

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Credit Union Act is amended by changing Section 8 as follows:

(205 ILCS 305/8) (from Ch. 17, par. 4409)

Sec. 8. Secretary's powers and duties. Credit unions are regulated by the Department. The Secretary in executing the powers and discharging the duties vested by law in the Department has the following powers and duties:

(1) To exercise the rights, powers and duties set forth in this Act or any related Act. The Director shall oversee the functions of the Division and report to the Secretary, with respect to the Director's exercise of any of the rights, powers, and duties vested by law in the Secretary under this Act. All references in this Act to the Secretary shall be deemed to include the Director, as a person authorized by the Secretary or this Act to assume responsibility for the oversight of the functions of the Department relating to the regulatory supervision of credit unions under this Act.

(2) To prescribe rules and regulations for the administration of this Act. The provisions of the Illinois

Administrative Procedure Act are hereby expressly adopted and incorporated herein as though a part of this Act, and shall apply to all administrative rules and procedures of the Department under this Act.

(3) To direct and supervise all the administrative and technical activities of the Department including the employment of a Credit Union Supervisor who shall have knowledge in the theory and practice of, or experience in, the operations or supervision of financial institutions, preferably credit unions, and such other persons as are necessary to carry out his functions. The Secretary shall ensure that all examiners appointed or assigned to examine the affairs of State-chartered credit unions possess the necessary training and continuing education to effectively execute their jobs.

(4) To issue cease and desist orders when in the opinion of the Secretary, a credit union is engaged or has engaged, or the Secretary has reasonable cause to believe the credit union is about to engage, in an unsafe or unsound practice, or is violating or has violated or the Secretary has reasonable cause to believe is about to violate a law, rule or regulation or any condition imposed in writing by the Department.

(5) To suspend from office and to prohibit from further participation in any manner in the conduct of the affairs of his credit union any director, officer or committee

member who has committed any violation of a law, rule, regulation or of a cease and desist order or who has engaged or participated in any unsafe or unsound practice in connection with the credit union or who has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director, officer or committee member, when the Secretary has determined that such action or actions have resulted or will result in substantial financial loss or other damage that seriously prejudices the interests of the members.

(6) To assess a civil penalty against a credit union ~~for a violation of this Act, any rule adopted in accordance with this Act, any order of the Secretary issued under his or her authority under this Act, or any other action that in the Secretary's discretion is an unsafe or unsound practice~~ provided that:

(A) the Secretary reasonably determines, based on objective facts and an accurate assessment of applicable legal standards, that the credit union has:

(i) committed a violation of this Act, any rule adopted in accordance with this Act, or any order of the Secretary issued pursuant to his or her authority under this Act; or

(ii) engaged or participated in any unsafe or unsound practice;

(B) before a civil penalty is assessed under this

item (6), the Secretary must make the further reasonable determination, based on objective facts and an accurate assessment of applicable legal standards, that the credit union's action constituting a violation under subparagraph (i) of paragraph (A) of item (6) or an unsafe and unsound practice under subparagraph (ii) of paragraph (A) of item (6):

(i) directly resulted in a substantial and material financial loss or created a reasonable probability that a substantial and material financial loss will directly result; or

(ii) constituted willful misconduct or a material breach of fiduciary duty of any director, officer, or committee member of the credit union;

Material financial loss, as referenced in this paragraph (B), shall be assessed in light of surrounding circumstances and the relative size and nature of the financial loss or probable financial loss. Certain benchmarks shall be used in determining whether financial loss is material, such as a percentage of total assets or total gross income for the immediately preceding 12-month period. Absent compelling and extraordinary circumstances, no civil penalty shall be assessed, unless the financial loss or probable financial loss is equal to or greater than either 1% of the credit union's total assets for the

immediately preceding 12-month period, or 1% of the credit union's total gross income for the immediately preceding 12-month period, whichever is less;

(C) ~~(A)~~ before a civil penalty is assessed under this item (6), the credit union must be expressly advised in writing of the:

(i) specific violation that could subject it to a penalty under this item (6); and

(ii) the specific remedial action to be taken within a specific and reasonable time frame to avoid imposition of the penalty; ~~-~~

(D) Civil penalties assessed under this item (6) shall be remedial, not punitive, and reasonably tailored to ensure future compliance by the credit union with the provisions of this Act and any rules adopted pursuant to this Act;

(E) ~~(B)~~ a credit union's failure to take timely remedial action with respect to the specific violation may result in the issuance of an order assessing a civil penalty up to the following maximum amount, based upon the total assets of the credit union:

(i) Credit unions with assets of less than \$10 million..... \$1,000

(ii) Credit unions with assets of at least \$10 million and less than \$50 million \$2,500

(iii) Credit unions with assets of at least \$50

million and less than \$100 million \$5,000

(iv) Credit unions with assets of at least \$100 million and less than \$500 million \$10,000

(v) Credit unions with assets of at least \$500 million and less than \$1 billion \$25,000

(vi) Credit unions with assets of \$1 billion and greater \$50,000; and

(F) ~~(C)~~ an order assessing a civil penalty under this item (6) shall take effect upon service of the order, unless the credit union makes a written request for a hearing under 38 IL. Adm. Code 190.20 of the Department's rules for credit unions within 90 days after issuance of the order; in ~~in~~ that event, the order shall be stayed until a final administrative order is entered. ~~and~~

~~(D) in the event a credit union commits a subsequent violation that is substantially similar to the initial violation for which a cure period under paragraph (A) of this item (6) was provided the credit union, no additional cure period shall be required before another order is issued assessing a civil penalty for the subsequent violation. Any such order shall take effect upon service of the order, subject to the credit union's right to request a hearing as described in paragraph (C) of this item (6). If a hearing is requested, the order shall be stayed until a~~

~~final administrative order is entered.~~

This item (6) shall not apply to violations separately addressed in rules as authorized under item (7) of this Section.

(7) Except for the fees established in this Act, to prescribe, by rule and regulation, fees and penalties for preparing, approving, and filing reports and other documents; furnishing transcripts; holding hearings; investigating applications for permission to organize, merge, or convert; failure to maintain accurate books and records to enable the Department to conduct an examination; and taking supervisory actions.

(8) To destroy, in his discretion, any or all books and records of any credit union in his possession or under his control after the expiration of three years from the date of cancellation of the charter of such credit unions.

(9) To make investigations and to conduct research and studies and to publish some of the problems of persons in obtaining credit at reasonable rates of interest and of the methods and benefits of cooperative saving and lending for such persons.

(10) To authorize, foster or establish experimental, developmental, demonstration or pilot projects by public or private organizations including credit unions which:

(a) promote more effective operation of credit unions so as to provide members an opportunity to use

and control their own money to improve their economic and social conditions; or

(b) are in the best interests of credit unions, their members and the people of the State of Illinois.

(11) To cooperate in studies, training or other administrative activities with, but not limited to, the NCUA, other state credit union regulatory agencies and industry trade associations in order to promote more effective and efficient supervision of Illinois chartered credit unions.

(Source: P.A. 97-133, eff. 1-1-12.)

Section 99. Effective date. This Act takes effect upon becoming law.