



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0348

Introduced 1/27/2009, by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

205 ILCS 305/34	from Ch. 17, par. 4435
205 ILCS 305/42	from Ch. 17, par. 4443
205 ILCS 305/42.5 new	
205 ILCS 305/46	from Ch. 17, par. 4447

Amends the Illinois Credit Union Act. Provides that in determining the appropriate balance in the allowance for loan losses account, a credit union may determine its historical loss rate using a defined period of time of less than 5 years, provided that specified criteria are met. Provides that shares issued in trust may serve as the subscription to a share required under specified provisions for a trustee having the same social security number as the grantor. Contains provisions concerning marketing of services by a credit union. Provides that credit unions may make residential real estate mortgage loans on terms and conditions established by the United States Department of Agriculture through its Rural Development Housing and Community Facilities Program and that the portion of any loan in excess of the appraised value of the real estate shall be allocable only to the guarantee fee required under the program. Imposes conditions on any rulemaking authority. Effective immediately.

LRB096 04653 MJR 14712 b

1 AN ACT concerning financial regulation.

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

4 Section 5. The Illinois Credit Union Act is amended by
5 changing Sections 34, 42, and 46 and by adding Section 42.5 as
6 follows:

7 (205 ILCS 305/34) (from Ch. 17, par. 4435)

8 Sec. 34. Duties of Supervisory Committee.

9 (1) The Supervisory Committee shall make or cause to be
10 made an annual internal audit of the books and affairs of the
11 credit union to determine that the credit union's accounting
12 records and reports are prepared promptly and accurately
13 reflect operations and results, that internal controls are
14 established and effectively maintained to safeguard the assets
15 of the credit union, and that the policies, procedures and
16 practices established by the Board of Directors and management
17 of the credit union are being properly administered. The
18 Supervisory Committee shall submit a report of that audit to
19 the Board of Directors and a summary of that report to the
20 members at the next annual meeting of the credit union. It
21 shall make or cause to be made such supplementary audits as it
22 deems necessary or as are required by the Director or by the
23 Board of Directors, and submit reports of these supplementary

1 audits to the Director or Board of Directors as applicable. If
2 the Supervisory Committee has not engaged a public accountant
3 registered by the Department of Professional Regulation to make
4 the internal audit, the Supervisory Committee or other
5 officials of the credit union shall not indicate or in any
6 manner imply that such audit has been performed by a public
7 accountant or that the audit represents the independent opinion
8 of a public accountant. The Committee must retain its tapes and
9 working papers of each internal audit for inspection by the
10 Department. The report of this audit must be made on a form
11 approved by the Director. A copy of the report must be promptly
12 mailed to the Director.

13 (2) The Supervisory Committee shall make or cause to be
14 made at least once each year a reasonable percentage
15 verification of members' share and loan accounts, consistent
16 with rules promulgated by the Director.

17 (3) The Supervisory Committee of a credit union with assets
18 of \$5,000,000 or more shall engage a public accountant
19 registered by the Department of Professional Regulation to
20 perform an annual external independent audit of the credit
21 union's financial statements in accordance with generally
22 accepted auditing standards. The Supervisory Committee of a
23 credit union with assets of \$3,000,000 or more, but less than
24 \$5,000,000, shall engage a public accountant registered by the
25 Department of Professional Regulation to perform an external
26 independent audit of the credit union's financial statements in

1 accordance with generally accepted auditing standards at least
2 once every 3 years. A copy of an external independent audit
3 shall be mailed to the Director upon completion. If the annual
4 internal audit of such a credit union is conducted by a public
5 accountant registered by the Department of Professional
6 Regulation and the annual internal audit is done in conjunction
7 with the credit union's annual external audit, the requirements
8 of subsection (1) of this Section shall be deemed met.

9 (4) In determining the appropriate balance in the allowance
10 for loan losses account, a credit union may determine its
11 historical loss rate using a defined period of time of less
12 than 5 years, provided that:

13 (A) the methodology used to determine the defined
14 period of time is formally documented in the credit union's
15 policies and procedures and is appropriate to the credit
16 union's size, business strategy, and loan portfolio
17 characteristics and the economic environment of the areas
18 and employers served by the credit union;

19 (B) supporting documentation is maintained for the
20 technique used to develop the credit union loss rates,
21 including the period of time used to accumulate historical
22 loss data and the factors considered in establishing the
23 time frames; and

24 (C) the external auditor conducting the credit union's
25 financial statement audit has analyzed the methodology
26 employed by the credit union and concludes that the

1 financial statements, including the allowance for loan
2 losses, are fairly stated in all material respects in
3 accordance with U.S. Generally Accepted Accounting
4 Principles, as promulgated by the Financial Accounting
5 Standards Board.

6 Rulemaking authority to implement this amendatory Act of
7 the 96th General Assembly, if any, is conditioned on the rules
8 being adopted in accordance with all provisions of the Illinois
9 Administrative Procedure Act and all rules and procedures of
10 the Joint Committee on Administrative Rules; any purported rule
11 not so adopted, for whatever reason, is unauthorized.

12 (5) A majority of the members of the Supervisory Committee
13 shall constitute a quorum.

14 (Source: P.A. 86-238.)

15 (205 ILCS 305/42) (from Ch. 17, par. 4443)

16 Sec. 42. Shares in trust.

17 (1) Shares may be issued in trust to a member as trustee or
18 to an individual or corporate trustee. If a corporate trustee
19 is a bank or trust company, shares may be issued to the
20 corporate trustee only if such bank or trust company is
21 organized under the laws of the State of Illinois or is a
22 nationally chartered bank located principally in the State of
23 Illinois. An individual trustee shall be a member of the credit
24 union unless the person establishing the trust in respect to
25 which such shares are issued or each beneficiary of the trust

1 is a member of the credit union and the name of each
2 beneficiary is disclosed to the credit union. Shares issued in
3 trust may serve as the subscription to a share required under
4 Section 15 of this Act for a trustee having the same social
5 security number as the grantor. Shares may also be issued in
6 the name of an individual or corporate representative under the
7 Illinois Probate Act of 1975 for or in respect to a member of a
8 credit union. Shares may also be issued in trust under the
9 Illinois Funeral or Burial Funds Act, for or in respect to a
10 member of a credit union, to a trustee licensed under said Act.
11 Any credit union which issues shares in trust as provided in
12 this Section must be insured by the NCUA or another approved
13 insurer. Payment of part or all of such shares to such trustee
14 or member shall, to the extent of such payment, discharge the
15 liability of the credit union to the member and the beneficiary
16 and the credit union shall be under no obligation to see to the
17 application of such payment.

18 (2) If a credit union's shares are insured as provided for
19 in this Act, such credit union shall have power to act as
20 trustee or custodian under individual retirement accounts or
21 plans, health savings accounts, and similar tax-advantaged
22 savings plans established pursuant to the Internal Revenue Code
23 for its members or groups or organizations of its members
24 provided the funds of such accounts or plans are invested
25 solely in (1) share accounts of, or (2) share accounts and
26 obligations issued by such credit union. All funds held in such

1 fiduciary capacity shall be maintained in accordance with
2 applicable statutes and regulations promulgated thereunder by
3 any authority exercising jurisdiction over such trusts or
4 custodial accounts.

5 (3) Notwithstanding any language to the contrary in this
6 Section 42, a credit union may act as trustee or custodian of
7 individual retirement plans of its members established
8 pursuant to the Employee Retirement Income Security Act of 1974
9 or self-employed retirement plans established pursuant to the
10 Self-Employed Individuals Retirement Act of 1962, and any laws
11 amendatory or supplementary to such Acts, provided that:

12 (a) All contributions of funds are initially made to a
13 share account in the credit union;

14 (b) Any subsequent transfer of funds to other assets is
15 solely at the direction of the member and the credit union
16 performs only custodial duties, exercises no investment
17 discretion and provides no investment advice with respect
18 to plan assets;

19 (c) The member is notified of the fact that share
20 insurance coverage is limited to funds held in share
21 accounts; and

22 (d) The credit union complies with all applicable
23 provisions of this Act and applicable laws and regulations
24 as may be promulgated by any authority exercising
25 jurisdiction over such trust or custodial accounts.

26 (Source: P.A. 94-150, eff. 7-8-05.)

1 (205 ILCS 305/42.5 new)

2 Sec. 42.5. Marketing of services. For purposes of
3 promoting its services to persons eligible for membership, a
4 credit union may sell to persons within its field of membership
5 negotiable checks, including travelers checks, money orders,
6 and similar money transfer instruments (including
7 international and domestic electronic fund transfers) and may
8 cash checks and money orders, and may receive international and
9 domestic electronic fund transfers for such persons for a fee.

10 (205 ILCS 305/46) (from Ch. 17, par. 4447)

11 Sec. 46. Loans and interest rate.

12 (1) A credit union may make loans to its members for such
13 purpose and upon such security and terms, including rates of
14 interest, as the Credit Committee, credit manager, or loan
15 officer approves. Notwithstanding the provisions of any other
16 law in connection with extensions of credit, a credit union may
17 elect to contract for and receive interest and fees and other
18 charges for extensions of credit subject only to the provisions
19 of this Act and rules promulgated under this Act, except that
20 extensions of credit secured by residential real estate shall
21 be subject to the laws applicable thereto. The rates of
22 interest to be charged on loans to members shall be set by the
23 Board of Directors of each individual credit union in
24 accordance with Section 30 of this Act and such rates may be

1 less than, but may not exceed, the maximum rate set forth in
2 this Section. A borrower may repay his loan prior to maturity,
3 in whole or in part, without penalty. The credit contract may
4 provide for the payment by the member and receipt by the credit
5 union of all costs and disbursements, including reasonable
6 attorney's fees and collection agency charges, incurred by the
7 credit union to collect or enforce the debt in the event of a
8 delinquency by the member, or in the event of a breach of any
9 obligation of the member under the credit contract. A
10 contingency or hourly arrangement established under an
11 agreement entered into by a credit union with an attorney or
12 collection agency to collect a loan of a member in default
13 shall be presumed prima facie reasonable.

14 (2) Credit unions may make loans based upon the security of
15 any interest or equity in real estate, subject to rules and
16 regulations promulgated by the Director. In any contract or
17 loan which is secured by a mortgage, deed of trust, or
18 conveyance in the nature of a mortgage, on residential real
19 estate, the interest which is computed, calculated, charged, or
20 collected pursuant to such contract or loan, or pursuant to any
21 regulation or rule promulgated pursuant to this Act, may not be
22 computed, calculated, charged or collected for any period of
23 time occurring after the date on which the total indebtedness,
24 with the exception of late payment penalties, is paid in full.

25 For purposes of this subsection (2) of this Section 46, a
26 prepayment shall mean the payment of the total indebtedness,

1 with the exception of late payment penalties if incurred or
2 charged, on any date before the date specified in the contract
3 or loan agreement on which the total indebtedness shall be paid
4 in full, or before the date on which all payments, if timely
5 made, shall have been made. In the event of a prepayment of the
6 indebtedness which is made on a date after the date on which
7 interest on the indebtedness was last computed, calculated,
8 charged, or collected but before the next date on which
9 interest on the indebtedness was to be calculated, computed,
10 charged, or collected, the lender may calculate, charge and
11 collect interest on the indebtedness for the period which
12 elapsed between the date on which the prepayment is made and
13 the date on which interest on the indebtedness was last
14 computed, calculated, charged or collected at a rate equal to
15 1/360 of the annual rate for each day which so elapsed, which
16 rate shall be applied to the indebtedness outstanding as of the
17 date of prepayment. The lender shall refund to the borrower any
18 interest charged or collected which exceeds that which the
19 lender may charge or collect pursuant to the preceding
20 sentence. The provisions of this amendatory Act of 1985 shall
21 apply only to contracts or loans entered into on or after the
22 effective date of this amendatory Act.

23 (3) Notwithstanding any other provision of this Act, a
24 credit union authorized under this Act to make loans secured by
25 an interest or equity in real estate may engage in making
26 "reverse mortgage" loans to persons for the purpose of making

1 home improvements or repairs, paying insurance premiums or
2 paying real estate taxes on the homestead properties of such
3 persons. If made, such loans shall be made on such terms and
4 conditions as the credit union shall determine and as shall be
5 consistent with the provisions of this Section and such rules
6 and regulations as the Director shall promulgate hereunder. For
7 purposes of this Section, a "reverse mortgage" loan shall be a
8 loan extended on the basis of existing equity in homestead
9 property and secured by a mortgage on such property. Such loans
10 shall be repaid upon the sale of the property or upon the death
11 of the owner or, if the property is in joint tenancy, upon the
12 death of the last surviving joint tenant who had such an
13 interest in the property at the time the loan was initiated,
14 provided, however, that the credit union and its member may by
15 mutual agreement, establish other repayment terms. A credit
16 union, in making a "reverse mortgage" loan, may add deferred
17 interest to principal or otherwise provide for the charging of
18 interest or premiums on such deferred interest. "Homestead"
19 property, for purposes of this Section, means the domicile and
20 contiguous real estate owned and occupied by the mortgagor. The
21 Director shall promulgate rules and regulations under this
22 Section; provided that such rules and regulations need not be
23 promulgated jointly with any other administrative agency of
24 this State.

25 (4) Notwithstanding any other provisions of this Act, a
26 credit union authorized under this Act to make loans secured by

1 an interest or equity in real property may engage in making
2 revolving credit loans secured by mortgages or deeds of trust
3 on such real property or by security assignments of beneficial
4 interests in land trusts.

5 For purposes of this Section, "revolving credit" has the
6 meaning defined in Section 4.1 of the Interest Act.

7 Any mortgage or deed of trust given to secure a revolving
8 credit loan may, and when so expressed therein shall, secure
9 not only the existing indebtedness but also such future
10 advances, whether such advances are obligatory or to be made at
11 the option of the lender, or otherwise, as are made within
12 twenty years from the date thereof, to the same extent as if
13 such future advances were made on the date of the execution of
14 such mortgage or deed of trust, although there may be no
15 advance made at the time of execution of such mortgage or other
16 instrument, and although there may be no indebtedness
17 outstanding at the time any advance is made. The lien of such
18 mortgage or deed of trust, as to third persons without actual
19 notice thereof, shall be valid as to all such indebtedness and
20 future advances from the time said mortgage or deed of trust is
21 filed for record in the office of the Recorder of Deeds or the
22 Registrar of Titles of the county where the real property
23 described therein is located. The total amount of indebtedness
24 that may be so secured may increase or decrease from time to
25 time, but the total unpaid balance so secured at any one time
26 shall not exceed a maximum principal amount which must be

1 specified in such mortgage or deed of trust, plus interest
2 thereon, and any disbursements made for the payment of taxes,
3 special assessments, or insurance on said real property, with
4 interest on such disbursements.

5 Any such mortgage or deed of trust shall be valid and have
6 priority over all subsequent liens and encumbrances, including
7 statutory liens, except taxes and assessments levied on said
8 real property.

9 (5) Compliance with federal or Illinois preemptive laws or
10 regulations governing loans made by a credit union chartered
11 under this Act shall constitute compliance with this Act.

12 (6) Credit unions may make residential real estate mortgage
13 loans on terms and conditions established by the United States
14 Department of Agriculture through its Rural Development
15 Housing and Community Facilities Program. The portion of any
16 loan in excess of the appraised value of the real estate shall
17 be allocable only to the guarantee fee required under the
18 program.

19 (Source: P.A. 95-98, eff. 8-13-07.)

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