union. Notice of meetings shall contain the proposed amendment.

(3) A three-fourths vote of all members present shall be necessary to amend the articles.

(4) No amendment shall be made without the approval of the commissioner.

**History:** C. 1953, 7-9-9, enacted by L. 1981, ch. 16, § 10.

### **7-9-10. Filing amendment.**

The Division of Corporations and Commercial Code shall accept for filing an amendment to the articles of incorporation if it finds that the amendment conforms to law and has been approved by the commissioner.

**History:** C. 1953, 7-9-10, enacted by L. 1981, ch. 16, § 10; 1984, ch. 66, § 19.

**Cross-References.** — Division of Corpora-

tions and Commercial Code, Title 13, Chapter 1a.

**7-9-11. Bylaws and amendments to be approved.**

(1) No credit union shall receive payments on shares, deposits, or certificates, or make any loans or other transactions, until its bylaws have been approved in writing by the commissioner.

(2) Amendments to its bylaws shall not become operative until the bylaws have been approved by the commissioner.

**History:** C. 1953, 7-9-11, enacted by L. 1981, ch. 16, § 10.

**7-9-12. Contents of bylaws.**

The bylaws of a credit union shall contain at least the following:

- (1) the name of the credit union;
- (2) the purpose for which it was formed;
- (3) the conditions of domicile or vocation which qualify persons or co-operative societies for membership;
- (4) the number of directors and procedures for their election;
- (5) the term of directors;
- (6) the duties of the officers;
- (7) the time of year of the annual meeting of members;
- (8) the manner in which members shall be notified of meetings;
- (9) the number of members which shall constitute a quorum at meetings;
- (10) the manner of amending;
- (11) the manner in which officers may act as surety; and
- (12) such other matters, rules, and regulations as the board of directors consider necessary.

**History:** C. 1953, 7-9-12, enacted by L. 1981, ch. 16, § 10.

**7-9-13. Fiscal year.**

The fiscal year of the credit union shall end at the close of business on December 31 of each year.

**History:** C. 1953, 7-9-13, enacted by L. 1981, ch. 16, § 10.

**7-9-14. Meetings.**

(1) The annual meeting of the credit union shall be held at such time and place as the bylaws prescribe.

(2) Special meetings may be held as the bylaws prescribe.

(3) Notice of all meetings of the credit union shall be given as the bylaws prescribe.

(4) In the absence of any provisions in the bylaws, special meetings of the members of the credit union may be called by a majority of the members of the corporation.



History: C. 1953, 7-9-14, enacted by L.  
1981, ch. 16, § 10.

#### **7-9-15. Appeals from board of directors or committees.**

Appeals from decisions of the board of directors, supervisory committee, or credit committee shall be made as the bylaws prescribe.

History: C. 1953, 7-9-15, enacted by L.  
1981, ch. 16, § 10.

#### **7-9-16. Members — Eligibility — Liability — Grounds for closing account — Denial of membership.**

(1) Any person within the limited field of membership of a credit union may be admitted to membership, upon:

- (a) payment of any required entrance or membership fee;
- (b) payment for one or more shares; and
- (c) compliance with this chapter and the bylaws of the corporate credit union.

(2) Members of the credit union may not be held personally or individually liable for payment of the credit union's debts.

(3) The credit union may close the account of any member whose actions have resulted in any financial loss to the credit union.

(4) Denial of membership is not considered a denial of credit.

History: C. 1953, 7-9-16, enacted by L.  
1981, ch. 16, § 10; 1983, ch. 8, § 109.

#### **7-9-17. Membership officer — Appointment — Eligibility — Function — Appeals from.**

(1) One or more membership officers may be appointed by the board of directors.

(2) A membership officer may approve applications for membership under conditions prescribed by the board of directors and the bylaws.

(3) A membership officer shall be appointed from among the members of the credit union.

(4) A president, vice president, or loan officer may not serve as a membership officer.

(5) The membership officer authorized to approve membership shall submit to the board of directors at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, and other related information as the board or the bylaws may require.

(6) A person denied membership by a membership officer may appeal the denial to the board of directors.

History: C. 1953, 7-9-17, enacted by L.  
1981, ch. 16, § 10.

**7-9-18. Expulsion of member.**

(1) The board of directors may expel from the credit union any member who has not carried out his engagements with the credit union, or neglected or refused to comply with the credit union board policies, provisions of this chapter, or of the credit union bylaws.

(2) If the member whose expulsion is under consideration is a member of the board of directors or credit committee, the supervisory committee shall call a special meeting of the members to hear the facts and act upon the proposed expulsion.

**History:** C. 1953, 7-9-18, enacted by L. 1981, ch. 16, § 10.

**7-9-19. Payments to expelled members — Liability of member not relieved by expulsion.**

(1) Except in the case of liquidation or dissolution, the amount paid in on shares or deposited by members who have been expelled shall be paid to them with all accrued interest, in the order of expulsion.

(2) Payment shall be made only as funds become available.

(3) All amounts due the credit union by the expelled member shall be deducted by the credit union before any amounts are paid to the expelled member.

(4) Expulsion shall not relieve a member from any liability to the credit union.

**History:** C. 1953, 7-9-19, enacted by L. 1981, ch. 16, § 10.

**7-9-20. Board of directors — Powers and duties — Loan limitations.**

(1) At annual meetings the members shall elect from their number a board of directors consisting of an odd number of not less than five members.

(2) The bylaws may provide balloting by mail or ballot box, or both.

(3) Voting may not be by proxy.

(4) Members of the board of directors shall hold office for the terms prescribed in the bylaws.

(5) The board of directors shall meet at least monthly.

(6) The board of directors shall have the general management of the affairs, funds, and records of the credit union. In particular, they shall:

(a) act upon applications for membership;

(b) act upon expulsion of members;

(c) fix the amount of surety bond required of each officer or employee having custody of funds;

(d) determine the rate of interest or dividend allowed on shares and deposits;

(e) determine the terms and conditions of credit granted to members;

(f) lend money, borrow money, and pledge security for any borrowing;

- (g) fill vacancies in the board of directors or in the credit committee, if applicable, or in the supervisory committee until the election and qualification of officers to fill those vacancies;
  - (h) appoint up to two alternate directors as provided in the bylaws;
  - (i) fix the amount of the entrance fee;
  - (j) declare dividends and their amount;
  - (k) make recommendations to meetings of the members relative to amendments to the articles of incorporation, and transact any other business of the credit union; and
  - (l) fix the maximum amount of credit, secured and unsecured, that may be extended to any one member, up to the limit described in Subsection (7).
- (7) (a) Except as provided in Subsection (7)(b), and unless the board of directors sets a lower limit, the maximum amount of credit that may be outstanding or available to any one member at any one time may not exceed:
- (i) the greater of \$1,000 or 15% of capital and surplus up to a total of \$25,000 for a credit union with less than \$2,000,000 in capital and surplus; or
  - (ii) the greater of \$25,000, 1% of capital and surplus, or 25% of the regular reserve for a credit union with \$2,000,000 or more in capital and surplus.
- (b) A credit union may loan to a member an amount in excess of the limits described in Subsection (7)(a) only if the excess portion is fully secured by share or deposit savings in the credit union.
- (8) As provided in this chapter or in the credit union bylaws, the board of directors:
- (a) within 30 days following the annual meeting of the members, shall appoint a supervisory committee consisting of not less than three members;
  - (b) within 30 days after the annual meeting of the members, shall appoint a credit committee consisting of not less than three members, or may appoint a credit manager, in lieu of a credit committee;
  - (c) shall appoint a president to serve as general manager;
  - (d) shall have an executive committee;
  - (e) may appoint an investment officer;
  - (f) shall elect a secretary;
  - (g) may appoint other officers and committees that it considers necessary;
  - (h) shall establish written credit policies, loan security requirements, loan investment, personnel, and collection policies; and
  - (i) on or before January 31 of each year, shall provide for share insurance for the shares and deposits of the credit union from the National Credit Union Administration or successor federal agency.
- (9) No person may be a member of more than one committee except as otherwise provided in this chapter or in the credit union bylaws.
- (10) The president and secretary may not be the same person.

**History:** C. 1953, 7-9-20, enacted by L. 1981, ch. 16, § 10; 1987, ch. 220, § 5; 1994, ch. 200, § 72.

**Amendment Notes.** — The 1994 amend-

ment, effective June 1, 1994, rewrote the section to such an extent that a detailed analysis is impracticable.

**7-9-21. Executive officers — Election — Power — Terms.**

(1) At their first meeting held within 30 days following each annual meeting of the members, the board of directors shall elect from their own number a board chairman, one or more vice chairmen, and a secretary. These officers shall be the executive officers of the credit union.

(2) The executive officers may act for the board in matters delegated to them by the board, as provided in the bylaws, however, the president appointed by the board, who may be a member of the board, shall take active direction of the credit union's operation, as prescribed in this chapter or in the bylaws.

(3) The terms of the executive officers shall be one year or until their successors are chosen by the board of directors and have been duly qualified.

**History:** C. 1953, 7-9-21, enacted by L. 1981, ch. 16, § 10.

**7-9-22. Credit committee — Credit manager — Loan officers and assistants.**

(1) All members of the credit committee shall hold office for terms prescribed in the bylaws. No director may be a member of the credit committee.

(2) A credit manager appointed in lieu of a credit committee has the same authority as a credit committee as prescribed in the credit union bylaws. The credit union president may be appointed as credit manager.

(3) The board of directors may appoint one or more loan officers and necessary assistants.

(a) Loan officers shall act under the supervision and direction of the president or the president's designee.

(b) The loan officer or credit manager may approve or disapprove loans, lines of credit or advances from lines of credit and approve withdrawals of obligated members only as prescribed in writing by the board of directors.

(c) All loans approved by the loan officer shall be reviewed by the credit committee during one of its regular meetings.

(d) If the board of directors appoints a credit manager in lieu of a credit committee, all such loans approved by the loan officer shall be reviewed by the credit manager.

(e) Loan officers or the credit manager shall be compensated in accordance with the personnel policy. If the president serves as credit manager, the president may not receive dual compensation for serving in both capacities.

(4) Other duties and responsibilities of the credit committee, loan officer, or credit manager may be prescribed in the bylaws.

**History:** C. 1953, 7-9-22, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 110.

**7-9-23. Supervisory committee — Duties — Suspension or removal of officer, director, or credit committee member.**

(1) Appointees to the supervisory committee shall hold office until the next annual meeting of the members and until successors are appointed. One

member of the board of directors, except the chairman of the board and the president, may be appointed to the supervisory committee. The president and other employees of the credit union may not be appointed to the supervisory committee.

(2) (a) The commissioner may remove any member of the supervisory committee for any violation of this chapter or the bylaws of the credit union, failure to fulfill the duties of office, malfeasance, or maladministration in office.

(b) The board of directors shall fill any vacancy created by removal of a supervisory committee member.

(3) It is the duty of the supervisory committee to:

(a) make or cause to be made an examination of the affairs of the credit union at least annually, including an inspection of the credit union's books, securities, cash, accounts, and loans;

(b) ascertain that action by the board of directors and credit committee, or credit manager and loan officers, complies with the law and the credit union's bylaws;

(c) make or cause to be made supplemental audits and examinations it considers necessary, or as required by the commissioner or board of directors;

(d) make a written report to the board of directors of its findings following each audit or examination; and

(e) make or cause to be made annually a verification of member accounts, by statistical sampling or otherwise, in accordance with generally accepted accounting principles, including a complete verification at least every two years.

(4) (a) The supervisory committee may, by majority vote, recommend to the board of directors:

(i) the suspension or removal of a credit union officer or a member of the credit committee; or

(ii) any other action the board of directors could lawfully take.

(b) Within 30 days after submission of the recommendation to the board of directors, if the board fails to adopt the material aspects of the recommendation, the supervisory committee may, by unanimous vote and after notifying the commissioner, call a meeting of the credit union members to consider the recommendation. The members may, by majority vote of those present at the meeting, adopt the supervisory committee's recommendation.

(5) (a) The supervisory committee may, by unanimous vote, suspend or remove a director for any violation of this chapter or the bylaws of the credit union, malfeasance, or maladministration in office.

(b) Within 30 days after the suspension or removal of a director, the supervisory committee shall, after notifying the commissioner, call a special meeting to present the matter to the membership of the credit union. The members may, by majority vote of those present, ratify or reject the action of the supervisory committee. If the members vote to remove the director, they may at the same meeting elect a replacement. If the members vote to reject the suspension or removal, they shall reinstate the director.

(6) The bylaws may prescribe other duties and responsibilities of the supervisory committee.

**History:** C. 1953, 7-9-23, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 111; 1994, ch. 200, § 73.

**Amendment Notes.** — The 1994 amendment, effective June 1, 1994, subdivided Subsection (2); in Subsection (2)(a), substituted the language following “supervisory committee” for “when they fail to meet their responsibilities as

required by law”; in Subsection (3)(e), substituted “including a complete verification at least every two years” for “If a complete verification is made, the verification shall be made not less than once in every three years”; added Subsection (4) and renumbered the following subsections accordingly; rewrote Subsection (5); and made stylistic changes.

#### **7-9-24. Compensation of directors, committee members and president — Expense reimbursement.**

(1) No member of the board of directors, or of the credit committee, or supervisory committee may receive any compensation for services as a member unless authorized by the bylaws.

(2) Any member of a credit union who incurs any expenses or performs any service authorized by the board of directors may be compensated or reimbursed for the expenses or services in an amount approved by the board of directors.

(3) The board of directors shall determine the compensation for a president appointed as general manager.

**History:** C. 1953, 7-9-24, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 112.

#### **7-9-25. Shares — Number unlimited — Subscription and payment — Par value — Ownership required for membership — Dormant accounts.**

(1) The capital of the credit union shall be unlimited in amount.

(2) Shares of the credit union may be subscribed and paid for in cash or its equivalent in a manner prescribed in the bylaws.

(3) The par value of each share of a credit union shall be determined by the board of directors in multiples of \$5 as prescribed in the bylaws.

(4) Each member of the credit union shall subscribe to at least one share and pay the initial installment thereon. The par value of the share shall be paid for within six months.

(5) The board of directors may close a member’s account when the share par value is not paid within the required period or the par value is not maintained. Notice in writing shall be mailed to the member at the last known address and shall contain a statement that the member may increase payment or voluntarily close the account within 60 days of receipt of the notice.

(6) When a member’s account becomes dormant or is reasonably presumed to be dormant and abandoned, as provided in Chapter 1, the credit union by resolution of the board of directors may close the account and transfer the credits of the account to an account for unclaimed shares. Thereafter the credit union may not pay dividends or interest on the account, as provided in the bylaws, until the funds in the account escheat to the state of Utah. Prior to transferring the member’s dormant and abandoned account to the credit union unclaimed shares account, the credit union shall mail a written notice to the member at the member’s last known address stating that this action will be taken within 30 days of the date of the notice.

**History:** C. 1953, 7-9-25, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 113.

**Cross-References.** — Uniform Unclaimed Property Act, Title 78, Chapter 44.

### **7-9-26. Loans to members — Investment officers — Investments.**

(1) The capital and surplus of the credit union shall be loaned to the members for the purposes and upon the endorsements or security and the terms as the bylaws provide, or, in the absence of any provision in the bylaws, as the credit committee or credit manager approves.

(2) Within 30 days after the annual meeting of the members the board of directors may appoint one or more investment officers who shall have responsibilities for the credit union investment portfolio based upon policy established by the board of directors and as provided in this chapter or in the bylaws.

(3) The credit union by action of its board of directors may invest its funds as follows:

(a) in securities, obligations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the United States of America or any of its agencies, or in any trusts established by investing directly or collectively in these instruments;

(b) in obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories organized by Congress, or any of their political subdivisions;

(c) in certificates of deposit or accounts issued by a federally insured state or national depository institution;

(d) in loans to, or in shares or deposits of, other federally insured credit unions, central credit unions, corporate credit unions, or a central liquidity facility established under state or federal law;

(e) in shares, stocks, loans, or other obligations of any organization, corporation, or association, if the membership or ownership of the organization, corporation, or association is primarily confined or restricted to credit unions, and if the purpose for which it is organized is to strengthen or advance the development of credit unions or credit union organizations; and

(f) in other investments that are reasonable and prudent.

**History:** C. 1953, 7-9-26, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 114; 1994, ch. 200, § 74.

**Amendment Notes.** — The 1994 amendment, effective June 1, 1994, rewrote Subsection (3)(c) which read “in certificates of deposit or passbook accounts issued by a state or national bank or mutual savings bank, insured by the federal deposit insurance corporation”; de-

leted former Subsections (3)(d) and (3)(g), which authorized investments in shares and accounts of savings and loan associations insured by the federal savings and loan insurance corporation and in accounts of insured or guaranteed industrial loan corporations with thrift powers, and renumbered the remaining subsections accordingly; and made stylistic changes.

### **7-9-27. Dividends — Interest refunds.**

(1) After allocations to required reserves, a credit union may declare and pay a dividend from current earnings and undivided earnings at the discretion of the board of directors and as provided in its bylaws.

(2) Dividends may be paid at different rates on different types or sizes of accounts.

(3) The board of directors may authorize any interest refunds on such classes of loans and under such conditions as the board authorizes.

(4) A credit union need not pay a dividend on any account less than the par value of one share.

**History:** C. 1953, 7-9-27, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 115.

### **7-9-28. Loan application approval or disapproval.**

(1) As provided in this chapter or in the credit union bylaws, the credit committee, credit manager, or loan officer shall approve every loan or advance made to members by the credit union, except as otherwise provided in this chapter, and shall approve in writing all withdrawals of pledges.

(2) All loans or withdrawals approved shall be done in accordance with loan policy established by the board of directors.

(3) No loan may be made unless the credit committee, credit manager, or loan officer is satisfied that it is reasonably expected to benefit the borrower.

(4) Loans approved or disapproved by the credit committee shall receive a majority approval of the members of the committee present. A quorum of the credit committee shall be present when the loan is approved or disapproved. A minimum quorum is two members.

(5) (a) A loan officer may approve a loan if he does so in accordance with the loan policy established by the board of directors.

(b) A board of directors' loan policy may require loan approval of more than one loan officer depending upon the amount of the loan and other factors as required by the board of directors.

(6) A loan officer or officers may disapprove a loan application in accordance with the loan policy established by the board of directors.

(7) The board of directors of a credit union having a credit manager in lieu of a credit committee may authorize the credit manager to approve or disapprove loan applications if he or she does so in accordance with loan policy established by the board of directors.

(8) A member of the board of directors, executive committee, credit committee, or supervisory committee may act as a surety indirectly or directly for his or her spouse and children only.

(9) (a) A loan application of members of the credit committee, or the credit manager, or of their dependents when they serve as a surety, must be approved by a majority of the members of the board of directors.

(b) A loan application of any officer may be approved by the credit committee, credit manager, or loan officer if the loan will be fully secured by shares or deposits.

(c) A loan application of a credit manager serving in lieu of a credit committee must be approved by the board of directors.

(d) A loan application of a loan officer may be approved by the credit manager of a credit union not having a credit committee, if done with the authorization of and pursuant to loan policy established by the board of directors.



**History:** C. 1953, 7-9-28, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 116.

### **7-9-29. Allowance account for loan losses.**

As of January 1, 1984, a credit union shall establish an allowance account for loan losses subject to regulation as the commissioner may prescribe.

**History:** C. 1953, 7-9-29, enacted by L. 1983, ch. 8, § 117. enacted by Laws 1981, ch. 16, § 10, providing that there is no penalty for prepayment of loan,

**Repeals and Reenactments.** — Laws 1983, ch. 8, § 117 repeals former § 7-9-29, as and enacts the present section.

### **7-9-30. Reserve requirements — “Risk assets” defined.**

(1) As used in this section, the words “risk assets” means all assets except the following:

- (a) cash on hand;
- (b) deposits and shares in federal or state banks, savings and loan associations, and credit unions;
- (c) assets which are insured by any agency of the federal government, the Federal National Mortgage Association, or the Government [National] Mortgage Association;
- (d) loans to students insured under Title IV, Part B of the Higher Education Act of 1965, 20 U.S.C. Sections 1071 et seq. or similar state insurance programs;
- (e) loans insured under Title 1 of the National Housing Act, 12 U.S.C. Sections 1702 et seq. by the Federal Housing Administration;
- (f) shares or deposits in corporate credit unions as provided in Section 7-9-44, or of any other state act, or of the Federal Credit Union Act;
- (g) accrued interest on nonrisk investments; and
- (h) loans fully guaranteed by shares or deposits.

(2) At the end of each accounting period, after payment of any interest refunds, the credit union shall determine the gross income from member loans and from this amount shall set aside a regular reserve in accordance with Subsections (a), (b), and (c).

(a) A credit union in operation for more than four years and having assets of \$500,000 or more shall set aside a minimum of 10% of gross income from member loans until the regular reserve equals at least 4% of the total of outstanding loans and risk assets, then a minimum of 5% of gross income from member loans until the regular reserve equals at least 6% of the total of outstanding loans and risk assets.

(b) A credit union in operation for less than four years or having assets of less than \$500,000 shall set aside a minimum of 10% of gross income from member loans until the regular reserve equals at least 7½% of the total of outstanding loans and risk assets, then a minimum of 5% of gross income from member loans until the regular reserve equals at least 10% of the total of outstanding loans and risk assets.

(c) The regular reserve belongs to the credit union and shall be used to build equity and to meet contingencies or losses when authorized by the commissioner or the supervisor of credit unions.

(d) The commissioner may temporarily reduce or waive the requirements for the regular reserve placement if he finds it to be in the best interest of the credit union.

**History:** C. 1953, 7-9-30, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 118; 1989, ch. 267, § 38; 1990, ch. 93, § 1.

**Federal Law.** — For creation and powers of Federal National Mortgage Association and

Government National Mortgage Association, referred to in Subsection (1)(c), see 12 U.S.C. § 1717.

The Federal Credit Union Act, cited in Subsection (1)(f), is 12 U.S.C. § 1751 et seq.

### **7-9-31. Minor shareholders — Shares held in trust.**

(1) Shares may be issued to and deposits received in the name of a minor, and these shares and deposits may, in the discretion of the board of directors, be withdrawn by the minor or by his parent or guardian.

(2) If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of the holder as trustee for the beneficiary. If no other notice of the existence and terms of the trust is given in writing to the credit union, the shares or deposits held in trust may, upon the death of the trustee, be withdrawn by the person for whom the deposit was made, or by the legal representative of that person.

(3) Shares, share certificates, deposits, and deposit certificates may be held in the name of a member in trust for a beneficiary who is a member, or in the name of a non-member in trust for a beneficiary who is a member. Beneficiaries may be minors, but no beneficiary, unless he or she is a member, shall be permitted to vote, obtain loans, hold office, or be required to pay an entrance or membership fee.

(4) Payment of part or all of the trust account to the party in whose name the account is held shall, to the extent of such payment, discharge the liability of the credit union to that party and to the beneficiary and other claimants, if any.

(5) If a named trustee dies, and if the credit union has been given no written notice of the existence or terms of a trust agreement, account funds and any dividends or interest shall be paid to the beneficiary.

**History:** C. 1953, 7-9-31, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 119.

**Cross-References.** — Legal capacity of children, Title 15, Chapter 2.

### **7-9-32. Joint accounts — Accounts providing for payment to designated person on death of owner or owners.**

(1) If a deposit or share account is opened in any credit union in the name of two or more persons, whether minor or adult, in such form that the money in the account is payable to the survivor or survivors, the account and all additions to it are considered held by these persons as joint tenants or owners.

(2) The money in a joint account may be paid to or on the receipt or withdrawal order of any one of the joint owners during their lifetimes or to or on receipt of withdrawal order of any one of the survivors of them after the death of any one or more of them upon presentation of the pass or account book or other evidence of ownership as required by the bylaws of the credit union. The opening of the account in such form shall, in the absence of fraud, undue influence, or legal proof of other intent, be conclusive evidence in any action or

proceedings concerning said account of the intention of the parties to the account to vest title to such account and the additions thereto in such survivor and survivors.

(3) By written instructions given to the credit union by all parties to the account, the signature of more than one of such persons during their lifetime or of more than one of the survivors after the death of any one of them may be required on a receipt or withdrawal order, in which case the credit union shall pay the moneys in the account only in accordance with such instructions, but no such instructions shall limit the right of the survivor or survivors to receive the money in the account.

(4) Payment of all or part of the money in a joint account as provided in Subsections (2) and (3) shall discharge the credit union from liability with respect to the money paid prior to receipt by the credit union of a written notice from any one of the joint owners directing the credit union not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of such notice a credit union may refuse, without incurring liability, to honor any receipt or withdrawal on the account pending determination of the rights of the parties. No credit union paying any survivor shall be liable for any estate, inheritance, or succession taxes.

(5) The pledge to a credit union of all or part of a share account in joint tenancy or ownership signed by that person or those persons who are authorized in writing to make withdrawals from the account shall, unless the terms of the share account provide specifically to the contrary, be a valid pledge and transfer to the credit union of that part of the account pledged, and shall not operate to sever or terminate the joint and surviving ownership quality of all or any part of the account.

(6) Any credit union may issue share or deposit accounts in the name of one or more persons with the provision that upon the death of the owner or owners thereof the proceeds shall be the property of the person or persons designated by the owner or owners and shown by the records of such credit union, but such proceeds shall be subject to the debts of the decedent and the payment of Utah inheritance tax, if any. However, upon the receipt of acquittance of the person so designated or six months having elapsed from the date of death and no claim on the account having been made for taxes, the credit union may make payment to the persons designated by the deceased owner or owners and having done so is discharged from further obligation and relieved from all further liability for payment made under this subsection.

**History:** C. 1953, 7-9-32, enacted by L. 1981, ch. 16, § 10.

**Cross-References.** — Multiple party accounts, §§ 75-6-101 to 75-6-115.

#### NOTES TO DECISIONS

##### **Joint accounts.**

##### **—Title to funds.**

The opening of a joint savings account carried by a credit union was not conclusive evidence of the parties' intentions to vest title to the funds in the account in both of them and the survivor of them. The statements of joint ownership with rights of survivorship on the account forms gave rise to a presumption of

ownership in the parties and the survivor of them, which could have been overcome by clear and convincing evidence showing that one of the parties contributed the whole amount to the account and that it was not intended that title vest in the noncontributor until the contributor's death. *Culley v. Culley*, 17 Utah 2d 62, 404 P.2d 657 (1965) (decided under prior law).

**7-9-33. Lien and right of set off of credit union.**

The credit union shall have a lien and right of set off on the shares, deposits, and accumulated dividends or interest in any member's individual, joint, multiple party, trust, or transaction accounts for any sum due the credit union from the members. This statutory lien does not apply if the application of the lien will cause a loss of a tax incentive for the member or is otherwise prohibited by law.

**History:** C. 1953, 7-9-33, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 120.

**7-9-34. Tax exemption of credit unions.**

(1) Except as otherwise provided in this section, credit unions organized under this chapter or prior law are exempt from taxation.

(2) Any real property or any tangible personal property owned by the credit union shall be subject to taxation to the same extent as other similar property is taxed.

(3) For purposes of the corporate tax, credit unions shall be governed by Section 59-7-102.

(4) This section does not exempt credit unions from sales or use taxes, or fees owed to the department in accordance with this title and rules of the department.

**History:** C. 1953, 7-9-34, enacted by L. 1981, ch. 16, § 10; 1990, ch. 177, § 4; 1994, ch. 178, § 1.

**Amendment Notes.** — The 1994 amendment, effective January 1, 1994, added Subsection (3), adding the other subsection designations; added "Except as otherwise provided in this section" at the beginning of Subsection (1); and made related stylistic changes.

**Retrospective Operation.** — Laws 1994, ch. 178, § 11 provides: "This act has retrospec-

tive operation for taxable years beginning on or after January 1, 1994. For a corporation electing a 52-53 week accounting period as provided in Section 441(f), Internal Revenue Code, and which has a taxable year beginning on or after December 25, 1993, the corporation shall be considered to have a taxable year beginning on January 1, 1994, for purposes of this act." Section 441(f) of the Internal Revenue Code is 26 U.S.C. § 441(f).

**7-9-35. Repealed.**

**Repeals.** — Laws 1983, ch. 8, § 127 repeals § 7-9-35, as enacted by Laws 1981, ch. 16, § 10, relating to suspension of operations of a credit union

**7-9-36. Dissolution.**

(1) A credit union may be dissolved upon a majority vote of the entire membership.

(2) A copy of a notice of a special meeting to consider the matter shall be mailed to the members of the credit union at least ten days before the date of the meeting.

(3) Any member not present at the meeting may within the following 20 days vote for or against dissolution by signing a statement approved by the commissioner. A vote cast in this manner has the same force and effect as if cast at the meeting. A member not voting within the 20-day period is considered to be in favor of the dissolution.

(4) The officers of the credit union may appoint a liquidating agent, subject to the approval of the commissioner, who has the right to exercise all the powers of the dissolved credit union to wind up its affairs. If the liquidating agent is other than the Utah League of Credit Unions or the National Credit Union Administration, the liquidator shall provide a bond or other security, as required by the commissioner, for the faithful discharge of duties in connection with the liquidation, including accounting for all money collected.

(5) Upon the vote required under this section, a certificate of dissolution, signed by the chair of the board and the secretary, shall be filed with the commissioner and shall state the vote cast in favor of dissolution, the proposed date upon which the credit union will cease to do business, the names and addresses of the directors and officers of the credit union and the name and address of the liquidating agent appointed by the officers of the credit union. The commissioner shall approve the dissolution unless he finds that the procedures set forth in this section have not been properly followed.

(6) Upon approval, the credit union shall cease to do business except for the purpose of discharging its debts, collecting and distributing assets, and doing all acts required to adjust, wind up, and dissolve its business and affairs. It may sue and be sued for the purpose of enforcing debts or obligations until its affairs are fully adjusted.

(7) If the board or the liquidating agent determines that all assets from which a reasonable return could be expected have been liquidated and distributed, it shall execute a certificate of dissolution in a form approved by the commissioner and file it with the department and the Division of Corporations and Commercial Code. After the certificate has been filed, the credit union is dissolved.

**History:** C. 1953, 7-9-36, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 121; 1989, ch. 267, § 39; 1994, ch. 200, § 75.

**Amendment Notes.** — The 1994 amendment, effective June 1, 1994, inserted the designation for Subsection (1) and renumbered the following subsections accordingly; in Subsection (7), substituted “department and the Divi-

sion of Corporations and Commercial Code” for “lieutenant governor” at the end of the first sentence and deleted “the lieutenant governor shall forward it to the commissioner and” after “filed” in the second sentence; and made stylistic changes.

**Cross-References.** — Lieutenant governor, Title 67, Chapter 1a.

### **7-9-37. Transfer of members of dissolved, merged, consolidated, transferred or acquired credit union.**

Members of a dissolved, merged, consolidated, transferred, or acquired credit union may become members of another existing credit union with a related field of membership or geographical location as approved by the commissioner.

**History:** C. 1953, 7-9-37, enacted by L. 1983, ch. 8, § 122.

**Repeals and Reenactments.** — Laws 1983, ch. 8, § 122 repeals former § 7-9-37, as

enacted by Laws 1981, ch. 16, § 10, relating to appeal of order of liquidation, and enacts the present section.

### 7-9-38. Repealed.

**Repeals.** — Laws 1983, ch 8, § 127 repeals § 10, relating to procedure for liquidation of a § 7-9-38, as enacted by Laws 1981, ch 16, credit union

### 7-9-39. Merger.

(1) Any credit union may merge with another credit union under the existing charter of the other credit union when all of the following have occurred:

(a) the majority of the directors of each merging credit union votes in favor of the merger plan;

(b) the commissioner approves the merger plan;

(c) the majority of the members of each merging credit union present at a meeting called for the purpose of considering the merger plan votes to approve it, but a vote of the membership of the surviving credit union is not required if its board of directors determines that the merger will not have any significant effect on the organization, membership, or financial condition of the credit union; and

(d) the National Credit Union Administration or its successor federal deposit insurance agency approves the merger plan and commits to insure deposits of the serving credit union.

(2) Upon merger, the chair of the board and secretary of each credit union shall execute, and file with the department, a certificate of merger setting forth:

(a) the time and place of the meeting of the board of directors at which the plan was approved;

(b) the vote by which the directors approved the plan;

(c) a copy of the resolution or other action by which the plan was approved;

(d) the time and place of the meeting of the members at which the plan was approved;

(e) the vote by which the members approved the plan; and

(f) the effective date of the merger, which shall be the date on which the last approval or vote required under Subsection (1) was obtained, or a later date specified in the merger plan.

(3) On the effective date of any merger, all property, property rights, and interests of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the surviving credit union.

(4) This section shall be interpreted, whenever possible, to permit a credit union chartered under this chapter to merge with a credit union chartered under any other law, regardless of commonality, if the preservation of membership interest is concerned.

**History:** C. 1953, 7-9-39, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 123; 1989, ch. 267, § 40; 1994, ch. 200, § 76.

**Amendment Notes.** — The 1994 amend-

ment, effective June 1, 1994, rewrote the section to such an extent that a detailed analysis is impracticable

**7-9-40. Repealed.**

**Repeals.** — Laws 1991, ch. 133, § 37 repeals § 7-9-40, as enacted by Laws 1981, ch. 16, § 10, relating to filing reports of financial conditions and the penalty for failure to file, effective July 1, 1991. For present comparable provisions, see §§ 7-1-317, 7-1-318.

**7-9-41. Publication of applications and reports — Hearing and notice on application to form community or regional credit union.**

(1) If the commissioner requires publication of an application to organize a credit union, publication may be given by publishing in a newspaper having general circulation where the credit union will be located and by posting a copy of the application in a conspicuous place at the office of the applicant and by mailing or delivering written notice to other credit unions who may be affected by the granting of the application.

(2) If the commissioner requires publication of the credit union call reports or report of condition, publication may be given by publishing in a newspaper having general circulation in the county where the credit union is located and by posting a copy of the call report in a conspicuous place at the office of the credit union, or by mailing or delivering a copy of the credit union call report or report of condition to the members of the credit union.

(3) If the applicant desires to form a community or regional credit union, the commissioner may require a hearing and may prescribe the type of notice to be given by the applicant.

**History:** C. 1953, 7-9-41, enacted by L. 1981, ch. 16, § 10.

**7-9-42. Record requirements.**

(1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with rules the commissioner may prescribe or in accordance with Chapter 1.

(2) In prescribing these rules, the commissioner shall consider the size of a credit union and its ability to comply.

(3) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the rules.

(4) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union.

**History:** C. 1953, 7-9-42, enacted by L. 1981, ch. 16, § 10.

**7-9-43. Board of Credit Union Advisors.**

There is created a Board of Credit Union Advisors of five members to be appointed by the governor.

(1) Members of the board shall be individuals who are familiar with and associated in the field of credit unions.

(2) At least three of the members shall be persons who have had three or more years of experience as a credit union officer and shall be selected from a list submitted to the governor by the Utah League of Credit Unions.

(3) The board shall meet quarterly.

(4) A chairman of the advisory board shall be chosen each year from the membership of the advisory board by a majority of the members present at the board's first meeting each year.

(5) As terms of appointed members expire their successors shall be appointed for terms to expire the first Monday in March five years thereafter.

(6) All members shall serve until their successors are appointed and qualified.

(7) When a vacancy occurs, the vacancy shall be filled by the governor in the same manner as original appointments were made and the newly appointed member shall serve for the unexpired term of his or her predecessor.

(8) Meetings of the advisory board shall be held on the call of the chairman. A majority of the members of the board shall constitute a quorum.

(9) The Board of Credit Union Advisors has the duty to advise the governor and commissioner on problems relating to credit unions and to foster the interest and cooperation of credit unions in the improvement of their services to the people of the state of Utah.

**History:** C. 1953, 7-9-43, enacted by L. 1981, ch. 16, § 10; 1989, ch. 267, § 41.

#### **7-9-44. Corporate central credit union.**

(1) A credit union in which all credit unions, the Utah League of Credit Unions and its affiliates are eligible for membership may be established in this state and shall be known as a corporate central credit union.

(2) The corporate central credit union has all the powers and rights granted credit unions established under this chapter. The maximum loan by a corporate central credit union shall be established in the corporate central credit union bylaws.

(3) Beginning January 1, 1984, and at the end of each dividend period, the corporate central credit union, in lieu of a regular reserve as provided in Section 7-9-30, shall transfer 2% of its gross earnings to its central reserve until the reserve equals 1½% of total assets. If the central reserve falls below 1½% of total assets, it shall be replenished by regular transfers of 2% of gross earnings or by contributions, whichever is less, in such amounts as are needed to maintain the central reserve at 1½% of total assets.

(4) Charges may be made against the central reserve to the extent permitted against a regular reserve. No other charges may be made against the central reserve, except as authorized in writing by the commissioner.

(5) The purposes of the corporate central credit union are:

(a) to accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;

(b) to act as an intermediary for credit union funds between members, other corporate credit unions, other financial institutions, and government agencies;



(c) to obtain liquid funds from other credit union organizations, financial intermediaries, and other sources;

(d) to foster and promote, in cooperation with other state, regional, and national corporate credit unions and credit union organizations or associations, the economic security, growth, and development of member credit unions; and

(e) to perform other financial services of benefit to its members authorized by the commissioner.

(6) The corporate central credit union is exempt from supervision fees but is subject to examination fees.

**History:** C. 1953, 7-9-44, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 124; 1989, ch. 267, § 42.

### **7-9-45. Insurance of shares and deposits.**

(1) Each credit union chartered under the laws of this state shall obtain and maintain insurance on shares and deposits from the National Credit Union Administration or successor federal deposit insurance agency.

(2) The commissioner may appoint the administrator of the National Credit Union Administration as liquidating agent of an insured credit union.

(3) Failure to maintain share and deposit insurance constitutes grounds for supervisory action under Chapter 2 or 19.

**History:** C. 1953, 7-9-45, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 125; 1987, ch. 220, § 6; 1989, ch. 267, § 43; 1994, ch. 200, § 77.

**Amendment Notes.** — The 1994 amendment, effective June 1, 1994, in Subsection (1), inserted “chartered under the laws of this state” and “and maintain” and substituted “or successor federal deposit insurance agency” for “under the Federal Credit Union Act, from the Credit Union Insurance Corporation, from successor organizations, or from any insurer qualified under the insurance laws of this state”;

deleted former Subsection (2) permitting the commissioner to make available reports of condition and examination to the National Credit Union Administration; deleted former Subsection (4) relating to the acquisition of share and deposit insurance; deleted former Subsection (5), which set a sixty day time limit for the acquisition of insurance after approval of an application to form a credit union; and rewrote Subsection (3), which read, “Failure to maintain insurance constitutes grounds for revocation of the credit union’s charter by the commissioner.”

### **7-9-46. Foreign credit unions — Authorization to do business in state — Supervision — Examination — Actions to prevent unauthorized business.**

(1) As used in this section “foreign credit union” means any credit union actually engaged in the operation of a credit union having its principal office outside the territorial limits of this state, except:

(a) a credit union organized under this chapter; and

(b) a credit union organized under the laws of the federal government.

(2) No foreign credit union may maintain an office in this state for the purpose of doing such business unless it has been authorized by the department or organized under federal law.

(3) The commissioner may examine and supervise all foreign credit unions, except federal credit unions, doing business in the state in the same manner as he examines and supervises credit unions in this state.

(4) The commissioner is hereby authorized, empowered, and directed to obtain an injunction or to take any other action necessary to prevent any foreign credit union, except federal credit unions, from doing any business of a credit union in this state without the prior written approval of the commissioner.

**History:** C. 1953, 7-9-46, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 126; 1985, ch. 159, § 5; 1985, ch. 244, § 16; 1991, ch. 133, § 19.

**Amendment Notes.** — The 1991 amend-

ment, effective July 1, 1991, deleted the former second sentence in Subsection (3), relating to fees for examination, and made changes in punctuation in Subsection (1).

### **7-9-47. Repealed.**

**Repeals.** — Laws 1994, ch. 200, § 88 repeals § 7-9-47, as last amended by Laws 1991, ch. 133, § 20, relating to branch offices, effective June 1, 1994.

### **7-9-48. Disclosure of share and deposit insurance.**

Credit unions shall comply with all share and deposit insurance disclosure requirements of the National Credit Union Administration or its successor agency.

**History:** C. 1953, 7-9-48, enacted by L. 1987, ch. 220, § 7; 1994, ch. 200, § 78.

**Amendment Notes.** — The 1994 amendment, effective June 1, 1994, deleted a Subsection (1) designation; deleted former Subsections (2) through (8) relating to the advertisement of coverage by share and deposit insurance by

credit unions; and rewrote the remaining sentence, which had read “credit unions whose shares and deposits are insured by the National Credit Union Administration Share Insurance Fund shall comply with all disclosure rules and regulations of the National Credit Union Administration.”

### **7-9-49. Limitation of personal liability of directors and committee members.**

(1) Without limiting the generality of Section 7-9-50, the articles of incorporation may include a provision eliminating or limiting the personal liability of a director, supervisory committee member, or credit committee member to the credit union, its members, or its depositors for monetary damages for any action taken or any failure to take any action as a director, supervisory committee member, or credit committee member, except liability for:

(a) the amount of a financial benefit received by a director, supervisory committee member, or credit committee member to which he is not entitled;

(b) an intentional infliction of harm on the credit union, its members, or depositors; or

(c) an intentional violation of criminal law.

(2) No provision authorized under this section may eliminate or limit the liability of a director, supervisory committee member, or credit committee member for any act or omission occurring prior to the date when the provision becomes effective.

(3) Any provision authorized under this section to be included in the articles of incorporation may also be adopted in the bylaws or by resolution, but only if the provision is approved by the same percentage of members as would be required to approve it as an amendment to the articles of incorporation.

**History:** C. 1953, 7-9-49, enacted by L. 1987, ch. 220, § 8; 1994, ch. 200, § 79.  
**Amendment Notes.** — The 1994 amendment, effective June 1, 1994, rewrote the section to such an extent that a detailed analysis is impracticable.

## COLLATERAL REFERENCES

**Utah Law Review.** — Recent Developments in Utah Law — Legislative Enactments — Corporations, 1988 Utah L. Rev. 265.  
 Note, Utah's Statute Permitting Limits on Corporate Directors' Liability: A Guide for Lawyers and Directors, 1988 Utah L. Rev. 847.

**7-9-50. General limitation on liability.**

A director, supervisory committee member, credit committee member, or officer is not liable to the credit union, its members, its depositors, any conservator or receiver, or any assignee or successor-in-interest thereof, for any action taken, or any failure to take any action, as a director, supervisory committee member, credit committee member, or officer, as the case may be, unless:

- (1) he has breached or failed to perform the duties of the office in compliance with this title; and
- (2) the breach or failure to perform constitutes gross negligence, willful misconduct, or intentional infliction of harm on the credit union or its members.

**History:** C. 1953, 7-9-50, enacted by L. 1994, ch. 200, § 80.  
**Effective Dates.** — Laws 1994, ch. 200, § 90 makes the act effective on June 1, 1994.

## CHAPTER 10

### SMALL LOANS

(Repealed by Laws 1969, ch. 18, § 9.103.)

**7-10-1 to 7-10-24. Repealed.**

**Repeals.** — Sections 7-10-1 to 7-10-24 (L. 1945, ch. 15a, §§ 1 to 24; C. 1943, Supp., 7-8a-1 to 7-8a-24; L. 1955, ch. 10, § 1), the Utah Small Loan Act, were repealed by Laws 1969, ch. 18, § 9.103. For present regulation of consumer loans, see Title 70C.

## CHAPTER 11

### FEDERAL DEPOSIT INSURANCE CORPORATION

(Repealed by Laws 1984 (2nd S.S.),  
ch. 5, § 28.)

**7-11-1 to 7-11-7. Repealed.**

**Repeals.** — Sections 7-11-1 to 7-11-7, as enacted by Laws 1981, ch. 16, § 11, relating to the Federal Deposit Insurance Corporation, were repealed by Laws 1984 (2nd S.S.), ch. 5, § 28.

# **ADDENDUM B**

Subsection (1), and in Subsection (2) substituted “a domestic corporation” for “an industrial loan corporation” and deleted language

concerning limitations on a corporation when receiving public deposits.

## **7-8-20. Limitations on loans to one borrower — Exceptions — Rules.**

### NOTES TO DECISIONS

**Cited** in *Brown v. Moore*, 973 P.2d 950 (Utah 1998).

## **CHAPTER 9 CREDIT UNIONS**

Section		Section	
7-9-3.	Definitions.	7-9-31.	Shares held in trust.
7-9-5.	Powers of credit unions.	7-9-33.	Lien and right of set off of credit union.
7-9-6.	Formation of corporation to conduct credit union — Approval of commissioner.	7-9-37.	Transfer of members of dissolved, merged, consolidated, transferred, or acquired credit union.
7-9-11.	Bylaws and amendments to be approved.	7-9-39.	Voluntary merger.
7-9-12.	Contents of bylaws.	7-9-39.5.	Supervisory merger.
7-9-16.	Members — Eligibility — Liability — Grounds for closing account — Denial of membership.	7-9-41.	Repealed.
7-9-18.	Expulsion of member.	7-9-43.	Board of Credit Union Advisors.
7-9-20.	Board of directors — Powers and duties — Loan limitations.	7-9-45.	Insurance of shares and deposits — Security on shares and deposits.
7-9-22.	Credit committee — Credit manager.	7-9-46.	Out-of-state credit unions — Authorization to do business in state — Supervision — Examination.
7-9-23.	Supervisory committee — Duties — Suspension or removal of officer, director, or credit committee member.	7-9-48.	Disclosure of share and deposit insurance — Disclosure if secured through securities.
7-9-24.	Compensation of directors, committee members, and president — Expense reimbursement.	7-9-51.	Limited field of membership.
7-9-26.	Loans to members — Investment officers — Investments.	7-9-52.	Expansion of a limited field of membership.
7-9-28.	Loan to credit union official.	7-9-53.	Grandfathering.
		7-9-54.	Electing to terminate grandfathering.

### **7-9-1. Title.**

### COLLATERAL REFERENCES

**Utah Law Review.** — Credit Union Amendments, 1999 Utah L. Rev. 1130.

### **7-9-2. Description of credit unions.**

### NOTES TO DECISIONS

**Cited** in *Utah Bankers Ass’n v. America First Credit Union*, 912 P.2d 988 (Utah 1996).

**7-9-3. Definitions.**

As used in this chapter:

- (1) "Association" means a group of persons that:
  - (a) has a similar:
    - (i) interest;
    - (ii) profession;
    - (iii) occupation; or
    - (iv) formal association with an identifiable purpose; or
  - (b) is employed by a common employer.
- (2) "Capital and surplus" means:
  - (a) shares;
  - (b) deposits;
  - (c) reserves; and
  - (d) undivided earnings.
- (3) "Corporate credit union" means any credit union organized pursuant to any state or federal act for the purpose of serving other credit unions.
- (4) "Deposits" means that portion of the capital paid into the credit union by members on which a specified rate of interest will be paid.
- (5) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the member.
- (6) "Limited field of membership" means persons designated as eligible for credit union membership in accordance with Section 7-9-51 or 7-9-53.
- (7) (a) "Member-business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for:
  - (i) a commercial purpose;
  - (ii) other business investment property or venture purpose; or
  - (iii) an agricultural purpose.
- (b) "Member-business loan" does not include an extension of credit:
  - (i) that is fully secured by a lien on a one- to four-family dwelling that is the primary residence of a member;
  - (ii) that is fully secured by:
    - (A) shares or deposits in the credit union making the extension of credit; or
    - (B) deposits in other financial institutions;
  - (iii) the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of:
    - (A) the federal government;
    - (B) a state; or
    - (C) a political subdivision of a state; or
  - (iv) that is granted by a corporate credit union to another credit union.
- (8) "Service center" means a single location at which multiple credit unions can provide products or services directly to their members.
- (9) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts from which owners are permitted to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to other persons or to the owner.
- (10) "Shares" means that portion of the capital paid into the credit union by members on which dividends may be paid.

**History:** C. 1953, 7-9-3, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 106; 1999, ch. 329, § 1.

**Amendment Notes.** — The 1999 amendment, effective May 3, 1999, added Subsections (1), (7), and (8); in Subsection (6) deleted “per-

sons belonging to a group or” after “means” and added “in accordance with Section 7-9-51 or 7-9-53” at the end; deleted Subsections (6)(a) through (6)(f), which specified various eligibility requirements; and changed subsection designations and made stylistic changes.

### **7-9-5. Powers of credit unions.**

In addition to the powers specified elsewhere in this chapter, a credit union may:

- (1) make contracts;
- (2) sue and be sued;
- (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and equipment as the directors consider necessary or incidental to the operation and business of the credit union, but the value of the real property may not exceed 7% of credit union assets, unless approved by the commissioner;
- (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in whole or in part, necessary or incidental to its operation;
- (5) incur and pay necessary and incidental operating expenses;
- (6) require an entrance or membership fee;
- (7) receive the funds of its members in payment for:
  - (a) shares;
  - (b) share certificates;
  - (c) deposits;
  - (d) deposit certificates;
  - (e) share drafts;
  - (f) NOW accounts; and
  - (g) other instruments;
- (8) allow withdrawal of shares and deposits, as requested by a member orally to a third party with prior authorization in writing, including, but not limited to, drafts drawn on the credit union for payment to the member or any third party, in accordance with the procedures established by the board of directors, including, but not limited to, drafts, third-party instruments, and other transaction instruments, as provided in the bylaws;
- (9) charge fees for its services;
- (10) extend credit to its members, at rates established in accordance with the bylaws or by the board of directors;
- (11) extend credit secured by real estate;
- (12) make loan participation arrangements with other credit unions, credit union organizations, or financial organizations in accordance with written policies of the board of directors, if the credit union that originates a loan for which participation arrangements are made retains an interest of at least 10% of the loan;
- (13) sell and pledge eligible obligations in accordance with written policies of the board of directors;
- (14) engage in activities and programs of the federal government or this state or any agency or political subdivision of the state, when approved by the board of directors and not inconsistent with this chapter;
- (15) act as fiscal agent for and receive payments on shares and deposits from the federal government, this state, or its agencies or political subdivisions not inconsistent with the laws of this state;

- (16) borrow money and issue evidence of indebtedness for a loan or loans for temporary purposes in the usual course of its operations;
- (17) discount and sell notes and obligations;
- (18) sell all or any portion of its assets to another credit union or purchase all or any portion of the assets of another credit union;
- (19) invest funds as provided in this title and in its bylaws;
- (20) maintain deposits in insured depository institutions as provided in this title and in its bylaws;
- (21) (a) hold membership in corporate credit unions organized under this chapter or under other state or federal statutes; and  
(b) hold membership or equity interest in associations and organizations of credit unions, including credit union service organizations;
- (22) declare and pay dividends on shares, contract for and pay interest on deposits, and pay refunds of interest on loans as provided in this title and in its bylaws;
- (23) collect, receive, and disburse funds in connection with the sale of negotiable or nonnegotiable instruments and for other purposes that provide benefits or convenience to its members, as provided in this title and in its bylaws;
- (24) make donations for the members' welfare or for civic, charitable, scientific, or educational purposes as authorized by the board of directors or provided in its bylaws;
- (25) act as trustee of funds permitted by federal law to be deposited in a credit union as a deferred compensation or tax deferred device, including, but not limited to, individual retirement accounts as defined by Section 408, Internal Revenue Code;
- (26) purchase reasonable accident and health insurance, including accidental death benefits, for directors and committee members through insurance companies licensed in this state as provided in its bylaws;
- (27) provide reasonable protection through insurance or other means to protect board members, committee members, and employees from liability arising out of consumer legislation such as, but not limited to, truth-in-lending and equal credit laws and as provided in its bylaws;
- (28) reimburse directors and committee members for reasonable and necessary expenses incurred in the performance of their duties;
- (29) participate in systems which allow the transfer, withdrawal, or deposit of funds of credit unions or credit union members by automated or electronic means and hold membership in entities established to promote and effectuate these systems, if:
  - (a) the participation is not inconsistent with the law and rules of the department; and
  - (b) any credit union participating in any system notifies the department as provided by law,
- (30) issue credit cards and debit cards to allow members to obtain access to their shares, deposits, and extensions of credit;
- (31) provide any act necessary to obtain and maintain membership in the credit union;
- (32) exercise incidental powers necessary to carry out the purpose for which a credit union is organized;
- (33) undertake other activities relating to its purpose as its bylaws may provide;
- (34) engage in other activities, exercise other powers, and enjoy other rights, privileges, benefits, and immunities authorized by rules of the commissioner;



(35) act as trustee, custodian, or administrator for Keogh plans, individual retirement accounts, credit union employee pension plans, and other employee benefit programs; and

(36) advertise to the general public the products and services offered by the credit union if the advertisement prominently discloses that to use the products or services of the credit union a person is required to:

- (a) be eligible for membership in the credit union; and
- (b) become a member of the credit union.

**History:** C. 1953, 7-9-5, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 108; 1989, ch. 267, § 37; 1994, ch. 200, § 71; 1999, ch. 329, § 2; 2001, ch. 116, § 1.

**Amendment Notes.** — The 1999 amendment, effective May 3, 1999, added Subsection

(36), subdivided Subsections (7) and (21), and made other stylistic changes.

The 2001 amendment, effective April 30, 2001, substituted “accident and health insurance” for “disability insurance” in Subsection (26).

#### NOTES TO DECISIONS

##### **Electronic funds transfer services.**

The list of activities authorized by Subsection (29) was not intended to be an exhaustive list of activities credit union service organizations may engage in. The commissioner properly approved the application of an association of

credit unions to serve as a system for automated and electronic transfer of funds, a service authorized by rule (U.A.C. R337-4). *Utah Bankers Ass’n v. Utah Dep’t of Fin. Insts.*, 888 P.2d 714 (Utah Ct. App. 1994).

### **7-9-6. Formation of corporation to conduct credit union — Approval of commissioner.**

(1) (a) Ten or more incorporators belonging to the same group of 200 persons or more having a limited field of membership may, with the approval of the commissioner, form a corporation to conduct a credit union under:

- (i) this chapter;
- (ii) Title 16, Chapter 10a, Utah Revised Business Corporation Act; and
- (iii) Chapter 1.

(b) This chapter takes precedence over conflicting provisions of other state law governing:

- (i) the formation of the corporation; and
- (ii) the duties and obligations of:
  - (A) the corporation;
  - (B) the corporation’s officers; and
  - (C) the corporation’s shareholders or members.

(2) The commissioner may grant the approval referenced in Subsection (1) if the commissioner finds that:

- (a) the proposed limited field of membership is favorable to the success of the credit union;
- (b) the standing of the proposed membership will give assurance that its affairs will be administered in accordance with this chapter;
- (c) the proposed credit union has a reasonable promise of financial viability; and
- (d) formation of the credit union would not result in a substantial adverse financial impact on an existing credit union having the same or substantially the same limited field of membership.

(3) (a) Except as provided in Subsection (3)(b) and in addition to the requirements of Subsections (1) and (2), Section 7-1-704 governs the formation of a credit union.

(b) Notwithstanding Subsection (3)(a):

(i) if the proposed credit union has a limited field of membership that does not base eligibility on residence in a county, the persons seeking formation of the proposed credit union are not required to provide the notice required under Subsection 7-1-704(3); and

(ii) a credit union may not be required to obtain federal insurance if the credit union complies with Subsection 7-9-45(2).

**History:** C. 1953, 7-9-6, enacted by L. 1981, ch. 16, § 10; 1992 (3rd S.S.), ch. 6, § 4; 1996, ch. 182, § 8; 1999, ch. 329, § 3.

**Amendment Notes.** — The 1996 amendment, effective July 1, 1996, added Subsection (3); redesignated former Subsection (3) as (4); and made stylistic changes.

The 1999 amendment, effective May 3, 1999, added “or members” at the end of Subsection (1)(b)(ii)(C); deleted “Except for regional and community groups” from the beginning of Sub-

section (2); substituted “proposed limited field of membership” for “proposed field of operation” in Subsection (2)(a); added Subsections (2)(c) and (2)(d); rewrote Subsection (3); deleted Subsection (4), which authorized the commissioner’s approval to financially viable applicants unless that would cause substantial adverse financial impact on other similar credit unions; and designated subsections and made stylistic changes.

#### NOTES TO DECISIONS

##### **Judicial action.**

Utah Bankers Association had standing to bring action seeking declaratory judgment finding that, under this section, regional credit

union membership is limited to residents of one county. *Utah Bankers Ass’n v. America First Credit Union*, 912 P.2d 988 (Utah 1996).

### **7-9-11. Bylaws and amendments to be approved.**

(1) A credit union may not receive payments on shares, deposits, or certificates, or make any loans or other transactions, until its bylaws have been approved in writing by the commissioner.

(2) An amendment to a credit union’s bylaws does not become operative until the amendment to the bylaws is approved by the commissioner.

(3) (a) If the amendment to the bylaws of a credit union expands the limited field of membership of a credit union as described in Subsection 7-9-52(1), the commissioner’s approval of the amendment is subject to Section 7-9-52.

(b) If the amendment to the bylaws of a credit union terminates the grandfathering of a limited field of membership under Section 7-9-54, the commissioner’s approval of the amendment is subject to Section 7-9-54.

(c) If the bylaws or an amendment to the bylaws of a credit union adds an association to the limited field of membership of the credit union, the commissioner may require that the credit union provide written confirmation from the association that the association has agreed to be served by the credit union.

**History:** C. 1953, 7-9-11, enacted by L. 1981, ch. 16, § 10; 1999, ch. 329, § 4.

**Amendment Notes.** — The 1999 amend-

ment, effective May 3, 1999, added Subsection (3) and made stylistic changes.

### 7-9-12. Contents of bylaws.

The bylaws of a credit union shall specify at least the following:

- (1) the name of the credit union;
- (2) the purpose for which it was formed;
- (3) a limited field of membership of the credit union that complies with Section 7-9-51 or 7-9-53;
- (4) the number of directors and procedures for their election;
- (5) the term of directors;
- (6) whether a credit manager, credit committee, or combination of both shall be responsible for credit functions of the credit union;
- (7) the duties of the officers;
- (8) the time of year of the annual meeting of members;
- (9) the manner in which members shall be notified of meetings;
- (10) the number of members which shall constitute a quorum at meetings;
- (11) the manner of amending;
- (12) the manner in which officers may act as surety; and
- (13) such other matters, rules, and regulations as the board of directors consider necessary.

**History:** C. 1953, 7-9-12, enacted by L. 1981, ch. 16, § 10; 1996, ch. 182, § 9; 1999, ch. 329, § 5.

**Amendment Notes.** — The 1996 amendment, effective July 1, 1996, substituted “specify” for “contain” in the introductory para-

graph, added Subsection (6), and redesignated former Subsections (6) to (12) as (7) to (13).

The 1999 amendment, effective May 3, 1999, rewrote Subsection (3), which read “the conditions of domicile or vocation which qualify persons or co-operative societies for membership.”

### 7-9-16. Members — Eligibility — Liability — Grounds for closing account — Denial of membership.

(1) A person within the limited field of membership of a credit union may be admitted to membership, upon:

- (a) payment of any required entrance or membership fee;
- (b) payment for one or more shares; and
- (c) compliance with this chapter and the bylaws of the credit union.

(2) A member who is eligible for membership in a credit union at the time the member is admitted as a member but who is no longer in the limited field of membership of the credit union may retain membership in the credit union unless otherwise provided in the bylaws of the credit union.

(3) A member of the credit union may not be held personally or individually liable for payment of the credit union’s debts.

(4) The credit union may close the account of any member whose actions have resulted in any financial loss to the credit union.

(5) Denial of membership is not considered a denial of credit.

**History:** C. 1953, 7-9-16, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 109; 1999, ch. 329, § 6.

**Amendment Notes.** — The 1999 amend-

ment, effective May 3, 1999, deleted “corporate” before “credit union” in Subsection (1)(c); added Subsection (2); and redesignated subsections and made stylistic changes.

### 7-9-18. Expulsion of member.

(1) The board of directors or board-designated representatives may expel from the credit union any member who has not carried out his engagements

with the credit union, or neglected or refused to comply with the credit union board policies, provisions of this chapter, or of the credit union bylaws.

(2) If the member whose expulsion is under consideration is a member of the board of directors or credit committee, the supervisory committee shall call a special meeting of the members to hear the facts and act upon the proposed expulsion.

**History:** C. 1953, 7-9-18, enacted by L. 1981, ch. 16, § 10; 1996, ch. 182, § 10.  
**Amendment Notes.** — The 1996 amend-

ment, effective July 1, 1996, added “or board-designated representatives” in Subsection (1).

### **7-9-20. Board of directors — Powers and duties — Loan limitations.**

(1) At annual meetings the members shall elect from their number a board of directors consisting of an odd number of not less than five members.

(2) The bylaws may provide balloting by:

- (a) mail;
- (b) ballot box; or
- (c) both mail and ballot box.

(3) Voting may not be by proxy.

(4) Members of the board of directors shall hold office for the terms prescribed in the bylaws.

(5) The board of directors shall meet at least monthly.

(6) The board of directors shall have the general management of the affairs, funds, and records of the credit union. In particular, the board of directors shall:

- (a) act upon applications for membership;
- (b) act upon expulsion of members;
- (c) fix the amount of surety bond required of each officer or employee having custody of funds;
- (d) determine the rate of interest or dividend allowed on shares and deposits;
- (e) determine the terms and conditions of credit granted to members;
- (f) lend money, borrow money, and pledge security for any borrowing;
- (g) fill vacancies in the board of directors or in the credit committee, if applicable, or in the supervisory committee until the election and qualification of officers to fill those vacancies;
- (h) appoint up to two alternate directors as provided in the bylaws;
- (i) fix the amount of the entrance fee;
- (j) declare dividends and their amount;
- (k) make recommendations to meetings of the members relative to amendments to the articles of incorporation, and transact any other business of the credit union; and

(l) fix the maximum amount of credit, secured and unsecured, that may be extended to any one member, up to the limitations described in Subsection (7).

(7) (a) The credit that may be outstanding or available by a credit union at any one time is subject to the limitations described in Subsections (7)(b) and (c):

- (i) except as provided in Subsection (7)(d) through (7)(f); and
- (ii) except that the board of directors may:
  - (A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(B); or

- (B) require that a person described in Subsection (7)(b)(ii)(A) be a member of the credit union for more than six months before the date a member-business loan is extended.
- (b) (i) A credit union may not extend credit that is not a member-business loan to a member if as a result of that extension of credit the total credit that is not a member-business loan that the credit union has issued to that member exceeds at any one time:
- (A) for a credit union with less than \$2,000,000 in capital and surplus, the greater of:
- (I) \$1,000; or
  - (II) 15% of capital and surplus up to a total of \$25,000; or
- (B) for a credit union with \$2,000,000 or more in capital and surplus, the greater of:
- (I) \$25,000;
  - (II) 1% of capital and surplus; or
  - (III) 25% of the regular reserve.
- (ii) Beginning March 24, 1999, a credit union may not extend a member-business loan to a person:
- (A) (I) if the person is a business entity, unless at least one individual having a controlling interest in that business entity has been a member of the credit union for at least six months prior to the date of the extension of the member-business loan; or
- (II) if the person is an individual, unless the individual is a member of the credit union for at least six months prior to the date of the extension of the member-business loan; or
- (B) if as a result of the extension of the member-business loan, the total amount outstanding for all member-business loans that the credit union has extended to that person at any one time exceeds the lesser of:
- (I) 10% of the credit union's capital and surplus; or
  - (II) \$250,000.
- (c) (i) Beginning March 24, 1999, a credit union may not extend a member-business loan if as a result of that member-business loan the credit union's aggregate member-business loan amount calculated under Subsection (7)(c)(ii) at any one time exceeds 1.25 times the sum of:
- (A) the actual undivided earnings; and
  - (B) the actual reserves other than the regular reserves.
- (ii) For purposes of Subsection (7)(c)(i), the aggregate member-business loan amount of a credit union equals:
- (A) the sum of the total amount financed under all member-business loans outstanding at the credit union; minus
  - (B) the amount of the member-business loans described in Subsection (7)(c)(ii)(A):
- (I) that is secured by share or deposit savings in the credit union; or
  - (II) for which the repayment is insured or guaranteed by, or there is an advance commitment to purchase by an agency of the federal government, a state, or a political subdivision of the state.
- (d) A credit union may extend credit that is not a member-business loan in an amount that exceeds the limits described in Subsection (7)(b)(i) only

if the excess portion is fully secured by share or deposit savings in the credit union.

(e) (i) Except as provided in Subsection (7)(e)(ii), a credit union may extend a member-business loan in an amount that exceeds the limits described in Subsection (7)(b)(ii)(B) only if:

(A) that portion that is in excess of the limits described in Subsection (7)(b)(ii)(B) is secured by share or deposit savings in the credit union; or

(B) the repayment of that portion that is in excess of the limits described in Subsection (7)(b)(ii)(B) is insured or guaranteed by, or there is an advance commitment to purchase that excess portion by, an agency of:

(I) the federal government;

(II) a state; or

(III) a political subdivision of the state.

(ii) Notwithstanding Subsection (7)(e)(i), a credit union may not extend a member-business loan if the total amount financed by the credit union exceeds \$1,000,000.

(f) For a member-business loan that is extended through a loan participation arrangement in accordance with Subsection 7-9-5(12):

(i) in applying the limitation of Subsection (7)(e), each credit union participating in the member-business loan may extend up to \$1,000,000 of the amount financed; and

(ii) the requirement of Subsection (7)(b)(ii)(A) applies to membership in any credit union that participates in the loan participation arrangement for the member-business loan.

(8) As provided in this chapter or in the credit union bylaws, the board of directors:

(a) within 30 days following the annual meeting of the members, shall appoint a supervisory committee consisting of not less than three members;

(b) within 30 days after the annual meeting of the members, shall appoint:

(i) a credit committee consisting of not less than three members; or

(ii) a credit manager in lieu of a credit committee;

(c) shall appoint a president to serve as general manager;

(d) shall have an executive committee;

(e) may appoint an investment officer;

(f) shall elect a secretary;

(g) may appoint other officers and committees that it considers necessary;

(h) shall establish written credit policies, loan security requirements, loan investment, personnel, and collection policies; and

(i) on or before January 31 of each year, shall provide for:

(i) share insurance for the shares and deposits of the credit union from the National Credit Union Administration or successor federal agency; or

(ii) security expressly pledged for the payment of the shares and deposits in accordance with Section 7-9-45.

(9) A person may not be a member of more than one committee except as otherwise provided in this chapter or in the credit union bylaws.

(10) The president and secretary may not be the same person.

**History:** C. 1953, 7-9-20, enacted by L. 1981, ch. 16, § 10; 1987, ch. 220, § 5; 1994, ch. 200, § 72; 1999, ch. 329, § 7.

**Amendment Notes.** — The 1999 amendment rewrote Subsections (7)(a) and (7)(b); added Subsections (7)(c), (7)(e), and (7)(f); in Subsection (7)(d) substituted “may extend credit that is not a member-business loan in an amount that exceeds” for “may loan to a member an amount in excess of” and updated a

subsection reference; added Subsection (8)(i)(ii); and changed subsection designations and made stylistic changes. For the effective dates of these changes, see the compiler’s note.

**Compiler’s Notes.** — Laws 1999, ch. 329, § 18 makes the 1999 amendments to Subsection (7) effective on March 24, 1999, and the other 1999 amendments of this section effective on May 3, 1999.

## **7-9-22. Credit committee — Credit manager.**

(1) A credit union’s bylaws shall provide for a credit committee, credit manager, or combination of both to be responsible for credit functions of the credit union. The bylaws shall prescribe the duties and responsibilities of the credit committee, credit manager, or combination of both.

(2) A director may not be a member of the credit committee.

(3) The credit union president may be appointed as credit manager. If the president is appointed as the credit manager, the president may not receive dual compensation for serving in both capacities.

**History:** C. 1953, 7-9-22, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 110; 1996, ch. 182, § 11.

**Amendment Notes.** — The 1996 amend-

ment, effective July 1, 1996, rewrote this section, deleting provisions relating to loan officers.

## **7-9-23. Supervisory committee — Duties — Suspension or removal of officer, director, or credit committee member.**

(1) (a) Appointees to the supervisory committee shall hold office until the next annual meeting of the members and until successors are appointed.

(b) One member of the board of directors, except the chair of the board and the president, may be appointed to the supervisory committee.

(c) The president and other employees of the credit union may not be appointed to the supervisory committee.

(2) (a) The commissioner may remove any member of the supervisory committee for:

- (i) any violation of this chapter or the bylaws of the credit union;
- (ii) failure to fulfill the duties of office;
- (iii) malfeasance; or
- (iv) maladministration in office.

(b) The board of directors shall fill any vacancy created by removal of a supervisory committee member.

(3) It is the duty of the supervisory committee to:

(a) make or cause to be made an examination of the affairs of the credit union at least annually, including an inspection of the credit union’s books, securities, cash, accounts, and loans;

(b) investigate or cause to be investigated any complaint that action by the credit union, board of directors, committees, officers, or employees does not comply with the law or the credit union’s bylaws;

(c) make or cause to be made supplemental audits and examinations it considers necessary, or as required by the commissioner or board of directors;

- (d) make a written report to the board of directors of its findings following each audit or examination; and
- (e) make or cause to be made a verification of member accounts:
  - (i) annually by statistical sampling or otherwise, in accordance with generally accepted accounting principles; or
  - (ii) at least every two years by a complete verification.
- (4) (a) The supervisory committee may, by majority vote, recommend to the board of directors:
  - (i) the suspension or removal of a credit union officer or a member of the credit committee; or
  - (ii) any other action the board of directors could lawfully take.
- (b) Within 30 days after submission of the recommendation to the board of directors, if the board fails to adopt the material aspects of the recommendation, the supervisory committee may, by unanimous vote and after notifying the commissioner, call a meeting of the credit union members to consider the recommendation. The members may, by majority vote of those present at the meeting, adopt the supervisory committee's recommendation.
- (5) (a) The supervisory committee may, by unanimous vote, suspend or remove a director for any violation of this chapter or the bylaws of the credit union, malfeasance, or maladministration in office.
- (b) Within 30 days after the suspension or removal of a director, the supervisory committee shall, after notifying the commissioner, call a special meeting to present the matter to the membership of the credit union. The members may, by majority vote of those present, ratify or reject the action of the supervisory committee. If the members vote to remove the director, they may at the same meeting elect a replacement. If the members vote to reject the suspension or removal, they shall reinstate the director.
- (6) The bylaws may prescribe other duties and responsibilities of the supervisory committee.

**History:** C. 1953, 7-9-23, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 111; 1994, ch. 200, § 73; 1996, ch. 182, § 12; 2000, ch. 260, § 11.

**Amendment Notes.** — The 1996 amendment, effective July 1, 1996, subdivided Subsection (2)(a); rewrote Subsection (3)(b), which read: "ascertain that action by the board of directors and credit committee, or credit man-

ager and loan officers complies with the law and the credit union's bylaws"; and made stylistic changes.

The 2000 amendment, effective May 1, 2000, subdivided Subsection (3)(e), deleting "annually" after "to be made" and adding it to the beginning of Subsection (3)(e)(i) and substituting "or" at the end of Subsection (3)(e)(i) for "including," and made stylistic changes.

#### **7-9-24. Compensation of directors, committee members, and president — Expense reimbursement.**

- (1) A member of the board of directors, credit committee, or supervisory committee may not receive any compensation for services as such, except that the reimbursement of reasonable expenses incurred in the execution of the duties of the position may not be considered compensation.
- (2) Any member of a credit union who incurs any expenses or performs any service authorized by the board of directors may be compensated or reimbursed for the expenses or services in an amount approved by the board of directors.
- (3) The board of directors shall determine the compensation for a president appointed as general manager.



**History:** C. 1953, 7-9-24, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 112; 1996, ch. 182, § 13.

**Amendment Notes.** — The 1996 amendment, effective July 1, 1996, substituted the

clause beginning “as such, except that” at the end of Subsection (1) for “as a member unless authorized by the bylaws” and made stylistic changes.

### **7-9-26. Loans to members — Investment officers — Investments.**

(1) The capital and surplus of the credit union shall be loaned to the members for the purposes and upon the endorsements or security and the terms as the bylaws provide.

(2) Within 30 days after the annual meeting of the members the board of directors may appoint one or more investment officers who shall have responsibilities for the credit union investment portfolio based upon policy established by the board of directors and as provided in this chapter or in the bylaws.

(3) The credit union by action of its board of directors may invest its funds as follows:

(a) in securities, obligations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the United States of America or any of its agencies, or in any trusts established by investing directly or collectively in these instruments;

(b) in obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories organized by Congress, or any of their political subdivisions;

(c) in certificates of deposit or accounts issued by a federally insured state or national depository institution;

(d) in loans to, or in shares or deposits of, other federally insured credit unions, central credit unions, corporate credit unions, or a central liquidity facility established under state or federal law;

(e) in shares, stocks, loans, or other obligations of any organization, corporation, or association, if the membership or ownership of the organization, corporation, or association is primarily confined or restricted to credit unions, and if the purpose for which it is organized is to strengthen or advance the development of credit unions or credit union organizations; and

(f) in other investments that are reasonable and prudent.

**History:** C. 1953, 7-9-26, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 114; 1994, ch. 200, § 74; 1996, ch. 182, § 14.

**Amendment Notes.** — The 1996 amend-

ment, effective July 1, 1996, deleted “or, in the absence of any provision in the bylaws, as the credit committee or credit manager approves” from the end of Subsection (1).

### **7-9-28. Loan to credit union official.**

The board of directors shall review and either approve or deny a loan application on which a member of the board of directors, credit committee, supervisory committee, president, or credit manager is a direct obligor, or endorser, cosigner, or guarantor.

**History:** C. 1953, 7-9-28, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 116; 1996, ch. 182, § 15.

**Amendment Notes.** — The 1996 amend-

ment, effective July 1, 1996, rewrote this section, which had prescribed in detail procedures governing approval of loans, advances, and withdrawal of pledges.

**7-9-31. Shares held in trust.**

(1) Shares may be issued to and deposits received in the name of a minor, and these shares and deposits may, in the discretion of the board of directors, be withdrawn by the minor or by his parent or guardian.

(2) A credit union share account, share certificate, deposit, or deposit certificate may be held in trust provided that the trustor, trustee, or primary beneficiary is a member of the credit union.

(3) The trustee of the trust meeting the requirements of Subsection (2) shall exercise the rights of the trust as a member of the credit union.

**History:** C. 1953, 7-9-31, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 119; 1996, ch. 182, § 16.

**Amendment Notes.** — The 1996 amendment effective July 1, 1996, rewrote this section.

**7-9-33. Lien and right of set off of credit union.**

(1) A credit union shall have a lien and right of set off on a member's individual, joint, multiple party, or transaction accounts, including any accumulated dividend or interest, for any sum due the credit union from the member.

(2) All funds in the account at any time are subject to the lien and right of set off.

(3) A security interest in the funds shall be perfected by restricting withdrawals of the funds.

(4) A lien under this section does not apply if:

- (a) the application of the lien will cause a loss of a tax incentive for the customer or member; or
- (b) is prohibited by law.

**History:** C. 1953, 7-9-33, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 120; 1996, ch. 182, § 17.

**Amendment Notes.** — The 1996 amendment effective July 1, 1996, rewrote this section.

**7-9-34. Tax exemption of credit unions.**

## NOTES TO DECISIONS

**Cited in** Utah Bankers Ass'n v. America First Credit Union, 912 P.2d 988 (Utah 1996).

**7-9-37. Transfer of members of dissolved, merged, consolidated, transferred, or acquired credit union.**

Members of a dissolved, merged, consolidated, transferred, or acquired credit union may become members of another existing credit union with a related limited field of membership as approved by the commissioner.

**History:** C. 1953, 7-9-37, enacted by L. 1983, ch. 8, § 122; 1999, ch. 329, § 8.

**Amendment Notes.** — The 1999 amend-

ment, effective May 3, 1999, inserted "limited" and deleted "or geographical location" before "as approved."

**7-9-39. Voluntary merger.**

(1) Any credit union may merge with another credit union under the existing charter of the other credit union when all of the following have occurred:

- (a) the majority of the directors of each merging credit union votes in favor of the merger plan;
- (b) the commissioner approves the merger plan;
- (c) the majority of the members of each merging credit union present at a meeting called for the purpose of considering the merger plan votes to approve the merger plan, but a vote of the membership of the surviving credit union is not required if its board of directors determines that the merger will not have any significant effect on the organization, membership, or financial condition of the credit union; and
- (d) (i) the National Credit Union Administration or its successor federal deposit insurance agency approves the merger plan and commits to insure deposits of the surviving credit union; or  
(ii) the commissioner approves the surviving credit union to operate without federal deposit insurance in accordance with Section 7-9-45.

(2) Upon merger, the chair of the board and secretary of each credit union shall execute, and file with the department, a certificate of merger setting forth:

- (a) the time and place of the meeting of the board of directors at which the plan was approved;
- (b) the vote by which the directors approved the plan;
- (c) a copy of the resolution or other action by which the plan was approved;
- (d) the time and place of the meeting of the members at which the plan was approved;
- (e) the vote by which the members approved the plan; and
- (f) the effective date of the merger, which shall be:
  - (i) the date on which the last approval or vote required under Subsection (1) was obtained; or
  - (ii) a later date specified in the merger plan.

(3) On the effective date of any merger:

- (a) all property, property rights, and interests of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer; and
- (b) all debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the surviving credit union.

(4) Except as provided in Subsection (5)(b), if the surviving credit union is chartered under this chapter, the residents of a county in the limited field of membership of the merging credit union may not be added to the limited field of membership of the surviving credit union, except that the surviving credit union:

- (a) may admit as a member any member of the merging credit union that is not in the limited field of membership of the surviving credit union if the member of the merging credit union was a member of that credit union at the time of merger; and
- (b) may service any member-business loan of the merging credit union until the member-business loan is paid in full.

(5) (a) This section shall be interpreted, whenever possible, to permit a credit union chartered under this chapter to merge with a credit union

chartered under any other law if the preservation of membership interest is concerned.

(b) The commissioner may under Subsection (1)(b) approve a merger plan that includes the addition of the residents of a county in the limited field of membership of the merging credit union to the limited field of membership of the surviving credit union if the commissioner finds that:

(i) the expansion of the limited field of membership of the surviving credit union is necessary for that credit union's safety and soundness; and

(ii) the expanded limited field of membership of the surviving credit union meets the criteria stated in Subsection 7-9-52(3)(c).

(6) If the commissioner approves a merger plan under Subsection (5)(b) under which the surviving credit union's limited field of membership after the merger will include residents of more than one county, Subsections (6)(a) through (e) apply to the surviving credit union.

(a) The domicile-county of the surviving credit union is:

(i) if the credit union does not have a limited field of membership under Subsection 7-9-53(2)(c) or (2)(d), the county in which the credit union has located the greatest number of branches as of the date the merger is effective; or

(ii) if the credit union has a limited field of membership under Subsection 7-9-53(2)(c) or (2)(d), the county that is the domicile-county of the surviving credit union under Section 7-9-53;

(b) Within the surviving credit union's domicile-county, the surviving credit union may establish, relocate, or otherwise change the physical location of the credit union's:

(i) main office; or

(ii) branch.

(c) Within a county other than the domicile-county that is in the limited field of membership of the surviving credit union after the merger, the surviving credit union may not:

(i) establish a main office or branch if the main office or branch was not located in the county as of the date that the merger is effective;

(ii) participate in a service center in which it does not participate as of the date that the merger is effective; or

(iii) relocate the surviving credit union's main office or a branch located in the county as of the date that the merger is effective unless the commissioner finds that the main office or branch is being relocated within a three-mile radius of the original location of the main office or branch.

(d) After the merger, the surviving credit union may admit as a member:

(i) a person in the surviving credit union's limited field of membership after the date that the merger is effective; or

(ii) a person belonging to an association that:

(A) is added to the limited field of membership of the credit union; and

(B) resides in the domicile-county of the surviving credit union, as defined in Section 7-9-53.

(e) In addition to any requirement under this Subsection (6), a surviving credit union shall comply with any requirement under this title for the establishment, relocation, or change in the physical location of a main office or branch of a credit union.

**History:** C. 1953, 7-9-39, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 123; 1989, ch. 267, § 40; 1994, ch. 200, § 76; 1999, ch. 329, § 9.

**Amendment Notes.** — The 1999 amend-

ment, effective May 3, 1999, added Subsections (1)(d)(ii), (4), (5)(b), and (6); deleted “regardless of commonality” after “any other law” in Subsection (5)(a); and changed subsection designations and made stylistic changes.

### **7-9-39.5. Supervisory merger.**

If a credit union is merged with another credit union as a result of a supervisory action under Chapter 2 or 19, the commissioner may permit the surviving credit union to have a limited field of membership that is larger than a limited field of membership permitted under Section 7-9-51.

**History:** C. 1953, 7-9-39.5, enacted by L. 1999, ch. 329, § 10.

**Effective Dates.** — Laws 1999, ch. 329, § 18 makes the act effective on May 3, 1999.

### **7-9-41. Repealed.**

**Repeals.** — Laws 1999, ch. 329, § 17 repeals § 7-9-41, as last amended by Laws 1996, ch. 182, § 18, relating to publication of an application to organize a credit union and to hearings

to prescribe the type of notice if the credit union is a community or regional type, effective May 3, 1999.

### **7-9-43. Board of Credit Union Advisors.**

There is created a Board of Credit Union Advisors of five members to be appointed by the governor.

(1) Members of the board shall be individuals who are familiar with and associated in the field of credit unions.

(2) At least three of the members shall be persons who have had three or more years of experience as a credit union officer and shall be selected from a list submitted to the governor by the Utah League of Credit Unions.

(3) The board shall meet quarterly.

(4) A chair of the advisory board shall be chosen each year from the membership of the advisory board by a majority of the members present at the board's first meeting each year.

(5) (a) Except as required by Subsection (b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(7) All members shall serve until their successors are appointed and qualified.

(8) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(9) Meetings of the advisory board shall be held on the call of the chair. A majority of the members of the board shall constitute a quorum.

(10) The Board of Credit Union Advisors has the duty to advise the governor and commissioner on problems relating to credit unions and to foster the interest and cooperation of credit unions in the improvement of their services to the people of the state of Utah.

**History:** C. 1953, 7-9-43, enacted by L. 1981, ch. 16, § 10; 1989, ch. 267, § 41; 1996, ch. 243, § 17.

**Amendment Notes.** — The 1996 amendment, effective April 29, 1996, rewrote Subsec-

tion (5), revising provisions relating to terms of members; added Subsections (6) and (8); deleted former Subsection (7), relating to filling vacancies; and made appropriate redesignations of subsections and a stylistic change.

### **7-9-45. Insurance of shares and deposits — Security on shares and deposits.**

(1) Except as provided in Subsection (2), a credit union subject to the jurisdiction of the department shall obtain and maintain insurance on shares and deposits from the National Credit Union Administration or successor federal deposit insurance agency.

(2) Notwithstanding Subsection 7-1-704(7)(a)(v) and Subsection (1), a credit union may not be required to obtain federal insurance on shares and deposits if:

(a) the commissioner approves the credit union's election not to obtain federal insurance on shares and deposits;

(b) as security for the shares and deposits, the credit union maintains securities:

(i) that are issued by or directly and unconditionally guaranteed by:

(A) the United States; or

(B) an agency of the United States;

(ii) that are held in an account with a primary reporting dealer that is:

(A) recognized by the Federal Reserve Bank of New York; and

(B) independent of the credit union;

(iii) that are held in accordance with Title 70A, Chapter 8, Uniform Commercial Code — Investment Securities; and

(iv) in which the department has an express and exclusive security interest; and

(c) the aggregate value of the securities described in Subsection (2)(b) is at all times equal to or greater than 1.15 times the aggregate amount of the shares and deposits of the credit union.

(3) The commissioner may appoint the administrator of the National Credit Union Administration as liquidating agent of an insured credit union.

(4) Failure to comply with this section constitutes grounds for supervisory action under Chapter 2 or 19.

**History:** C. 1953, 7-9-45, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 125; 1987, ch. 220, § 6; 1989, ch. 267, § 43; 1994, ch. 200, § 77; 1995, ch. 49, § 30; 1999, ch. 329, § 11.

**Amendment Notes.** — The 1995 amendment, effective June 1, 1995, substituted "or branch subject to the jurisdiction of the department" for "chartered under the laws of this state" in Subsection (1).

The 1999 amendment, effective May 3, 1999, in Subsection (1) added "Except as provided in Subsection (2)" at the beginning and deleted "or branch" before "subject to"; added Subsection (2); substituted "to comply with this section" for "to maintain share and deposit insurance" in Subsection (4); and redesignated subsections.

**7-9-46. Out-of-state credit unions — Authorization to do business in state — Supervision — Examination.**

- (1) As used in this section “out-of-state credit union” means any credit union whose home state is not Utah.
- (2) An out-of-state credit union may maintain a branch in this state only if:
  - (a) maintaining the Utah branch is permissible under applicable law, including Sections 7-1-702 and 7-1-708 in the case of a state chartered credit union; and
  - (b) the branch has been authorized by:
    - (i) the department and the chartering authority of the credit union’s home state in the case of a state chartered credit union; or
    - (ii) the National Credit Union Administration or successor agency in the case of a federally chartered credit union.
- (3) The commissioner may examine and supervise all out-of-state credit unions with a branch in the state, except federal credit unions, in the same manner as the commissioner examines and supervises credit unions in this state.

**History:** C. 1953, 7-9-46, enacted by L. 1981, ch. 16, § 10; 1983, ch. 8, § 126; 1985, ch. 159, § 5; 1985, ch. 244, § 16; 1991, ch. 133, § 19; 1995, ch. 49, § 31.

**Amendment Notes.** — The 1995 amend-

ment, effective June 1, 1995, rewrote the section, substituting “out-of-state credit union” for “foreign credit union” and adding the references to Sections 7-1-702 and 7-1-708.

**7-9-48. Disclosure of share and deposit insurance — Disclosure if secured through securities.**

- (1) A credit union shall comply with all share and deposit insurance disclosure requirements of the National Credit Union Administration or its successor agency.
- (2) In addition to the disclosure requirements described in Subsection (1), a credit union that in accordance with Subsection 7-9-45(2) is not insured by the National Credit Union Administration or successor federal deposit insurance agency shall provide, as prescribed by rule or order, notice that deposits and shares in the credit union are not insured by a federal deposit insurance agency.

**History:** C. 1953, 7-9-48, enacted by L. 1987, ch. 220, § 7; 1994, ch. 200, § 78; 1999, ch. 329, § 12.

**Amendment Notes.** — The 1999 amendment, effective May 3, 1999, added Subsection (2) and made stylistic changes.

**7-9-51. Limited field of membership.**

- (1) Except as provided in Subsection (3), the limited field of membership of a credit union may include only the following:
  - (a) the immediate family of a member of the credit union;
  - (b) the employees of the credit union;
  - (c) residents of a single county; and
  - (d) one or more associations.
- (2) A credit union may have a limited field of membership that is more restrictive than the limited field of membership described in Subsection (1).
- (3) A credit union may have a limited field of membership that is less restrictive than the limited field of membership described in Subsection (1) if the limited field of membership of the credit union:

- (a) is determined under Subsection 7-9-53(2)(c) or (2)(d);
  - (b) is approved by the commissioner after a merger under Subsection 7-9-39(5); or
  - (c) is permitted by the commissioner after a merger in accordance with Section 7-9-39.5.
- (4) If a credit union includes the residents of one county in its limited field of membership, the credit union may not change its limited field of membership to include a different county than the county that is first included in the limited field of membership of the credit union.

**History:** C. 1953, 7-9-51, enacted by L. 1999, ch. 329, § 13.

**Effective Dates.** — Laws 1999, ch. 329, § 18 makes the act effective on May 3, 1999.

### **7-9-52. Expansion of a limited field of membership.**

- (1) The commissioner shall comply with Subsection (2) if the commissioner receives a request to approve an amendment to the bylaws of a credit union that expands the credit union's limited field of membership to include:
- (a) residents of one county; or
  - (b) an association consisting of 50 or more persons.
- (2) If the conditions of Subsection (1) are met, the commissioner shall:
- (a) give notice of the request in the manner and to the extent the commissioner considers appropriate to institutions subject to the jurisdiction of the department that:
    - (i) are located in the county, if the limited field of membership is being expanded to include residents of a county; or
    - (ii) serve or may serve the association described in Subsection (1)(b), if that association is being added to the limited field of membership; and
  - (b) cause a supervisor to examine and submit written findings and recommendations to the commissioner as to:
    - (i) whether the credit union is adequately capitalized;
    - (ii) whether the credit union has the financial capacity to serve the financial needs of the expanded limited field of membership in a safe and sound manner;
    - (iii) whether the credit union has the managerial expertise to serve the financial needs of the expanded limited field of membership in a safe and sound manner;
    - (iv) any potential harm the expansion of the limited field of membership may have on the institutions described in Subsection (2)(a); and
    - (v) the probable beneficial effect of the expansion.
- (3) The commissioner may approve the amendment to the bylaws described in Subsection (1) if the commissioner:
- (a) has given the notice required under Subsection (2)(a);
  - (b) received the written findings and recommendations of the supervisor under Subsection (2)(b); and
  - (c) finds that:
    - (i) the credit union is adequately capitalized;
    - (ii) the credit union has the financial capacity to serve the financial needs of the expanded limited field of membership in a safe and sound manner;
    - (iii) the credit union has the managerial expertise to serve the financial needs of the expanded limited field of membership in a safe and sound manner; and



- (iv) any potential harm the expansion of the limited field of membership may have on other institutions subject to the jurisdiction of the department does not clearly outweigh the probable beneficial effect of the expansion.
- (4) In accordance with Section 7-1-309, the commissioner may hold a hearing on the expansion of a credit union's limited field of membership.
- (5) This section may not be interpreted to permit a credit union to:
  - (a) expand its limited field of membership to include residents of more than one county; or
  - (b) change the county included in the limited field of membership of a credit union, if any.

**History:** C. 1953, 7-9-52, enacted by L. 1999, ch. 329, § 14. **Effective Dates.** — Laws 1999, ch. 329, § 18 makes the act effective on May 3, 1999.

### **7-9-53. Grandfathering.**

- (1) As used in this section and Section 7-9-54:
  - (a) "Association that resides in a domicile-county" means an association that:
    - (i) operates a place of business or other physical location in the domicile-county; or
    - (ii) has at least 100 members that are residents of the domicile-county.
  - (b) "Domicile-county" means the county:
    - (i) in the limited field of membership of the credit union as of January 1, 1999; and
    - (ii) in which the credit union has located the greatest number of branches as of January 1, 1999.
  - (c) "Grandfathered limited field of membership" means the limited field of membership as of May 3, 1999, of a credit union described in Subsection (2)(d).
- (2) For each credit union formed before January 1, 1999, its limited field of membership as of May 3, 1999, is determined as follows:
  - (a) if the limited field of membership stated in the bylaws of the credit union as of January 1, 1999, complies with Section 7-9-51, the credit union's limited field of membership is the limited field of membership indicated in its bylaws;
  - (b) (i) the limited field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(b)(ii) if:
    - (A) the limited field of membership stated in the bylaws of the credit union as of January 1, 1999, includes the residents of more than one county; and
    - (B) as of January 1, 1999, the credit union's main office and any of its branches are located in only one county in its limited field of membership;
  - (ii) as of May 3, 1999, the limited field of membership of a credit union described in Subsection (2)(b)(i) is:
    - (A) the immediate family of a member of the credit union;
    - (B) the employees of the credit union;
    - (C) residents of the one county in which the credit union has its main office or branches as of January 1, 1999, and
    - (D) any association that as of January 1, 1999, is in the limited field of membership of the credit union;

- (c) (i) the limited field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(c)(ii) if:
  - (A) the limited field of membership of a credit union stated in the bylaws of the credit union as of January 1, 1999, includes residents of more than one county;
  - (B) as of January 1, 1999, the credit union has a main office or branch in more than one county; and
  - (C) as a result of a merger pursuant to a supervisory action under Chapter 2 or 19 that is effective on or after January 1, 1983, but before January 1, 1994, the credit union acquired a branch in a county in the limited field of membership of the credit union and the credit union did not have a branch in the county before the merger;
- (ii) as of May 3, 1999, the limited field of membership of a credit union described in Subsection (2)(c)(i) is the same limited field of membership that the credit union would have had under Subsection (2)(d) except that the credit union:
  - (A) is not subject to Subsection (3); and
  - (B) is subject to Subsection (4)(b); and
- (d) (i) the limited field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(d)(ii) if:
  - (A) the limited field of membership stated in the bylaws of the credit union as of January 1, 1999, includes the residents of more than one county; and
  - (B) as of January 1, 1999, the credit union has a main office or branch in more than one county;
- (ii) as of May 3, 1999, the limited field of membership of a credit union described in Subsection (2)(d)(i) is:
  - (A) the immediate family of a member of the credit union;
  - (B) the employees of the credit union;
  - (C) residents of the credit union's domicile-county;
  - (D) the residents of any county other than the domicile-county:
    - (I) if, as of January 1, 1999, the county is in the limited field of membership of the credit union; and
    - (II) in which, as of January 1, 1994, the credit union had located its main office or a branch; and
  - (E) any association that as of January 1, 1999, is in the limited field of membership of the credit union.
- (3) If a credit union's limited field of membership is as described in Subsection (2)(d), beginning May 3, 1999, the credit union:
  - (a) within the credit union's domicile-county, may establish, relocate, or otherwise change the physical location of the credit union's:
    - (i) main office; or
    - (ii) branch;
  - (b) within a county other than a domicile-county that is in the credit union's grandfathered limited field of membership, may not:
    - (i) establish a main office or branch that:
      - (A) was not located in the county as of January 1, 1999; or
      - (B) for which the credit union has not received by January 1, 1999, approval or conditional approval of a site plan for the main office or branch from the planning commission of the municipality where the main office or branch will be located;
    - (ii) participate in a service center in which it does not participate as of January 1, 1999; or

- (iii) relocate the credit union's main office or a branch located in the county as of January 1, 1999, unless the commissioner finds that the main office or branch is relocated within a three-mile radius of where it was originally located; and
- (c) may only admit as a member:
  - (i) a person in the credit union's grandfathered limited field of membership; or
  - (ii) a person belonging to an association that:
    - (A) is added to the limited field of membership of the credit union; and
    - (B) resides in the domicile-county of the credit union.
- (4) (a) If a credit union's limited field of membership is as described in Subsection (2)(b), as of May 3, 1999, the credit union may operate as a credit union having a limited field of membership under Section 7-9-51.
- (b) If a credit union's limited field of membership is as described in Subsection (2)(c), as of May 3, 1999, the credit union:
  - (i) within the credit union's domicile-county, may establish, relocate, or otherwise change the physical location of the credit union's:
    - (A) main office; or
    - (B) branch;
  - (ii) within a county other than its domicile-county that is in the credit union's limited field of membership under Subsection (2)(c), may not:
    - (A) establish a main office or branch that was not located in the county as of January 1, 1999;
    - (B) participate in a service center in which it does not participate as of January 1, 1999; or
    - (C) relocate the credit union's main office or a branch located in the county as of January 1, 1999, unless the commissioner finds that the main office or branch is relocated within a three-mile radius of where it was originally located; and
- (iii) may only admit as a member:
  - (A) a person in the credit union's limited field of membership under Subsection (2)(c); or
  - (B) a person belonging to an association that is added to the limited field of membership of the credit union, regardless of whether the association resides in the domicile-county of the credit union.
- (5) (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union described in Subsection (2)(c) or (2)(d) may:
  - (i) operate an office or branch that is operated by the credit union on May 3, 1999, but that is not located in a county that is in the credit union's limited field of membership as of May 3, 1999; and
  - (ii) serve a member who is not in a credit union's limited field of membership as of May 3, 1999, if the member is a member of the credit union as of March 15, 1999.
- (b) Subsection (5)(a) does not authorize a credit union to:
  - (i) establish a branch in a county that is not in the credit union's limited field of membership as of May 3, 1999, unless the branch meets the requirements under this title for establishing a branch; or
  - (ii) for a credit union described in Subsection (2)(d), include in its limited field of membership an association that:
    - (A) as of January 1, 1999, is not included in the credit union's limited field of membership; and

(B) does not reside within the credit union's domicile-county.

(6) A credit union shall amend its bylaws in accordance with Section 7-9-11 by no later than August 3, 1999, to comply with this section.

(7) In addition to any requirement under this section, a credit union shall comply with any requirement under this title for the establishment, relocation, or change in the physical location of a main office or branch of a credit union.

**History:** C. 1953, 7-9-53, enacted by L. 1999, ch. 329, § 15.

**Effective Dates.** — Laws 1999, ch. 329, § 18 makes the act effective on May 3, 1999.

#### **7-9-54. Electing to terminate grandfathering.**

(1) (a) In accordance with this section, a credit union that has a grandfathered limited field of membership under Section 7-9-53 may terminate the grandfathering of the credit union's grandfathered limited field of membership if, by no later than August 3, 1999, the credit union has received approval from the commissioner in accordance with Section 7-9-11 of an amendment to the bylaws of the credit union that establishes a limited field of membership in compliance with Section 7-9-51.

(b) Notwithstanding Subsection (1)(a), a credit union seeking to terminate its grandfathered limited field of membership may not amend its bylaws to include in the limited field of membership of the credit union after termination of the grandfathering a county other than the domicile-county of the credit union.

(2) On receipt of a request under Subsection (1) to approve an amendment to the bylaws of a credit union, the commissioner shall give notice of the request in the manner and to the extent the commissioner considers appropriate to institutions subject to the jurisdiction of the department that:

(a) are located in a county within the credit union's grandfathered limited field of membership; or

(b) may be affected by the termination of the grandfathering.

(3) The commissioner may approve the amendment to the bylaws described in Subsection (1) if the commissioner:

(a) has given the notice required by Subsection (2); and

(b) finds that any harm the termination of the grandfathering may have on other institutions subject to the jurisdiction of the commissioner does not clearly outweigh the probable beneficial effect of the termination.

(4) In accordance with Section 7-1-309, the commissioner may hold a hearing on the termination of the grandfathering of a credit union.

(5) Beginning on the date the commissioner approves the amendments to the bylaws of a credit union under Subsection (3), the credit union:

(a) may not admit as a member a resident of a county for which grandfathering is terminated;

(b) may admit as a member a person belonging to an association regardless of whether the association resides in the domicile-county within the limited field of membership of the credit union;

(c) may serve a member of the credit union who is not in the credit union's grandfathered limited field of membership, if the member is a member of the credit union on the day that the grandfathering terminates;

(d) may operate a main office or branch that is located outside the limited field of membership of a credit union after grandfathering terminates but is operated by the credit union on the day that the grandfathering terminates; and

(e) may establish, relocate, or otherwise change the physical facilities of the credit union's main office or of a branch in the domicile-county of the

credit union if that county is included in the limited field of membership of the credit union after termination of the grandfathering.

(6) In addition to any requirement under this section, a credit union shall comply with any requirement under this title for the establishment, relocation, or change in the physical location of a main office or branch of a credit union.

**History:** C. 1953, 7-9-54, enacted by L. 1999, ch. 329, § 16.

**Effective Dates.** — Laws 1999, ch. 329, § 18 makes the act effective on May 3, 1999.

## CHAPTER 14

### CREDIT INFORMATION EXCHANGE

Section  
7-14-1. Definitions.

#### 7-14-1. Definitions.

As used in this chapter:

(1) “Depository institution” means any institution authorized by state or federal law to accept and hold demand deposits or other accounts which may be used to effect third party payment transactions. The definition of “depository institution” in Chapter 1 does not apply to Chapter 14.

(2) “Credit reporting agency” includes any co-operative credit reporting agency maintained by an association of financial institutions or one or more associations of merchants.

**History:** C. 1953, 7-14-1, enacted by L. 1981, ch. 16, § 12; 1995, ch. 20, § 23.  
**Amendment Notes.** — The 1995 amend-

ment, effective May 1, 1995, substituted “Chapter 14” for “Chapter 4” at the end of Subsection (1).

## CHAPTER 15

### DISHONORED INSTRUMENTS

Section  
7-15-1. Definitions — Civil liability of issuer — Notice of action — Collection costs — Exemptions.

Section  
7-15-2. Notice — Form.  
7-15-3. Liability of financial institution upon wrongful dishonor.

#### 7-15-1. Definitions — Civil liability of issuer — Notice of action — Collection costs — Exemptions.

(1) As used in this chapter:

(a) “Check” means a payment instrument on a depository institution including a:

- (i) check;
- (ii) draft;
- (iii) order; or
- (iv) other instrument.

(b) “Issuer” means a person who makes, draws, signs, or issues a check, whether as corporate agent or otherwise, for the purpose of:

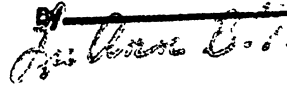
- (i) obtaining from any person any money, merchandise, property, or other thing of value; or

# **ADDENDUM C**

RECEIVED DISTRICT COURT  
Third Judicial District

MAY 6 , 2002

SALT LAKE COUNTY

By  Deputy Clerk

J. Bruce Reading (#2700)  
Scott N. Rasmussen (#5226)  
William G. Wilson (#8787)  
SCALLEY & READING, P.C.  
Attorneys for Plaintiff  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870  
Facsimile: (801) 531-7968

---

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

MOUNTAIN AMERICA FINANCIAL SERVICES,

Plaintiff,

vs.

G. EDWARD LEARY, as Commissioner of the  
UTAH DEPARTMENT OF FINANCIAL  
INSTITUTIONS,

Defendant.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Civil No. 000905335  
Judge Glenn Iwasaki

---

THE ABOVE-ENTITLED MATTER came on for oral argument on Plaintiff's Motion for Summary Judgment before the Honorable Glenn K. Iwasaki on October 22, 2001. The Plaintiff was represented through its attorney of record, J. Bruce Reading, and the Defendant appeared through his attorney of record, Perri Ann Babalis. The Court having heard argument of the parties and being fully advised in the premises enters the following

FINDINGS OF FACT

1. Mountain American Financial Services, Inc. ("MAFS") is a credit union service organization ("CUSO") organized under the laws of and doing business within the State of Utah.
2. MAFS is a "for profit" corporation which is subject to taxation.

3. MAFS is wholly owned by Mountain America Credit Union (“Mountain America”), a Utah “non-profit” corporation which is not subject to taxation.

4. Defendant G. Edward Leary is the commissioner of the Utah Department of Financial Institutions.

5. All acts at issue herein were performed in Salt Lake County, State of Utah.

6. This Court has jurisdiction to review of the record of final agency actions resulting from an informal adjudicative proceeding pursuant to Utah Code Ann. §§ 7-1-7-7(14).

7. On May 3, 1999, a series of amendments (the “Amendments”) to the Utah Credit Union Act (the “Act”), Utah Code Ann. § 7-9-1, *et seq.*, went into effect.

8. As a part of such Amendments, Utah Code Ann. § 7-9-20 was amended to, among other things: (i) limit the aggregate amount that a credit union can extend any individual person or entity in connection with “member-business loans” (as such term is defined in Utah Code Ann. § 7-9-3(7); and, (ii) limited the aggregate amount that a credit union can extend in connection of such credit union’s member business loans. Utah Code Ann. § 70-9-20(7)(ii)(b) provides:

(ii) Beginning March 24, 1999, a credit union may not extend a member-business loan to a person:

...

(b) If as a result of the extension of a member-business loan, the total amount outstanding for all member-business loans that that credit union has extended to that person at any one time exceeds the lesser of (i) 10% of the credit union’s capital and surplus; or (ii) \$250,000.00.

9. In February of 2000, MAFS extended two business loans to two separate members of Mountain America with each loan exceeding the \$250,000.00 limit. On March 15, 2000, MAFS filed a request (the “MAFS Request Letter”) with the Defendant requesting a ruling as to whether



MAFS, in its status as a “for profit”, tax-paying CUSO, was entitled to make business loans to persons and entities, including members of Mountain America and others.

10. On June 9, 2000, the Defendant issued his Findings Conclusions and Order Denying Request (the “Defendant’s Order”) wherein the Defendant denying the request of MAFS as contained in the MAFS Request Letter.

11. The Defendant concluded as set forth in Section 6 of the Defendant’s Order that:

A Credit Union Service Organization is a wholly owned subsidiary of one or more credit unions. As a result, any legal limitation imposed on a credit union applies equally to a “subsidiary” because the financial statement of the subsidiary is consolidated in the financial statement of the parent.

12. The Defendant ruled that pursuant to Utah Code Ann. § 7-9-20(7)(b)(ii)(B) the amount that a credit union can loan to an individual or single entity is limited to the lesser of 10% of the credit union’s capital and surplus or \$250,000.00.

13. On July 7, 2000, MAFS filed the present action asking the Court to find that “CUSO’s are not subject to or governed by § 7-9-20 of the Credit Union Act.”

14. MAFS has historically engaged in activities including, but not limited to, providing the following (collectively, the “MAFS Activities”):

- a. Investment services,
- b. Insurance services,
- c. Brokerage services, and
- d. Real property management services.

15. The Court's function is to act as an appellate review under Utah Code Ann. § 7-1-714.

16. Mountain America and MAFS file a "consolidated financial statement".

From the foregoing Findings of Facts, the Court now enters its

#### CONCLUSIONS OF LAW

1. Summary judgment is appropriate when there is no disputed issues of fact. The Defendant argues that there were some disputed facts but that such facts were, in Defendant's estimation, not material.

2. Looking in a light most favorable to the Defendant, the Court finds that the facts alleged as being in dispute by the Defendant would not properly preclude the entry of summary judgment. *See, Stone v. Antoliv ASP, Inc.*, 210 F.3d 1132 (10<sup>th</sup> Cir. 2000). "In considering the summary judgment motion the Court must evaluate all the evidence and all reasonable inferences fairly drawn from the evidence in a light most favorable to the party opposing summary judgment." *Cinder v. A.L. Williams & Assocs.*, 739 P.2d 634 (Utah Ct. App. 1987).

3. Under the provisions of Rule 81(d) of the Utah Rules of Civil Procedure the rules apply to "review of any order, ruling or other action of an administrative board or agency, except insofar as the specific statutory procedure in connection with any such appeal or review is in conflict or inconsistent with these rules." Nothing contained in Utah Code Ann. § 7-1-714 is in conflict with the Utah Rules of Civil Procedure.

4. Based upon the foregoing, summary judgment is appropriate even with this Court is serving an appellate function.

5. CUSOs are specifically created by credit unions for the express purpose of engaging in for-profit activities which, Mountain America as a credit union, is not entitled to do.

6. Utah Administrative Code R. 337-4-2(3) does not restrict CUSOs to specifically enumerated functions. In fact, CUSOs are organizations that provide “other services that are commonly associated with retained operation of credit unions.”

7. CUSOs are organizations that may provide loans. *Utah Bankers Assn. v. Utah Department of Financial Institutions*, 888 P.2d 714, 719 (Utah Ct. App. 1994).

8. The Court finds that the statutory language is unambiguous and its intent is discernable through traditional methods of statutory construction and for that reason, no deference is granted to the agency. *Morton International, Inc. v. Auditing Division of the Utah State Tax Commission*, 814 P.2d 581, 589 (Utah 1991).

9. MAFS and Mountain America are incorporated as separate legal entities and as such this precludes the imputation of the actions of one to another absent a piercing of the corporate veil.

10. CUSOs and credit unions are recognized by statutes and administrative rule as separate institutions that have different functions.

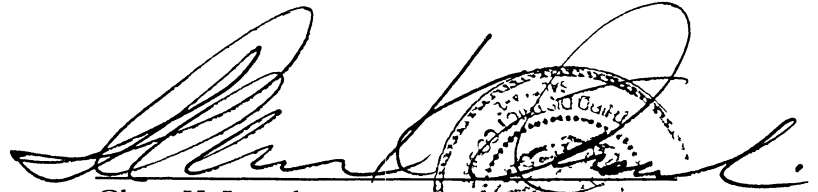
11. Nothing in the plain language of the statute speaks to the lending limitations of CUSOs.

12. The Defendant's Order should be vacated and the Court finds that CUSOs are not subject to or governed by § 7-9-20<sup>(7)(b)(2)</sup> of the Credit Union Act.


DATED this 6 day of May 2002.

BY THE COURT:

5/4/02

  
Glenn K. Iwasaki  
District Court Judge

Approved as to form:

  
Perri A. Babalis  
Attorney for Defendant

# **ADDENDUM D**

UTAH DEPARTMENT OF  
DFI 00-044  
FINANCIAL INSTITUTIONS

BEFORE THE DEPARTMENT OF FINANCIAL INSTITUTIONS  
OF THE STATE OF UTAH

-----000000000-----

IN RE: MOUNTAIN AMERICA CREDIT : FINDINGS, CONCLUSIONS AND  
UNION'S APPLICATION TO : ORDER DENYING REQUEST  
MAKE MEMBER BUSINESS :  
LOANS THROUGH A CREDIT :  
UNION SERVICE :  
ORGANIZATION :

-----000000000-----

FINDINGS AND CONCLUSIONS

1. By virtue of §7-1-501 Utah Code Annotated (Supp. 1999)<sup>1</sup> the Department of Financial Institutions has jurisdiction over depository institutions chartered under the laws of Utah.

2. The definition of "depository institution" found at §7-1-103(8) includes banks, credit unions, industrial loan corporations, and savings and loan associations.

3. The formation, organization, and operation of a credit union chartered under the laws of Utah are subject to various chapters of Title 7, *Financial Institutions Act*, including Chapter 9, *Utah Credit Union Act*.

4. Under §7-1-706, a credit union may request the Commissioner to act on any matter that is subject to the approval of the Commissioner. Mountain America Credit Union ("Mountain America") has requested the commissioner to rule on their application to make member-business loans through credit union service organizations ("CUSO").

5. By virtue of §§ 7-1-706 and 7-9-20, the Department has jurisdiction over the limits on various loan types.

6. A CUSO is a wholly owned subsidiary of one or more credit unions. As a result, any legal limitation imposed on a credit union applies equally to a "subsidiary" because the financial statement of the subsidiary is consolidated in the financial statement of the parent.

7 7  
in front  
0

7. During the 1999 Utah State General Legislative Session, portions of §7-9-1 et. seq., known as the "Utah Credit Union Act", were amended. Sections 7-9-20(7)(b)(ii) through 7-9-20(7)(f)(ii) were amended to reduce the limit on both the individual and aggregate amounts that a

---

<sup>1</sup> All subsequent statutory references are to the Utah Code Annotated (Supp. 1999).

credit union can make in member-business loans. Under §7-9-20(7)(b)(ii)(B) the amount that a credit union can loan to an individual or single entity is limited to the lesser of 10% of the credit union's capital and surplus or \$250,000. Under §7-9-20(7)(c)(i) the aggregate amount that a credit union may have in all member-business loans is 1.25 times the sum of undivided earnings and actual reserves other than the regular reserves.

8. Under current law, the aggregate amount that Mountain America is allowed for member-business loans is \$26,662,056. On March 31, 2000, Mountain America reported in its CALL report that it had member-business loans of \$45,088,966. As a result, Mountain America has exceeded its allowed aggregate loan limit for member-business loans by \$18,426,910.<sup>2</sup>

9. On or about March 15, 2000 Mountain America's CUSO, Mountain America Financial Services, Inc. ("MAFS"), a wholly owned subsidiary of Mountain America, extended two member-business loans totaling \$768,750 and \$25,000, respectively.

10. On March 15, 2000, Mountain America filed an application with the Commissioner requesting authorization to exceed the limits established by §7-9-20(7) limiting the amount a credit union can loan to an individual or entity for a business purpose. In addition, Mountain America requested a ruling on whether the limitation of §7-9-20(7) applies to member-business loans originated by MAFS.

11. The Supervisor of Credit Unions reviewed the application, and on May 8, 2000 issued her findings and recommendation that the application be denied.

12. Based upon the facts as presented in the application, together with the fact that Mountain America has exceeded the individual loan limitation of \$250,000 on the loans in question and its aggregate loan limitation and that MAFS is a wholly owned subsidiary of Mountain America, Mountain America has violated the provisions of §7-9-1 et. seq. in making the loans set forth in its application.

$$\begin{array}{r} 40,099,400 \text{ U/E} \\ 1.25 \\ \hline 50,124,250 \end{array}$$


---

<sup>2</sup>Mountain America has exceeded the aggregate loan limit since the law was amended. Mountain America is the only credit union that has exceeded the limit.

**ORDER**

1. By virtue of the foregoing Findings and Conclusions and in accordance with §7-1-501 the Application by Mountain America Credit Union to exceed the limitations established in §7-9-20(7) through its CUSO, Mountain America Financial Services, Inc. is denied.

DATED this 9<sup>th</sup> day of June, 2000.

  
G. EDWARD LEARY  
Commissioner of Financial Institutions