

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Division of Financial Services

3 CCR 703-3

RULES AND REGULATIONS OF THE COLORADO DIVISION OF FINANCIAL SERVICES PERTAINING TO CREDIT UNIONS

8.1 Report of Election or Appointment.

Within 20 days after any regular or special election or any regular or interim appointment, the Commissioner shall be provided with a record of the names and addresses of all current members of the board of directors, supervisory committee members or audit committee (as prescribed in the credit union bylaws), credit committee members (and alternates, if any) or the credit officer, and the officers of such bodies. All such notification shall be completed by the credit union updating said information on its Credit Union Profile, housed on the National Credit Union Administration's secure web site. C.R.S. 11-30-108 (1) and (2)

8.2 Audit Committee

The board of directors may appoint an audit committee in lieu of a supervisory committee to carry out all of the duties and responsibilities of the supervisory committee as contained in C.R.S. 11-30-111 and all applicable rules for the supervisory committee of a federally insured credit union with the following conditions:

- (a) The bylaws of the credit union must be amended to provide for an audit committee by a majority vote of the board of directors. The bylaw change must be submitted to the Commissioner for approval consistent with C.R.S. 11-30-102. If the board of directors subsequently desires to re-establish a supervisory committee in lieu of an audit committee, the same process must be followed.
- (b) The audit committee shall consist of no less than three members. No member of the audit committee shall serve as a member of the credit committee, as the credit manager, as the board chair, or as an employee of the credit union;
- (c) If an audit committee member calls for a committee vote as authorized under C.R.S. 11-30-111 (c) to potentially suspend a director of the credit union who simultaneously serves on the audit committee for the proper conduct of the credit union, the subject of the suspension must formally recuse himself or herself and abstain from the vote. All remaining, eligible voting members of the audit committee must then vote unanimously in support of the action for it to take effect.
- (d) If the membership of the audit committee consists entirely of the directors of the credit union then the annual audit to comply with C.R.S. 11-30-111(a) must be performed by a certified public accountant licensed to practice in the State of Colorado. This does not prevent the credit union from hiring a certified internal auditor to perform periodic audits however these audits will not be accepted as compliance with the annual audit requirements of C.R.S. 11-30-111(a)
- (e) All Audit Committee members must strive to achieve and maintain reasonable independence in fact and appearance while fulfilling their responsibilities under C.R.S 11-30-111. If at any time the Commissioner concludes that audit function independence or effectiveness is impaired to the

detriment of the credit union, or that the system of appropriate checks and balances is deficient or impaired, or that the Audit Committee is otherwise not meeting the minimum requirements established in C.R.S 11-30-111, the Commissioner may require any necessary changes deemed needed to correct or satisfactorily address the situation.

C.R.S. 11-30-108 (2)

9.2 Compensation of Directors and Committee Members.

Members of the ~~board of directors,~~ credit committee, ~~and~~ supervisory committee, and audit committee shall receive no compensation for the performance of duties for the credit union in such capacities. However, such persons may be reimbursed for reasonable and actual out-of-pocket expenses incurred by them in the normal performance of their duties. Such persons may also be reimbursed for actual wages or salary lost by virtue of the performance of duties for the credit union only if authorized by a majority of the members voting at an annual meeting or meeting specifically called for that purpose.

Subject to the provisions of this section, a credit union may pay compensation to the board of directors for their services to the credit union that is reasonable in accordance with subsection (b) of this section:

- (a) "Compensation" includes anything of value that is both given in exchange for services performed and required to be reported to the IRS as income. "Compensation" does not include: any advancement to or reimbursement or direct disbursement to a third party of reasonable expenses associated with credit union business-related travel of a director, payment for insurance coverage of a director which is also available to employees generally, payment of indemnification to a director and liability insurance coverage for directors and gifts to a director of minimal value.
- (b) A credit union shall implement and maintain appropriate internal controls to ensure that compensation is reasonable and that such compensation does not negatively impact the financial condition of the credit union and the credit union is adequately capitalized. Such internal controls shall include, without limitation the following:
 - (1) Prior to initial determination to pay compensation to directors or to increase any such payments, the board of directors shall in good faith create and review all written policies related to compensation and shall review the amount of compensation provided to the directors. The written policy must discuss the precise terms and conditions for a Director to receive or earn compensation, the expected timing of the payments, the applicable IRS reporting requirements, the amounts of the payments and/or methodology used to calculate the amounts, defined term limits to receive compensation for service and a requirement for an annual review and re-validation of the continued reasonableness of the amounts paid.
 - (2) Review set forth in subsection (1) must also:
 - (A) Contain written determination to pay compensation to directors is reasonable, including a discussion of the factors considered in making such determination; and
 - (B) Be included in part of the minutes of the meeting at which matters relating to compensation were deliberated and voted upon by the board.
- (c) Compensation is reasonable if it meets all of the following criteria:
 - (1) It is proportional to the services provided by the director;

- (2) It is reasonable considering the financial condition of the credit union; and
- (3) It is comparable to compensation paid by comparable organizations of a similar size and operational complexity.
- (d) A credit union shall annually disclose in writing to credit union members prior to its annual membership meeting the compensation provided to directors in the prior calendar year and anticipated amounts scheduled for the current calendar year. The written disclosure to a credit union's members:

 - (1) Shall be in writing and conspicuously set apart from other information provided to members;
 - (2) Shall include the names of all the directors receiving compensation and the total amount paid in the prior calendar year;
 - (3) Shall include the schedule for anticipated compensation to be paid to directors in the current calendar year; and
 - (4) Shall be included in the notice of the annual meeting of the members, a separate mailing to members, a periodic statement of account to members, a periodic publication of the credit union to members, posted electronically on a credit union's web site, or through some other e-mail publication to members.
- (e) A credit union shall provide written notice to the Commissioner of Financial Services its intent to adopt a policy and subsequent changes to compensate directors at least sixty days before adopting such policy. The notice must include:

 - (1) All documentation described in subsection (b) of this Section.
 - (2) Any information as may be required by the Commissioner; Any objections or concerns regarding the proposed plan raised by the Commissioner must be satisfactorily resolved prior to the actual implementation.
- (f) The Commissioner may, at any time, order the compensation be reduced or eliminated, if it is deemed to cause an unsafe or unsound condition to the credit union. C.R.S. 11-30-109 (3)