

CREDIT UNION ACT (EXCERPT)
Act 215 of 2003

490.207 Examination by director; conduct; report; document, material, or information; confidentiality; disclosure; demand for production; request for discovery or disclosure; judicial review; appeal; best practices or other improvements; guidance to promote consistency and due process.

Sec. 207. (1) The director or his or her authorized agent shall examine the condition and affairs of each domestic credit union, and may examine the condition and affairs of any subsidiary of a domestic credit union, at least once every 18 months. The director shall determine whether the domestic credit union transacts its business in the manner prescribed by law and the rules promulgated under law.

(2) In connection with an examination under subsection (1), the director or the director's authorized agent may examine under oath a board member, officer, agent, or employee of a domestic credit union concerning the affairs and business of the domestic credit union. The director or the director's authorized agent may examine an affiliate of a domestic credit union if necessary to fully disclose the relationship between the domestic credit union and the affiliate and the effect of the relationship on the domestic credit union.

(3) The director may examine a branch or branches located in this state of a foreign credit union.

(4) In an examination under this section, the director may use an examination made under the federal credit union act, 12 USC 1751 to 1795k, any other federal law related to the chartering or insuring of financial institutions, or the law of another state governing the activities of foreign credit unions organized in or regulated by that state. The director may require a credit union to furnish a copy of any report required by a federal or state credit union regulatory agency.

(5) The director may contract with another state credit union regulatory agency to assist in the conduct of examinations of domestic credit unions with 1 or more branches located in that other state and in examinations of foreign credit unions with 1 or more branches located in this state.

(6) The contents of a report of examination and examination-related documents, materials, or information that are prepared or obtained under this act remain the property of the director. Any document, material, or information related to an examination under this act is confidential by law and privileged, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials, or information in the furtherance of any supervisory activity or legal action brought as part of the director's duties.

(7) The director, or any person that received documents, materials, or information while acting under the director's authority, is not permitted and may not be required to testify in any private civil action concerning any confidential documents, materials, or information described in subsection (6).

(8) To assist in the performance of the director's duties under this act, the director may do any of the following:

(a) Share documents, materials, or information, including the confidential and privileged documents, materials, or information that are subject to subsection (6), with other state, federal, and international regulatory agencies, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or information.

(b) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The director shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that the documents, materials, or information the director receives are confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

(c) Enter into agreements governing the sharing and use of information that are consistent with this subsection.

(9) The disclosure of any documents, materials, or information to the director, or the sharing of documents, materials, or information under subsection (8), is not a waiver of, and shall not be construed as a waiver of, any privilege applicable to or claim of confidentiality in those documents, materials, or information.

(10) This article does not prohibit the director from releasing final, adjudicated actions that are open to public inspection under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, to a database or other clearinghouse service maintained by the National Credit Union Administration or its affiliates or subsidiaries.

(11) A person to which confidential and privileged documents, materials, or information is disclosed shall

not further disseminate those confidential and privileged documents, materials, or information.

(12) Any person on which a demand for production of confidential and privileged documents, materials, or information is made, whether by subpoena, order, or other judicial or administrative process, must withhold production of the confidential and privileged documents, materials, or information and must notify the director of the demand. If the director is notified of a demand under this subsection, the director may intervene for the purpose of enforcing the limitations of this section or seeking the withdrawal or termination of the attempt to compel production of the confidential and privileged documents, materials, or information.

(13) Any request for discovery or disclosure of confidential and privileged documents, materials, or information, whether by subpoena, order, or other judicial or administrative process, shall be made to the director, and the director shall determine within 7 days whether to disclose the documents, materials, or information under this act. If the director determines that the documents, materials, or information will not be disclosed, the director's decision is subject to judicial review.

(14) The judicial review of a decision of the director under subsection (13) may include in camera judicial review of the confidential and privileged documents, materials, or information. After judicial review, a court may only order disclosure of the portions of the confidential and privileged documents, materials, or information that are relevant and otherwise unobtainable by the requesting party.

(15) The director may immediately appeal any court order described in subsection (14) that compels disclosure of confidential and privileged documents, materials, or information, and the order is automatically stayed pending the outcome of the appeal.

(16) In an addendum to a report of an examination under this section, the director or his or her authorized agent may suggest best practices or other improvements in the operation of a domestic credit union that are not required by law or regulation or to address safety and soundness of the domestic credit union. The manner in which a domestic credit union addresses issues concerning its operations is within the discretion of the credit union in the exercise of its business judgment, except as required by law or regulation or to address a concern over safety and soundness. The director shall not take action against a domestic credit union under this act based on a failure or refusal of a domestic credit union to follow a best practice or other recommended improvement in the operation of the domestic credit union that is suggested informally by an examiner or that is contained in an addendum to a report of examination.

(17) Within 1 year after the effective date of the amendatory act that added this subsection, the director shall issue guidance to promote consistency and due process in the examination process under this section, including, but not limited to, establishing guidelines that define the scope of the examination process and clarify how examination issues will be resolved.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2016, Act 155, Eff. Sept. 7, 2016.