

**ILLINOIS DEPARTMENT OF FINANCIAL &
PROFESSIONAL REGULATION
DIVISION OF FINANCIAL INSTITUTIONS**

Guidelines for Regulatory Scope, Clarity and Resolution of Examination Items

The following guidelines are established by the Department to define the scope of the credit union examination process and clarify examination items to be resolved.

(a) **Communication Protocol in Identifying and Addressing Examination Findings –**

The Department will use the following communication protocol guidelines during credit union examinations:

- (1) Examiners and the credit union management shall set aside time throughout the examination to discuss any problems identified during the examination.
- (2) Credit union management shall be given the opportunity to recommend corrective action plans to address any exception items identified in the examination process.
- (3) Reasonable solutions provided by the credit union and accepted by the Department shall become the corrective action plan included in any document of resolution issued to or letter of understanding and agreement entered into with the credit union.
- (4) No verbal directions shall be given by any examiner to an employee of the credit union during the examination to perform any particular function or take any particular action other than routine examination tasks, without prior consultation with management of the credit union. Prior consultation shall not be required if the Department reasonably suspects that a serious underlying management deficiency exists. If any action requested by an examiner requires contact or the filing of documents with another party, person or entity, the credit union shall be afforded a reasonable opportunity to consult with its attorney, accountant or other professional consultant to confirm the propriety of the requested action. If the credit union, upon the advice of its attorney, accountant or professional

consultant, concludes the requested contact or filing is unwarranted, the Department may record its position on the matter as a finding or Document of Resolution (“DOR”) in its examination report or take other administrative action, but it shall make no further verbal demands on the credit union with respect to that matter.

(b) **Preparation of Examination Reports** - In preparing its examination report, the Department shall convey the purpose, scope, identified problems, corrective actions, and conclusions reached during the examination process. The examination report shall:

- (1) Properly identify examination concerns related to the risk areas: credit, interest rate, liquidity, transaction, compliance, strategic, and reputation;
- (2) Relate the applicable risk areas to the examination ratings;
- (3) Support all conclusions reached regarding problems identified;
- (4) Outline proper corrective actions to ensure problems are resolved in a timely manner, drawing upon recommended strategies and reasonable solutions provided by the credit union.

(c) **Delivery of Examination Reports.**

(1) *Definitions* –

- (A) An “exit meeting” is held when field work is completed and preliminary results are shared with management.
- (B) The “examination report meeting” with the Board and management customarily takes place after the exit meeting and is held with the credit union’s board and/or senior management. At the examination report meeting, any draft Document of Resolution (“DOR”) and any draft Examiner’s Findings shall be presented to the board and/or senior management.
- (C) The “final examination report” is delivered after the examination report meeting and is issued by the Department’s after the review examination process is finalized.

- (2) The final examination report will be issued to the credit union no later than sixty (60) days after the examination report meeting, unless extraordinary circumstances warrant a longer time period.
- (3) If the Department receives prior notification, the credit union may have a professional representative present at the joint conference, exit meeting or any other meeting with the Department related to the examination, whether conducted in person, electronically, or by telephone. The professional representative may be the credit union's attorney, accountant, consultant or compliance review committee member. The professional representative shall adhere to and be bound by all confidentiality standards set forth in the Act and that otherwise apply to the professional representative's rendition of services to the credit union.

(d) Examination Due Process: Enforcement Action Procedures.

(1) Actions Not Specified by the Act.

A. Document of Resolution (DOR)

- (i) **Definition** – A DOR is a corrective action plan that is incorporated into or accompanies the regulatory examination report issued to a state credit union by the Department. A DOR may address any action or lack of action that, if left uncorrected, may result in substantial loss or damage to the credit union or its members. Compliance violations that are systemic, recurring or that result from willful neglect may also be addressed in a DOR. A DOR is distinguishable from an Examiner's Finding, which is also set forth in the Examination Report. An Examiner's Finding reflects a problem that management may address in the normal course of business, because the problem does not threaten the viability of the credit union. The final examination report will contain all DORs, which shall be reviewed by the Supervisor, or his or her designee (each reference herein to "Supervisor" shall mean the Supervisor or his or her designee other than the Examiner in Charge ("EIC")). The Supervisor shall ensure that no DOR is issued that acts in lieu of a formal administrative order.

- (ii) **Purpose** – To obtain a written commitment from the Board and management of the credit union to address and correct existing conditions within specified time frames, in order to prevent more serious problems in the future.
- (iii) **Guidelines for Determining when a DOR Should be Considered** – A DOR shall be considered by the EIC, when any situation exists in which the operating deficiencies of a credit union are severe, chronic and/or previous recommendations for corrective action have not been implemented or the corrective action taken has been ineffective.
- (iv) **Procedures for Implementing a DOR**
 - (1) The EIC shall ensure that adequate documentation exists to support the need for a DOR between the Credit Union and the Department and, if applicable, the share insurer.
 - (2) Should a DOR be considered necessary, the EIC shall prepare a draft DOR based on the findings and conclusions of the examination.
 - (3) The EIC and, if deemed necessary by the Supervisor, the Supervisor and other representatives of the Department, shall discuss the draft DOR with management or with the Board at a Board meeting. Any final DOR shall be set forth in the final examination report, after it has been reviewed by the Supervisor.
 - (4) If management or the Board of the credit union fails to implement the DOR corrective action plan, the EIC shall document the failure of management or the Board and confer with the Supervisor to confirm the necessity of initiating alternative enforcement action.
- (v) **Determining Compliance with a DOR**
 - (1) The EIC may evaluate compliance with the DOR at any time or at the subsequent examination of the credit union, as part of the Department's examination report review process. The extent of

compliance may be reported in the DOR Status Update section of the examination report:

- (a) If management or the Board is in substantial compliance and the condition of the credit union no longer warrants the DOR, the EIC shall treat the DOR as resolved.
- (b) If management or the Board is not in substantial compliance and the condition of the credit union warrants further enforcement action, the EIC shall review the criteria for enforcement actions and make the appropriate recommendation. This may result in the recommendation for a new DOR or a more severe enforcement action.

B. Letter of Understanding and Agreement (LUA)

- (i) **Definition** – A LUA is a document prepared by the Department and, if applicable, the insurer listing specific credit union problems and the corrective action necessary to resolve the problems. The LUA is designed to demonstrate to Board and management of the credit union that problems noted are a major concern to the Department and that the Department is requesting the Board and management agree to the listed actions in lieu of taking administrative action.
- (ii) **Purpose** – To obtain a written commitment from the Board and management of the credit union to address and correct existing conditions within specified time frames, in order to prevent more serious problems in the future.
- (iii) **Guidelines for Determining when a LUA Should be Considered** – A LUA shall be considered by the EIC when any situation exists in which the operating deficiencies of a credit union are severe, chronic and/or previous recommendations for corrective action have not been implemented or the corrective action taken has been ineffective.

(iv) **Procedures for Implementing a LUA**

- (1) The EIC shall ensure that adequate documentation exists to support the need for a LUA between the Credit Union and the Department and, if applicable, the share insurer.
- (2) The EIC shall discuss the need for a LUA with the Supervisor of the Credit Union Section or Director as applicable:
 - (a) If the Supervisor agrees that a LUA is necessary, the EIC shall present the examination findings and discuss the possibility of a LUA at a meeting of management or the Board either during the examination or at the next regularly scheduled meeting.
 - (b) If the EIC and Supervisor believe that a LUA is not necessary, a memorandum may be sent by the EIC and/or Supervisor to the Director explaining why the LUA is not necessary.
 - (c) In every case, the Supervisor shall determine whether or not a LUA shall be recommended to the Board.
- (3) Should a LUA be considered necessary, the EIC shall prepare a draft LUA for review by the Supervisor, based on the findings and conclusions of the examination.
 - (a) If the provisions and language in the LUA are acceptable, the Supervisor shall forward the draft to the Director.
 - (b) If the provisions or language in the LUA are not acceptable, the Supervisor shall make the necessary changes and forward the draft to the Director. Significant changes in the draft shall be discussed with the EIC prior to submitting the document to the Director.
- (4) If the language or recommendations of the LUA are not acceptable, the Director shall make the necessary changes following consultation with the Supervisor and the EIC.

- (5) If the Director approves the language and recommendations of the LUA, the EIC and, if available, the Supervisor shall discuss the final draft with management or with the Board at a Board meeting.
- (6) If management or the Board ultimately fails to agree to the LUA, the Director shall document the failure of management or the Board to agree to the LUA, and may, in the Director's discretion, initiate alternative enforcement action.

(v) **Determining Compliance with a LUA**

- (1) The Supervisor shall determine compliance with the applicable provisions of the LUA between examinations, including maintenance and monitoring of a file containing the LUA, all correspondence relating to the LUA, any periodic reports submitted by management or the Board as mandated by the LUA.
- (2) In the course of the Supervisor's review of a LUA between examinations, should the Supervisor identify noncompliance with the LUA, the Supervisor may submit written correspondence to the Board or management addressing the matter of noncompliance, subject to further review by the Director, or conduct a special examination of the credit union. If the Supervisor determines that the Board or management is in substantial compliance and the condition of the credit union no longer warrants a LUA, the Supervisor may recommend terminating the LUA to the Director prior to the next examination. The credit union may, at any time, submit a written application to the Supervisor requesting termination of the LUA, based upon resolution of the conditions that led to the issuance of the LUA.
- (3) If the LUA is not terminated between examinations, the EIC shall evaluate compliance with the entire LUA at the subsequent examination. The extent of compliance shall be reported in the Supplementary Facts section of the examination report:

- (a) If management or the Board is in substantial compliance and the condition of the credit union no longer warrants a LUA, the EIC shall recommend that the LUA be terminated.
- (b) If management or the Board is not in substantial compliance and the condition of the credit union warrants further enforcement action, the EIC shall review the criteria for enforcement actions and make the appropriate recommendation. This may result in the recommendation for a new LUA or a more severe enforcement action.

(vi) **Procedures for Terminating a LUA**

(1) Terminating a LUA Between Examinations:

- (a) The Supervisor shall ensure that adequate documentation exists to support the recommendation to terminate the LUA. If such documentation exists, the Supervisor shall recommend terminating the LUA to the Director.
- (b) The Director shall determine whether or not a LUA shall be terminated.
- (c) If the Director agrees that termination is appropriate, a letter shall be prepared for the signature of the Director, notifying the Board or management of the credit union that the LUA is terminated.

(2) Terminating a LUA at a Subsequent Examination:

- (a) The EIC shall ensure that adequate documentation exists to support the recommendation to terminate the LUA.
- (b) The EIC shall discuss the recommendation to terminate a LUA with the Supervisor. If the Supervisor agrees that termination is appropriate, the EIC shall present the examination findings and discuss the possibility of termination at a meeting of management or the Board, or at an examination exit meeting with the credit

union's Board or management, either during the examination or at the next regularly scheduled meeting.

- (c) The Director shall determine whether or not a LUA shall be terminated.
- (d) If the Director agrees that termination is appropriate, a letter shall be prepared for the signature of the Director, notifying the Board or management that the LUA is terminated. Such written notification may be made in the transmittal letter accompanying the report of examination or in a separate correspondence.

(2) Actions Specified by the Act.

A. Cease and Desist Orders

- (i) **Definition** – A written directive, pursuant to Section 8(4) of the Act, by the Secretary/Director to the board of directors of a state credit union to cease and desist unsafe and unsound practices or violations of law.
- (ii) **Purpose** – To impose enforceable corrective action and the discontinuance of unsafe and unsound practices and violations of law.
- (iii) **Guidelines for Determining when a Cease and Desist Order (“Order”) Should be Considered** – An Order shall be considered by the EIC pursuant to the standards set forth in Section 8 (4) of the Act.
- (iv) **Procedures for Implementing a Cease and Desist Order**
 - (1) If the EIC believes that an Order is appropriate, the need for an Order shall be discussed with the EIC, Supervisor of the Credit Union Section, the Director, and the Deputy General Counsel.
 - (2) If an Order is appropriate, the EIC shall present the examination findings and discuss the possibility of an Order at a meeting with the Board or management of the credit union at the next regularly scheduled meeting or at the close of the examination.

- (3) The EIC shall prepare a draft document based on the examination findings and conclusions and a draft Order shall also be prepared. The Supervisor, Deputy General Counsel and Director shall have an opportunity to review and edit the draft Order.
- (4) Upon final review and approval by the Director, the Director shall forward a draft of the Order with a recommendation to the Secretary.
- (5) Following approval by the Secretary or his designee, the Department shall comply with provisions of 38 Ill. Admin. Code 190.30 of the Illinois Credit Union Rules and Regulations, in issuing the Order to the credit union.

(v) **Determining Compliance with a Cease and Desist Order**

- (1) The Supervisor shall monitor compliance with the applicable provisions of the Order between examinations including maintenance and monitoring of a file containing the Order, all correspondence relating to the Order, the submission of any periodic reports as mandated by the Order, and any other notes or documentation that would be helpful in the documentation of compliance.
- (2) In the course of the Supervisor's review of an Order between examinations, should the Supervisor identify noncompliance with the Order, the Supervisor shall draft written correspondence to the Board of Directors addressing the matter of noncompliance, subject to further review by the Director. If the Supervisor determines that the Board is in substantial compliance and the condition of the regulated entity no longer warrants an Order, the Supervisor may recommend terminating the Order to the Director prior to the next examination.
- (3) If the Director does not terminate the Order between examinations, the EIC shall evaluate compliance with the Order at each subsequent

examination. The extent of compliance shall be explained in the management analysis section of the examination report.

- (a) If the Board of a credit union is in substantial compliance and the condition of the credit union no longer warrants an Order, the EIC shall recommend that the Order is no longer needed.
 - (b) If the Board of the credit union is not in substantial compliance and the condition of the credit union continues to warrant the Order, the EIC shall recommend that the Order remain in effect or recommend a more severe enforcement action, including, but not limited to, the assessment of civil money penalties.
- (4) If the Board of a credit union is not in substantial compliance with any provision of an Order, the Director shall make a written recommendation to the Secretary or the Secretary's designee and the General Counsel on the necessity of requesting the Attorney General to seek the enforcement of the Order in a court of appropriate jurisdiction.

(vi) **Procedures for Terminating a Cease and Desist Order**

- (1) Terminating a Cease and Desist Order Between Examinations:
 - (a) The Supervisor shall ensure that adequate documentation exists to support the recommendation to terminate the Order. The Supervisor shall then make a written recommendation to the Director recommending termination of the Order.
 - (b) If the Director concurs, the Deputy General Counsel shall draft a Termination Order and forward it to the Director for signature. The Termination Order shall notify the Board and management of the credit union that the provisions of the Order are no longer in effect.
- (2) Terminating a Cease and Desist Order at a Subsequent Examination:
 - (a) The EIC shall prepare a written recommendation to terminate an Order and submit it to the Supervisor.

- (b) Following the Supervisor's review, a written recommendation shall be made to the Director.
- (c) If the Director concurs, the Deputy General Counsel shall draft a Termination order and forward it to the Director for signature.

B. Orders of Suspension/Removal

- (i) **Definition** –An order of removal is a directive issued by the Department pursuant to Section 8(5) of the Act, to suspend any director, officer, or committee member from office and to prohibit that person from further participation in any manner in the conduct of the affairs of the credit union.
- (ii) **Purpose** - To enforce corrective action and to protect the credit union from further director, officer, or committee member misconduct outlined in Section 8(5) of the Act.
- (iii) **Guidelines** – Guidelines for determining when a suspension/removal order should be considered are set forth in Section 8(5) of the Act.
- (iv) **Procedures** – Removal or Suspension Procedures are set forth in 38 Ill. Admin. Code 190.40 of the Illinois Credit Union Rules and Regulations.

C. Civil Penalty Orders

- (i) **Definition** – A written directive pursuant to Section 8(6) of the Act, by the Secretary or the Secretary's designee that imposes a monetary penalty against a credit union for a violation of the Act, any rule promulgated in accordance with the Act, any order of the Secretary or the Secretary's designee issued pursuant to his or her authority under the Act or any action which the Secretary or the Secretary's designee determines to be an unsafe or unsound practice, all pursuant to the standards set forth in Section 8(6) of the Act.
- (ii) **Purpose** – To impose monetary penalties for noncompliance with the Act, any rule promulgated in accordance with the Act, any part of an Order issued by the Secretary or the Secretary's designee or any other action that the Secretary or the Secretary's designee finds to be an unsafe and unsound practice consistent with the standards set forth in Section 8(6) of the Act.

- (iii) **Guidelines for Civil Penalties** – Guidelines for determining when Civil Penalties should be considered are set forth in Section 8(6) of the Act:
- (iv) **Procedures** – Procedures for implementing Civil Penalties are set forth in Section 8(6) of the Act. To assist the Secretary in making the Civil Penalty assessment determination required under Section 8(6) of the Act, the Director or Supervisor shall utilize the following process:
 - (1) If the Supervisor or Director believes that a Civil Penalty is appropriate, the EIC shall ensure that adequate documentation is maintained in a specific evidence file to support the findings.
 - (2) The Supervisor or Director shall designate an individual to complete the Civil Penalty Grid utilized by the Department's Division of Banking, a copy of which is attached hereto and incorporated herein by this reference, to determine the recommended amount of the Civil Penalty, subject to and consistent with the statutory criteria set forth in Section 8(6) of the Act.
 - (3) The Supervisor or Director shall prepare a written recommendation for a Civil Penalty to the Secretary and the Deputy General Counsel.
 - (4) If the Secretary concurs that a Civil Penalty is warranted pursuant to Section 8(6) of the Act and concurs with the recommended amount, the Deputy General Counsel shall prepare a draft Civil Penalty Order and forward the draft Order to the Director and Secretary for their review.
 - (5) If the draft Civil Penalty Order is acceptable to the Director and Secretary, the Deputy General Counsel shall forward the final Order to the Secretary for signature. The signed Order to pay a Civil Penalty shall be delivered to the credit union subject to the Order.
- (v) **Guidelines for Using the Civil Monetary Penalty Grid (CMP Grid)**
 - (1) The CMP Grid, used by the Division of Banking, but revised to be relevant to Credit Unions, is designed to provide a consistent standard for assessing monetary penalties. The CMP Grid contains 14 components that must be considered before recommending monetary penalties.

- (2) After all of the components have been evaluated and the final figures calculated, the Director or Supervisor shall add the final figures for the first 11 components to arrive at the first subtotal. The Director or Supervisor shall then subtract the final figures for the next three components from the first subtotal to arrive at the total. To determine the appropriate penalty amount, the Director or Supervisor shall take the total number of points, look at the “suggested action” for that number, and calculate a pro rata allocation based on the statutory schedule for the assessment of civil penalties set forth in Section 8(6) of the Act.
- (3) The penalty should be assessed in line with provisions set forth in Section 8(6)(D) of the Act.