

**ADOPTED REGULATION OF
THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R098-23

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: § 1, NRS 604A.300, 604A.605 and 672.250; §§ 2-7, NRS 658.105 and 662.115; § 8, NRS 676A.370, 676A.410 and 676A.730; § 9, NRS 672.250; § 10, NRS 672.250 and 672.710; § 11, NRS 672.250, 672.270 and 672.310; § 12, NRS 672.250, 672.370 and 672.420; § 13, NRS 672.250 and 672.680; § 14, NRS 672.250 and 672.760; § 15, NRS 672.250 and 672.790; § 16, NRS 672.250 and 672.270; § 17, NRS 672.250 and 672.3435; § 18, NRS 672.250 and 672.875; § 19, NRS 628B.210, 658.105, 662.115, 672.250, 676A.370, 676A.410 and 677.380.

A REGULATION relating to financial institutions; amending references to certain sections of the Nevada Revised Statutes in certain provisions related to credit unions; replacing references to the Administrator of Financial Institutions with references to the Commissioner of Financial Institutions; revising provisions related to the registration of providers of debt-management services; repealing certain obsolete or duplicative provisions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law sets forth requirements for the formation, licensure, operation and governance of credit unions. (Chapter 672 of NRS) **Sections 1 and 10-18** of this regulation update internal references to sections of the Nevada Revised Statutes (NRS) that were moved in revision from chapter 678 of NRS to chapter 672 of NRS.

Existing law establishes the position of the Commissioner of Financial Institutions. (NRS 657.026) **Sections 3-7** of this regulation replace references to the obsolete term “Administrator of Financial Institutions” with references to the Commissioner.

Existing law, with certain exceptions, prohibits a person from providing debt-management services in this State unless the person obtains a registration from the Commissioner. (NRS 676A.300) Existing law authorizes the registration of providers of debt-management services through the use of the Nationwide Multistate Licensing System and Registry. (NRS 676A.410) The registration of a provider of debt-management services through the Registry expires on December 31 of each year unless the registration is renewed. (NRS 676A.320, 676A.370, 676A.410) **Section 8** of this regulation changes the annual expiration date of such a registration from June 30 to December 31 to reflect the use of the Registry for the registration of providers of debt-management services in this State.

Under existing law, if a registration as a provider of debt-management services is not renewed between November 1 and December 31 of any year, the registration is cancelled as of

December 31 of that year. If a registration as a provider of debt-management services is cancelled because of the failure to timely renew the registration, the provider of debt-management services may reinstate the registration by submitting to the Commissioner all information and fees required to renew and reinstate the registration not later than February 28 following the cancellation of the registration. (NRS 676A.370) **Section 19** of this regulation repeals a conflicting procedure in existing regulations for the reinstatement of a registration as a provider of debt-management services. (NAC 676A.140)

Existing law, with certain exceptions, prohibits a person from serving as a private professional guardian for protected persons unless the person is: (1) a natural person who is certified by the Center for Guardianship Certification, or any successor organization, and is employed by a corporation, limited-liability company, partnership or other type of entity that is licensed by the Commissioner as a private professional guardian; or (2) is an entity that is licensed by the Commissioner and satisfies certain other requirements. (NRS 159.0595, 628B.300) Because existing law only requires an entity to have a license from the Commissioner, **section 19** repeals an obsolete requirement for the licensure of natural persons as private professional guardians. (NAC 628B.100)

Existing law provides that the words and terms defined in the NRS have the same meaning in corresponding provisions of the Nevada Administrative Code. (NRS 0.024) **Section 19** repeals definitions of terms in regulations governing thrift companies and credit unions for which a definition is currently set forth in Nevada Revised Statutes. (NRS 672.061, 677.065, 677.075, 677.110; NAC 677.074, 677.076, 677.085, 678.004) **Sections 2 and 9** of this regulation make conforming changes related to the removal of these definitions.

Section 1. NAC 657.010 is hereby amended to read as follows:

657.010 In addition to any other information required by law, the Commissioner of Financial Institutions may require an applicant for a license, a certificate, permission to organize or approval of a change of control pursuant to chapter ~~604,~~ **604A**, 645A, 645B, 649, 659, 671, **672**, 673, 675 ~~[,] or~~ **677** ~~[or 678]~~ of NRS to submit a fingerprint card with his or her application. Fingerprints must be taken by a recognized law enforcement agency.

Sec. 2. NAC 662.003 is hereby amended to read as follows:

662.003 ~~["Depository"]~~ ***As used in this chapter, unless the context otherwise requires, "depository institution affiliate" means a depository institution that directly or indirectly, through one or more intermediaries, is controlled by or is under common control with another depository institution.***

Sec. 3. NAC 662.010 is hereby amended to read as follows:

662.010 A bank may issue long-term capital notes or debentures only after having first received the written approval of the ~~[Administrator of Financial Institutions.]~~ *Commissioner*. The ~~[Administrator]~~ *Commissioner* will approve or deny such an issuance after considering whether it constitutes a sound banking practice and would be in the best interests of the depositors, creditors, and stockholders of the bank and the public in its relations with the bank.

Sec. 4. NAC 662.020 is hereby amended to read as follows:

662.020 1. A bank which desires to obtain approval for the issuance of long-term capital notes or debentures must submit an application to the ~~[Administrator of Financial Institutions.]~~ *Commissioner*.

2. The application must include:

(a) A statement explaining the need for and the proposed use of the money which the bank intends to borrow; and

(b) Three copies of the proposed long-term capital note or debenture.

Sec. 5. NAC 662.030 is hereby amended to read as follows:

662.030 The ~~[Administrator of Financial Institutions]~~ *Commissioner* will not consider a bank's application for or approve the issuance of its long-term capital notes or debentures unless:

1. The bylaws or articles of incorporation of the bank grant authority to its board of directors to issue the capital notes or debentures; or

2. The holders of two-thirds of the bank's capital stock have approved such an issuance at a stockholders' meeting. Before such a meeting, the bank shall mail or deliver to each stockholder a notice containing a statement that the proposal will be submitted at the meeting and a copy of the proposed debenture or agreement.

Sec. 6. NAC 662.060 is hereby amended to read as follows:

662.060 The ~~Administrator of Financial Institutions~~ *Commissioner* will prescribe periods of maturity not exceeding 25 years for any issue of such long-term capital notes or debentures, and the issuing bank shall establish a schedule of prepayments or an appropriate sinking fund for the amortization of the indebtedness.

Sec. 7. NAC 662.070 is hereby amended to read as follows:

662.070 No such long-term capital notes or debentures may be converted into capital stock, either common or preferred, of the issuing bank without prior consent of the ~~Administrator of Financial Institutions~~ *Commissioner*.

Sec. 8. NAC 676A.130 is hereby amended to read as follows:

676A.130 1. A registration as a provider expires on ~~June 30~~ *December 31* of each year.

2. A registered provider shall pay annually to the Division a fee of \$1,500 for the renewal of the registration of the provider.

3. If the Commissioner reinstates an expired registration, the registered provider shall pay a reinstatement fee of \$1,500 in addition to the renewal fee prescribed in subsection 2.

Sec. 9. NAC 678.006 is hereby amended to read as follows:

678.006 *As used in this chapter, unless the context otherwise requires,* “Division” means the Division of Financial Institutions of the Department of Business and Industry.

Sec. 10. NAC 678.008 is hereby amended to read as follows:

678.008 For the purposes of this chapter and NRS ~~678.710~~ *672.710*, the Division shall interpret the term “unimpaired capital and surplus” to mean shares plus postclosing, undivided earnings. The term does not include regular reserves or special reserves required by this chapter or chapter ~~678~~ *672* of NRS.

Sec. 11. NAC 678.010 is hereby amended to read as follows:

678.010 1. Any person desiring to form a credit union pursuant to chapter ~~678~~ 672 of NRS must:

(a) Complete the Organization Certificate, Confidential Report of Officials, Agreement by Director and Committeemen to Serve, Report of Officials and Credit Union Investigation Report provided by the Commissioner.

(b) Submit the forms required by paragraph (a) to the Commissioner, together with an investigation fee of \$750 and a charter fee of \$300.

2. The Commissioner will investigate and determine whether the proposed Organization Certificate conforms to the requirements of chapter ~~678~~ 672 of NRS concerning the general character and fitness of the subscribers thereto, and determine the economic feasibility of establishing the proposed credit union.

3. If the Commissioner is satisfied that the qualifications have been met, he or she will issue a charter to the proposed credit union.

Sec. 12. NAC 678.030 is hereby amended to read as follows:

678.030 1. All fidelity bonds must provide coverage for the faithful performance of any officer or employee while carrying out any of the duties of the treasurer as prescribed in chapter ~~678~~ 672 of NRS, the bylaws, or rules and regulations.

2. No form of fidelity bond coverage may be used by a credit union except a form which is approved by the Commissioner.

3. For the purpose of this section, forms of fidelity bond coverage for credit unions that are provided by surety companies authorized to do business in this State are approved.

4. The Commissioner may require additional fidelity bond coverage for any credit union when, in his or her opinion, the bonds in force are insufficient to provide adequate coverage. The board of directors of the credit union shall obtain such additional coverage within 30 days after the date of written notice from the Commissioner.

5. All surety companies writing credit union fidelity bonds must hold a Certificate of Authority from the Secretary of the Treasury pursuant to 31 U.S.C. §§ 9304-9308 as an acceptable surety on federal bonds in this State.

6. The board of directors of each credit union shall provide proper protection to meet any circumstance described in subsection 1 of NRS ~~678.370~~ 672.370 by obtaining adequate bond and insurance coverage.

Sec. 13. NAC 678.070 is hereby amended to read as follows:

678.070 If the Commissioner deems the reserves required by NRS ~~678.670~~ 672.670 inadequate to cover a credit union's delinquent loans, the Commissioner will require, upon 5 days' written notice, that the credit union maintain a special reserve against losses equal to 10 percent of the loan balance on all accounts that are between 2 and 6 months delinquent, plus 25 percent of the loan balances on all accounts that are between 7 and 12 months delinquent, plus 80 percent of the loan balances on all accounts that are more than 12 months delinquent.

Sec. 14. NAC 678.100 is hereby amended to read as follows:

678.100 The stocks and bonds which the Commissioner approves as investments for credit unions pursuant to subsection 8 of NRS ~~678.760~~ 672.760 are the stocks and bonds which are accorded one of the top two ratings by a statistical rating organization that is nationally recognized by the Securities and Exchange Commission. Investment by a credit union in securities which are provisionally rated is prohibited.

Sec. 15. NAC 678.130 is hereby amended to read as follows:

678.130 Any examination required by the provisions of chapter ~~678~~ 672 of NRS must be conducted in accordance with the procedures established by the Commissioner.

Sec. 16. NAC 678.150 is hereby amended to read as follows:

678.150 1. On or before June 30 of each year, the Commissioner will collect a fee from each credit union for the supervision and examination of the credit union pursuant to chapter ~~678~~ 672 of NRS.

2. The fee is based on the portion of the annual budget approved by the Legislature for expenses related to the operations of the Commissioner and the Division minus all other revenues collected by the Division, not including reserves. Each credit union shall pay a share of that amount as determined by the following schedule:

| <u>Total Assets</u> | <u>Base Fee</u> | <u>+ Fee Exceeding Base</u> |
|---|-----------------|--|
| Less than \$5,000,000 | \$5,000 | N/A |
| \$5,000,000 or more, but less than \$10,000,000 | 5,000 | \$.25 per thousand of assets exceeding \$5,000,000 |
| \$10,000,000 or more, but less than \$50,000,000 | 6,250 | \$.19 per thousand of assets exceeding \$10,000,000 |
| \$50,000,000 or more, but | 13,850 | \$.12 per thousand of assets |

| <u>Total Assets</u> | <u>Base Fee</u> | <u>+ Fee Exceeding Base</u> |
|--|-----------------|--|
| less than \$100,000,000 | | exceeding \$50,000,000 |
| \$100,000,000 or more, but less than \$500,000,000 | 19,850 | \$.10 per thousand of assets exceeding \$100,000,000 |
| \$500,000,000 or more, but less than \$1,000,000,000 | 59,850 | \$.07 per thousand of assets exceeding \$500,000,000 |
| \$1,000,000,000 or more, but less than \$3,000,000,000 | 94,850 | \$.05 per thousand of assets exceeding \$1,000,000,000 |
| \$3,000,000,000 or more, but less than \$10,000,000,000 | 194,850 | \$.03 per thousand of assets exceeding \$3,000,000,000 |
| \$10,000,000,000 or more, but less than \$20,000,000,000 | 404,850 | \$.02 per thousand of assets exceeding \$10,000,000,000 |
| \$20,000,000,000 or more | 604,850 | \$.01 per thousand of assets exceeding \$20,000,000,000 |

Any adjustment to the fee must be made in a proportionate amount that is based on the relationship that the fee determined for each credit union bears to the total fee imposed on all credit unions licensed pursuant to chapter ~~[678]~~ 672 of NRS. The fee is calculated as of June 1 of each year based upon the number of credit unions and the total assets of each credit union as of December 31 of the previous year.

3. If the fee is not paid on or before June 30, the Commissioner will assess a penalty of 10 percent of the amount of the fee and an additional 1 percent of the fee for each month or portion of a month that the fee is not paid. The Commissioner may waive the penalty for good cause.

4. The fee does not include the cost of any extraordinary examination, audit, investigation or hearing conducted by the Division. The cost of any such examination, audit, investigation or hearing is \$75 per hour.

Sec. 17. NAC 678.165 is hereby amended to read as follows:

678.165 1. An application for an initial certificate of authority submitted by a foreign credit union pursuant to NRS ~~[678.343]~~ 672.343 must be accompanied by a nonrefundable fee of \$750.

2. The annual fee for renewal for:

- (a) The initial office is \$750; and
- (b) Each branch office is \$150.

Sec. 18. NAC 678.200 is hereby amended to read as follows:

678.200 For the purpose of NRS ~~[678.875,]~~ 672.875, “risk assets” has the meaning ascribed to it in NRS ~~[678.690.]~~ 672.690.

Sec. 19. NAC 628B.100, 662.001, 662.002, 676A.140, 677.074, 677.076, 677.085, 678.002 and 678.004 are hereby repealed.

TEXT OF REPEALED SECTIONS

628B.100 Submission by applicant of proof of citizenship or lawful entitlement to work in United States and residency; exception. (NRS 628B.210) Each natural person who applies for the issuance of a license to engage in the business of a private professional guardian pursuant to chapter 628B of NRS shall submit proof satisfactory to the Commissioner that he or she is:

1. A citizen of the United States or lawfully entitled to remain and work in the United States; and
2. A resident of this State, unless the applicant, if a nonresident, has obtained the prior approval of the Commissioner to apply for the issuance of a license to engage in the business of a private professional guardian.

662.001 Definitions. (NRS 658.105) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 662.002 and 662.003 have the meanings ascribed to them in those sections.

662.002 “Commissioner” defined. (NRS 658.105) “Commissioner” means the Commissioner of Financial Institutions.

676A.140 Extension and reinstatement after expiration. (NRS 676A.370, 676A.730, 676A.750)

1. A provider may continue to provide debt-management services after the expiration of the provider's registration issued pursuant to chapter 676A of NRS if:

(a) The provider ceases to be registered solely due to the expiration of the provider's registration;

(b) Not later than 10 days after the date the registration expires, the provider submits to the Commissioner a request for an extension; and

(c) Not later than 30 days after the provider requests the extension, the provider submits all fees, documents and information required by the Commissioner for reinstatement of the registration.

2. The Commissioner will not reinstate a registration that has expired if a provider:

(a) Has failed to request an extension; or

(b) Requested an extension but failed to submit all fees, documents and information required by the Commissioner pursuant to paragraph (c) of subsection 1 and the Commissioner did not grant another extension.

3. If the Commissioner does not reinstate a registration pursuant to subsection 2, the provider must apply for and be issued a new registration before the provider may provide debt-management services.

4. It is the duty of the registered provider to renew in a timely manner a registration issued pursuant to this chapter and chapter 676A of NRS. A lack of notice from the Division to any person concerning the expiration of a registration or the need to renew a registration is not a justification or excuse for the failure of the person to renew a registration in a timely manner and does not constitute grounds for the waiver of any of the requirements of this chapter or chapter 676A of NRS.

677.074 “Commissioner” defined. (NRS 677.380) “Commissioner” has the meaning ascribed to it in NRS 677.065.

677.076 “Deposit” defined. (NRS 677.380) “Deposit” has the meaning ascribed to it in NRS 677.075.

677.085 “Licensee” defined. (NRS 677.380) “Licensee” has the meaning ascribed to it in NRS 677.110.

678.002 Definitions. (NRS 678.250) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 678.004 and 678.006 have the meanings ascribed to them in those sections.

678.004 “Commissioner” defined. (NRS 678.250) “Commissioner” means the Commissioner of Financial Institutions.