Colorado Department of Regulatory Agencies
Office of Policy and Research

2003 SUNSET REVIEW

Division of Financial Services

October 15, 2003

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of the Executive Director
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Bill Owens
Governor

October 15, 2003

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the Colorado Division of Financial Services. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2004 legislative committee of reference. The report is submitted pursuant to section 24-34-104(9)(b), of the Colorado Revised Statutes (C.R.S.), which states in part:

> *The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...*
>
> *The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination….*

The report discusses the question of whether there is a need for the regulation provided under Article 44 of Title 11, C.R.S. The report also discusses the effectiveness of the Division of Financial Services and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Richard F. O'Donnell

Richard F. O'Donnell
Executive Director

2003 Sunset Review

Colorado Division of Financial Services

EXECUTIVE SUMMARY

Department of Regulatory Agencies

Bill Owens
Governor

Richard F. O'Donnell
Executive Director

Quick Facts

What is Regulated? The Division of Financial Services (Division) administers and enforces the regulation of credit unions, the finances of life care institutions, savings and loan associations, and the Savings and Loan Association Public Deposit Protection Act. The oversight of these entities ensures that they operate soundly and responsibly as a means of increasing the economic prosperity of the state and protecting consumers' interests.

What is Regulated?

- 77 credit unions
- 4 savings and loan associations
- 6 life care institutions
- 12 public depositories

How is it Regulated? The 5-member Financial Services Board (Board) consists of three members who are executive officers of state-chartered credit unions, one member who is an executive officer with a savings and loan association, and one member who serves as a public member with expertise in finance. The Board is the policy-making and rule-making authority for the Division. The Commissioner administers and enforces the regulation of the institutions. The Division is located in the Department of Regulatory Agencies.

What Does it Cost? The FY 2002-03 total program expenditure to oversee this program was $1,071,354. There are 11 full-time equivalent employees allocated to the program.

What Disciplinary Activity is There? During the five year fiscal year period 1998-2003, disciplinary proceedings consisted of:

Letters of Understanding and Agreement	3
Cease and Desist Orders	1
Net Worth Restoration Plans	4
Late Call Report Penalties	46

Where Do I Get the Full Report? The full sunset review can be found on the internet at: www.dora.state.co.us/opr/2003FinancialServices.pdf

Key Recommendations

Continue the Board until 2013

Depositors rely on regulatory oversight to assure that financial institutions are healthy. Additionally, regulation of financial institutions contributes to a stable foundation upon which individuals conduct monetary transactions.

Amend the notification requirements for a community charter credit union application pertaining to hearing procedures

The extensive requirement for mailing notifications of a hearing to various financial institutions adds an additional regulatory burden for the credit union. This recommendation limits the requirement to only credit unions while continuing to provide appropriate notification.

Extend credit union information sharing provisions to include a federal home loan bank, a Federal Reserve Bank, the Division of Banking, and the Executive Director of the Department of Regulatory Agencies

All of these entities require information sharing with the Division in order to sustain a comprehensive regulatory scheme. The authority to share information with the four entities mentioned above will allow the Division to provide improved oversight of its financial institutions.

Revise the records retention system by broadening the scope of records retention to include all records in the possession of the Commissioner

The current provisions in statute are too limiting and should be broadened in scope to include any records in the possession of the Commissioner. The amended language clarifies that requirements for record retention conform with Colorado law that addresses public records and state archives.

…Key Recommendations Continued

Amend exclusions from life care institutions to correctly reflect the oversight that the Division has over these entities

The current statute, in effect, negates any regulation the Division has over assisted living and long-term care institutions that offer life care contracts. This recommendation clarifies the Division's specific authority to regulate the financial aspects of these institutions if they operate as life care institutions as defined by statute.

Major Contacts Made In Researching the 2003 Sunset Review of the Division of Financial Services

Members of the Colorado Financial Services Board
Staff of the Department of Regulatory Agencies, Division of Financial Services
Directors of Life Care Institutions
Presidents of Federal and State-Chartered Savings and Loan Associations
Colorado Credit Union League
Presidents and Directors of State-Chartered Credit Unions
Filene Research Institute
SunCorp Corporate Credit Union
Colorado Attorney General's Office
Colorado Central Credit Union
Colorado Department of Public Health and Environment
National Credit Union Administration
Credit Union National Association
Independent Bankers of Colorado
Colorado Department of the Treasury
Colorado Bankers Association
National Association of State Credit Union Supervisors
Attorney Providing Legal Representation for a Significant Number of Credit Unions

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:
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Office of Policy & Research
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Background

The Sunset Process

The regulatory functions of the Colorado Division of Financial Services (Division), in accordance with Article 44 of Title 11 of the Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2004, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Division pursuant to section 24-34-104(9)(b), C.R.S.

The purpose of this review is to determine whether the Division should be continued for the protection of the public and to evaluate the performance of staff. During this review, the Division must demonstrate that there is still a need for the regulatory program and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 56.

Methodology

As part of this review, DORA staff attended Financial Services Board (Board) meetings, interviewed Division staff, reviewed Board records and minutes, examined Division complaint and disciplinary actions, accompanied examiners on an examination of a credit union, interviewed officials with state and national professional associations, interviewed federal officials, reviewed Colorado statutes and rules, and reviewed the laws of other states. Additionally, DORA staff reviewed previous legislation, literature on specific financial institutions, and performed background and comparative research utilizing the library and the Internet. A survey was sent to all state-chartered savings and loan associations and to all state and federal savings and loan associations that accept public deposits in Colorado.

History of Regulation

Credit Unions

Credit unions are mutual organizations whose only source of capital is retained earnings, because they do not issue stock or other securities. They are governed by their members, and voting is on the basis of one-person-one vote, regardless of the dollar amount a member has deposited with a credit union. The board of directors is elected from the membership and directors are unpaid. In addition, credit unions are exempted from paying federal income tax, unlike other depository financial institutions, such as banks and savings and loan institutions.

From their early origins in 19th century Europe, credit unions were unique depository institutions created to serve members as not-for-profit credit cooperatives. The original savings cooperatives were owned by groups of individuals who worked for the same employer, lived in the same community, had the same religious or club affiliation, or shared some other common bond.

As the 20th century began, the credit union idea surfaced in Canada. Canada's successful efforts profoundly influenced two Americans: Pierre Jay, the Massachusetts banking commissioner, and Edward A. Filene, a Boston merchant. In 1921, Filene created the Credit Union National Extension Bureau and hired a Massachusetts attorney to assist him in seeking effective credit union laws in all states and at the federal level. Credit unions grew in popularity in the early 1920's. By 1925, 15 states had passed laws authorizing the creation of credit unions, and 419 credit unions were serving 108,000 members.

In 1934, President Roosevelt signed the Federal Credit Union Act into law, authorizing the establishment of federal credit unions in all states. The purpose of the federal law was "to make more available to people of small means credit for provident purposes through a national system of cooperative credit…."[1] By 1935, 39 states had credit union laws and 3,372 credit unions were serving more than 641,000 members.[2]

World War II halted progress of the U.S. credit union movement, but the war's end brought renewed credit union growth. In 1945, there were 8,683 credit unions in the country; by 1955, there were 16,201; and by 1969, the U.S. movement reached its peak of 23,876 credit unions.

In 1970, Congress created the National Credit Union Share Insurance Fund (NCUSIF) to insure member's deposits in credit unions up to the $100,000 federal limit. Administered by the National Credit Union Administration (NCUA), the NCUSIF is backed by the full faith and credit of the U.S. government. By law, federally insured credit unions maintain one percent of their deposits in the NCUSIF.

Until the 1980s, membership in any credit union was limited to a group with a single common bond -- i.e., members had to have some affinity with each other, such as working for the same employer, belonging to the same association, or residing in the same community. In 1982, the regulator of federal credit unions, NCUA, began permitting credit unions to add unrelated membership groups to the field of membership -- creating multiple common bond credit unions. The United States Supreme Court declared this policy illegal in 1998. Later that year, Congress overturned the ruling by enacting the Credit Union Membership Access Act (Pub.L. 105-219, August 7, 1998). This act allows a federal credit union to add unrelated groups of up to 3,000 individuals to its field of membership. This act also allows the NCUA to permit a group of more than 3,000 to join an existing credit union if it determines that the added group is unable to form a credit union on its own.

[1] 12 U.S.C. § 1751

[2] http://www.mcul.org/mcul/cu/pressroom/history_cu.htm

Over the past two decades, the assets of the United States credit union industry have grown at an average annual rate of almost 11 percent. Much of the growth can be attributed to the decision in 1982 by the NCUA to allow different membership groups to affiliate. While the number of credit unions declined from 16,594 in 1982 to 10,628 in 1999, the average credit union size more than quadrupled over this period, from $8.5 million in 1982 to $39 million in 1999. At the conclusion of 1999, there were 3,192 federal credit unions with multiple group charters.[3] Table 1 below illustrates the assets of credit unions nationally in comparison to other financial intermediaries. Credit union assets have grown significantly in the past 20 years but are still considerably less than those of commercial banks and savings institutions.

Table 1
Assets by Type of National Financial Intermediaries, 1980 - 2001
(billions)

	1980	1985	1990	1995	2001Q1
Commercial Banks	1,289.88	1,989.49	2,772.50	3,520.10	4,724.7
Savings Institutions	722.71	1,097.65	1,176.49	913.3	1,044.0
Credit Unions	52.97	98.42	166.58	263.0	360.1
Bank Personal Trusts and Estates	88.75	132.83	213.44	239.7	183.3
Life Insurance Companies	385.11	646.61	1,134.53	1,587.5	1,903.8
Private Pension Funds	151.38	330.45	487.38	716.9	1,065.7
State and Local Government Retirement Funds	147.17	252.36	424.03	531.0	745.3

Source: <u>Introduction to U.S. Financial Instruments</u>. Federal Reserve Bank of New York, 2002.

Colorado Regulation

Credit unions have been chartered in Colorado since 1931, when the General Assembly passed the Credit Union Act. From the 1940s through the 1960s, modifications occurred in the regulation of credit unions that changed the amount a credit union may borrow from 50 percent of assets to 50 percent of shares and deposits. During this time period, a maximum dividend rate of six percent was established and mergers were allowed. The 1970s addressed federal parity, provided for conversion from a federal to a state-chartered credit union, and afforded access to automatic teller machines (ATM).

[3] Leggett, K.J. and R.W. Strand. “Membership growth, multiple membership groups and agency control at credit unions.” *Review of Financial Economics*, Winter 2002.

Significant changes in the 1980s included: requiring that state-chartered credit unions obtain share insurance from NCUSIF; restricting the amount that the credit unions could loan to any one member to 10 percent of assets; and, prohibiting credit unions from paying dividends in excess of available earnings. In 1988, the oversight of state-chartered credit unions was transferred from the Division of Banking to the Commissioner of the Division of Savings and Loan. At that time, the Commissioner was granted authority to issue cease and desist orders and to assess civil money penalties against credit unions. The name of the Division of Savings and Loan subsequently changed in 1989 to the Division of Financial Services (Division).

In 1993, House Bill 93-1275 created the Financial Services Board (Board) as the policy-making and rule-making authority for the Division. This legislation created a five-member board: three members are executive officers of state-chartered credit unions; one member is an executive officer with a state savings and loan association; and, one member serves as a public member with expertise in finance. Additionally, procedures for community charter applications were established and provisions were created that require a hearing by the Board to obtain a community charter in excess of 25,000 persons.

Further changes were made in 1994 as a result of recommendations made in the 1993 Sunset Review of the Division of Financial Services. The amended law authorized the Commissioner to investigate the character and experience of organizers of credit unions before issuing a charter to the credit union. Senate Bill 96-056 expanded a credit union's authority to accept nonmember deposits from supervised financial institutions in states other than Colorado.

Significant revision of the Colorado credit union laws occurred in 1999, which resulted in clarification that civil penalties may be assessed either per occurrence or per day, and limited the penalty for a single occurrence to $50,000. Additionally, the Commissioner was given conservatorship powers and the Board was permitted to close appeals hearings of any action of the Commissioner. In 2001, credit unions' boards of directors were granted the authority to expel a member from the credit union for failing to comply with the written rules and policies of the credit union.

Colorado's credit union industry is reflective of the average national picture of credit unions. For instance, membership in credit unions is large. Approximately 1.4 million Colorado citizens belong to either federal or state-chartered credit unions, a large percentage through their employment. However, in terms of total assets, credit unions account for a small amount of deposits relative to other financial institutions in Colorado. When credit union size is compared to other depository institutions, the industry can appear somewhat small. Regardless of any statistical analysis, today's credit union industry bares little resemblance to the community cooperatives that arose over 75 years ago.

Savings and Loan Associations

Savings and loan associations are financial institutions that originally were created to accept savings from private investors and to provide home mortgage services for the public. This specialty in real estate lending particularly addressed loans for single-family homes and other residential properties. Historically, savings and loan associations could be organized in one of two ways: as a mutual or a capital stock institution. These institutions are referred to as "thrifts," because they originally offered only savings accounts or time deposits. Over the past two decades, however, they have acquired a wide range of financial powers, and now offer checking accounts and make business and consumer loans as well as mortgages.

The first U.S. savings and loan association was founded in 1831. In the late 1800s, the states were the first to enact specific regulatory measures for oversight of the building and loan industry. Federal savings and loan associations have been regulated since 1933 by the Federal Home Loan Bank Board (FHLBB), which was created as a nationwide response to the financial problems of the Great Depression. In 1934, a year after the formation of the Federal Deposit Insurance Corporation (FDIC), the Federal Savings and Loan Insurance Corporation (FSLIC) was established and provided federal insurance on accounts for savings and loan associations. All federal savings and loan associations were legally required to have their savings deposits insured by the FSLIC. After World War II, the associations began a period of rapid expansion.

The savings and loan industry went through many changes in recent years, primarily due to deregulatory measures instituted in the 1980s by the federal government, which permitted them to offer a much wider range of services than ever before. These services included the business of commercial lending, trust services, and non-mortgage consumer lending. The Depository Institutions Deregulation and Monetary Control Act of 1980 began these sweeping changes, one of which was to raise deposit insurance from $40,000 to $100,000.

Two years later, the act enabled savings and loan institutions to make secured and unsecured loans to a wide range of markets, permitted developers to own savings and loan associations, and allowed owners of these institutions to lend to themselves. Under the new laws, the FHLBB was given a number of new powers to secure the capital positions of savings and loan associations.

Savings and loan associations began to engage in large-scale speculation, particularly in real estate. Financial failure of the institutions became rampant, with well over 500 forced to close during the 1980s. In 1989, after the FSLIC itself became insolvent, the Federal Deposit Insurance Corporation took over the FSLIC's insurance obligations, and the Resolution Trust Corporation was created to buy and sell defaulted savings and loan associations. The U.S. Office of Thrift Supervision (OTS) also was created in an attempt to identify struggling savings and loan organizations before it was too late. A more detailed description of OTS may be found on page 11.

Federal savings and loan associations are chartered by OTS while state savings and loan associations are chartered by a regulatory authority within state government. Generally, savings and loan associations are insured by the Savings Association Insurance Fund (SAIF), administered by the Federal Deposit Insurance Corporation. Savings institutions must maintain 60 percent of their loan portfolio in housing-related assets to qualify for special tax status and must maintain 65 percent in housing-related assets to maintain their membership in a Federal Home Loan Bank.

The number of savings institutions has declined dramatically in the past decade as differences have narrowed between these institutions and commercial banks. The savings and loan crisis of the 1980s forced many thrifts to close or merge with other institutions. Today, 1,894 savings and loans and 323 savings banks continue to operate in the United States. Together, they hold $999 billion in assets and $756.9 billion in deposits.[4]

Colorado Regulation

In Colorado, state-chartered savings and loan associations have been subject to regulation since before the turn of the century. In 1921, the Bureau of Building and Loan Associations was created within the State Auditor's Office. In 1933, the General Assembly created the Building and Loan Department to regulate the organization and government of building and loan associations. The Colorado Reorganization Act of State Government of 1968 placed the Building and Loan Department within the Department of Regulatory Agencies and changed the name to the Division of Savings and Loan. The name of the Division of Savings and Loan was subsequently changed in 1989 to Division of Financial Services. Legislation passed in 1989 strengthened savings and loan association oversight. House Bill 89-1052 expanded the grounds for removal of officers and directors of savings and loan associations and granted the authority to impose civil money penalties.

The savings and loan industry in Colorado and elsewhere has undergone enormous change since the early 1980s. Between 1980 and early 1991, the number of savings and loan associations nationwide was halved. In Colorado, from the mid-1980s through 1989, 15 federal and 5 state-chartered savings and loans failed.

In 1993, House Bill 93-1275 created the Financial Services Board (Board) as the policy-making and rule-making authority for the Division of Financial Services. Further changes in 1994 were made as a result of recommendations made in the 1993 Sunset Review of the Division of Financial Services. The amended law broadened the scope of the definition of "eligible public depository" to include a savings and loan that has a branch office in the state of Colorado instead of requiring its principal office to be located in the state.

[4] http://www.pacb.org/pacb h09.htm

Public Deposit Protection Act

Before the implementation of the Colorado Savings and Loan Association Public Deposit Protection Act (PDPA) (§ 11-47-101, *et seq*., C.R.S.) in 1975, there was no uniform standard for the deposit and collaterization of public monies. Individual public treasurers and fund custodians operated in isolation and, as a result, governmental units maintained separate collateralization programs with disparate practices and requirements. Each public unit was required to contact financial institutions and individually negotiate collateral requirements for depositing its public monies. This lack of uniform practice often resulted in inefficiencies and high costs for both the governmental units and the depositories.

The PDPA was enacted to protect uninsured state and local government funds held on deposit in Colorado savings and loan associations. The PDPA protects time deposits and checking accounts of public depositors (the state, any county, school district, community college district, special district, metropolitan government, municipality, or court). In the event of a default or insolvency of a savings and loan association, Colorado law provides for the expedited repayment of public deposits not covered by the Federal Deposit Insurance Corporation (FDIC).

Life Care Institutions

Life care institutions or continuing care retirement communities are facilities that provide living facilities and other services to persons who are generally aged or retired. They offer several housing options and services, depending upon the needs of the resident. Having several different types of facilities on the same grounds, they accommodate older persons who wish to live independently, offer assisted living facilities that can provide assistance, and provide nursing homes for those needing skilled nursing care.

These institutions contractually agree to provide certain facilities and services to the consumer upon payment of an entrance fee and additional costs as required throughout the person's life. The costs of residing in these communities may range from an entrance fee of $20,000 to $400,000 and monthly payments varying from $200 to $2,500. The entrance fee is a buy-in fee of upfront money that a new resident must pay to gain entrance at these facilities. Additionally, there may be an option to pay a higher entrance fee in exchange for a lower monthly fee. Some institutions have refund provisions if residents change their minds and choose not to remain in the facility or if the resident dies. On occasion, residents may sell their homes and liquidate all or most of their assets to enter such an institution.

The *2003 Seniors Housing State Regulatory Handbook,* published by the American Seniors Housing Association, reports from a recent survey that 39 states have created regulatory programs for life care institutions. The regulatory agency varies greatly among states and may be located within such state departments as social services, insurance, securities, health and hospitals, elder affairs, aging, consumer affairs, financial services, or the secretary of state. Most regulatory agencies address such issues as the application, escrow of fees, reserves, surety bonds, disclosure requirements, contract terms, advertising, and liens.

In Colorado, the statute responsible for the regulation of life care institutions was originally enacted in 1963. Substantive provisions of this article were repealed and reenacted in 1981. The program was placed under the Commissioner of Insurance and life care institutions were required to obtain a certificate of authority to enter into life care contracts. In 1992, regulatory authority over life care institutions was transferred from the Division of Insurance to the Division of Financial Services pursuant to a recommendation made in the Sunset Review of the Division of Insurance. As a result of the recommendation from that review, statutory requirements that life care institutions receive state approval through a certificate of authority were repealed. The Division of Financial Services monitors and examines these institutions to determine that they comply with statutory fiscal responsibilities. The Department of Public Health and Environment has jurisdiction over these facilities pertaining to quality of care.

Legal Framework

Federal Credit Union Act (FCUA)

For credit unions, there has been a dual chartering system in place since 1934, when the Federal Credit Union Act (FCUA) (12 U.S.C. § 1751, *et seq.*) was passed and enacted into law. Furthermore, many states have had access to state-chartered credit unions since the 1920s. This dual chartering system has allowed credit unions a choice of state or federal charters, regulators, and laws and regulations under which such credit unions will operate. The general provisions in the federal act are similar to those of many state credit union laws. A 1937 amendment to the FCUA assured tax-exempt status for credit unions, regardless of whether they are state-chartered or federal-chartered.

The National Credit Union Administration (NCUA) is charged with chartering and supervising federal credit unions. The NCUA is governed by a three-member board appointed by the President and confirmed by the U.S. Senate. NCUA, with the backing of the full faith and credit of the federal government, operates the National Credit Union Share Insurance Fund (NCUSIF), insuring the savings of 80 million account holders in all federal credit unions and most state-chartered credit unions.

The NCUA created the Office of Corporate Credit Unions (OCCU) in 1994 to centralize its supervision of the corporate credit union system. This reorganization allowed for a more consistent approach in addressing such material issues as capital accumulation and asset liability management. Whereas "natural person" credit unions provide financial services to qualifying members of the general public, corporate credit unions provide a variety of investment services and payment systems only to other credit unions. Of the total 34 corporate credit unions, 16 have federal charters, 16 are federally insured state charters, and two are non-federally insured state charters. They range in asset size from $6 million to $32 billion.

More recently, in 1998, the FCUA was amended by the Credit Union Membership Access Act (CUMAA). The CUMAA authorizes multiple group chartering for federal credit unions and recognizes three types of credit unions in terms of their fields of membership: single common bond, multiple common bond, and community credit unions (12 U.S.C. § 1759(b). The single common bond credit union is defined as one group that has a common bond of occupation or association, while the multiple common-bond credit union includes more than one group, each of which has a common bond of occupation or association. Community credit unions are comprised of persons or organizations within a well-defined local community, neighborhood, or rural district. Additionally, CUMAA required a new aggregate limit on outstanding member business loans of the lesser of 1.75 times the net worth or 12.25 percent of total assets.

Table 2 below compares federal and state-chartered credit unions in terms of who may become a member, and general lending and borrowing limitations.

Table 2
A Comparison of State and Federal Charters by Field of Membership, and Lending and Borrowing Limits 2003

Field of Membership	
Colorado	**Federal**
Limited to groups with a common bond of employment or association or groups which reside within a well-defined neighborhood, community, or rural district (§ 11-30-103(2), C.R.S.).	Provides for four types of credit unions: single common bond; multiple common bond; community which includes those who work, worship, or reside in a specific geographic area; and trade industry profession (added in 2003) (FCUA §109).
Lending - General	
Colorado	**Federal**
No maximum terms under state law. Interest rates are limited by Colorado Uniform Consumer Credit Code. No loan to any director, credit officer, or committee member may exceed $20,000 unless approved by the board of directors. (§ 11-30-116, C.R.S.).	Maximum rate currently is 18%. The NCUA Board votes yearly to determine the rate. It has been 18% for several years (FCUA §107(5). No loan to any director, credit officer, or committee member may exceed $20,000 unless approved by the board of directors. .
Credit Union Borrowing	
Colorado	**Federal**
May borrow from any source a sum not to exceed 50% of its shares, deposits, and undivided earnings. No credit union shall loan more than 10 percent of its assets to members or to other credit unions (§ 11-30-115, C.R.S.).	May borrow up to 50% of paid in and unimpaired capital and surplus pursuant to NCUA Rules and Regulations (FCUA §107(9).

Office of Thrift Supervision (OTS)

The Office of Thrift Supervision (OTS) is the successor to the Federal Home Loan Bank Board (FHLBB) and was created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). This agency's expenses are met by fees and assessments charged to the thrift institutions.

OTS serves as the primary federal regulator of all federal and state-chartered savings and loan institutions across the nation that belong to the Savings Association Insurance Fund (SAIF). It issues federal charters for savings and loan associations and savings banks, adopts and enforces regulations to ensure that these institutions operate in a safe and sound manner, and examines and supervises savings institutions throughout the country. OTS headquarters are in Washington, D.C., but its staff works out of five regional offices.

OTS operates to maintain and enhance its risk-focused, differential, and proactive approach to the supervision of institutions; to improve credit availability by encouraging safe and sound housing and other lending in those areas of greatest need; and, to enhance competitiveness of the thrift industry.

As the primary regulator of federal and state-chartered savings and loan associations, federal savings banks, and savings and loan holding companies, OTS may take formal enforcement actions against these regulated entities and against institution-affiliated parties. Grounds for these actions may include violations of laws, rules, or regulations; unsafe or unsound practices; breaches of fiduciary duty; and, violations of final orders. Institution-affiliated parties are comprised of officers, directors and controlling shareholders of such entities, and others who may act for, or represent an institution. Formal enforcement actions include removal and prohibition orders, cease and desist orders, and orders to pay civil money penalties.

National Association of State Credit Union Supervisors (NASCUS)

The National Association of State Credit Union Supervisors Accreditation Program, approved and sanctioned by the NASCUS Board of Directors in June 1987, is a voluntary accreditation program. Patterned after university accreditation, the program applies national standards of performance to a state's regulatory program. The primary purpose of the NASCUS Accreditation Program is to improve and enhance the credibility of state credit union regulatory departments through a process of self-evaluation and accreditation. NASCUS specifically reviews a program in the following six areas: administration/finance, examination, legislative powers, personnel, supervision, and training.

The Colorado Division of Financial Services' (Division) regulatory program originally was accredited in 1996. In August 2001, the Re-Accreditation Team audited policies and procedures to determine the Division's success in examinations, in obtaining an adequate budget and necessary personnel, in training those personnel, and in adequately managing its resources. The team reviewed the Division's supervision of troubled credit unions, scheduling of examinations, and the clarity, completeness, and findings of credit union examination reports.

To earn accreditation, the Division completed a comprehensive Self Evaluation Report for Accreditation. An on-site review team composed of peer state regulators analyzed the Division's report for accuracy and for compliance with standards. The Re-Accreditation Team recommended unanimously that the Division be re-accredited by NASCUS for a five-year period beginning at the time of accreditation approval, subject to annual review by the Performance Standards Committee. Their report and recommendation for approval were submitted to the NASCUS Performance Standards Committee who recommended to the NASCUS Board that the Division be approved. The Division's re-accreditation became effective in November 2001.

Summary of State Statute

This section of the report provides an overview of Colorado statute concerning the regulatory oversight by the Division of Financial Services (Division). The Division performs its regulatory mission primarily through administration of the following statutes: Credit Unions (§ 11-30-101, *et seq*., C.R.S.); Savings and Loan Associations (§ 11-40-101, *et seq*. - § 11-46-101, *et seq*., C.R.S.); Life Care Institutions (§ 12-13-101, *et seq*., C.R.S.); and, the Protection of Deposits of Public Moneys (§ 11-47-101, *et seq*., C.S.R.) The creation and powers and duties of the State Commissioner of Financial Services (Commissioner) and the Financial Services Board (Board) can be found in section 11-44-101, *et seq*., C.R.S. The responsibility of the Division is to adopt rules to administer the programs and to tailor these rules in response to changes in economic conditions.

The Division is responsible for the promotion of lawful, safe, and sound operations of state-chartered credit unions and savings and loan associations. The Division also is responsible for providing protection of public monies on deposit in state-chartered and federal savings and loan associations above and beyond the protection provided by federal deposit insurance. Finally, the Division is responsible for providing monitoring and oversight of certain financial activities of life care institutions.

Powers and Duties of the Board

The five member Board consists of three members who are executive officers of state-chartered credit unions and who have at least five years practical experience as a credit union executive officer; one member who is an executive officer with a state savings and loan association; and, one member who serves as a public member with expertise in finance.

The Board is empowered to make policy and to establish rules for the regulation of credit unions, savings and loan associations, life care institutions, and the protection of public moneys in savings and loan associations. Additionally, the Board has a wide variety of powers regarding establishing fees, issuing declaratory orders, and restricting credit unions and savings and loan associations from engaging in certain activities. Further, the Board is empowered to make all final decisions with respect to a variety of regulatory matters including: suspending or liquidating credit unions; modifying or reversing orders of the Commissioner acting pursuant to authority delegated by the Board; establishing fees and assessments; issuing cease and desist orders; and, reviewing certain actions of the Commissioner.

The Board is required to hold public hearings prior to granting a community charter or approving a credit union merger involving a community charter. There are procedures for community charter applications and provisions that require a hearing by the Board if the community is more than 25,000 persons. Notice by registered or certified mail 30 days prior to the hearing is required by statute. In addition to the applicant, notice of the hearing must be given to each credit union, savings and loan association, bank or industrial bank within the geographical area proposed to be served by the credit union and to any others designated by the Board. The Board also must provide notice of the hearing in a newspaper distributed within the community proposed to be served by the credit union. If, ten days prior to the scheduled hearing, the Board receives no written protest against the proposed charter, the Board may elect to dispense with the hearing.

Credit Unions

Article 30 of Title 11, C.R.S., provides for the regulation of state-chartered credit unions and their operation under the supervision of the Division. The Division is empowered to approve applications to incorporate new state-chartered credit unions and to approve mergers between credit unions. State-chartered credit unions are examined regularly by Division staff to evaluate their financial condition and compliance with applicable laws and regulations.

Article 30 of Title 11, C.R.S., further establishes requirements for the organization of a credit union and empowers the Commissioner to issue a charter after making certain determinations. The Commissioner is empowered to establish standard bylaws under which all credit unions are required to operate.

Furthermore, the statute establishes membership requirements that include common bond of employment or association or groups that reside within a well-defined neighborhood, community, or rural district having a population of no more than 25,000, or as otherwise authorized. Groups too small to form a credit union are authorized to join an existing credit union.

Credit unions are granted powers to make loans to members and other credit unions, to receive savings, and to hold membership in a central credit union. The statute authorizes credit unions to make certain investments.

The Commissioner is required by statute to examine each credit union at least once every 18 months. The Commissioner is permitted to charge credit unions, based on a schedule, an amount to cover the expenses of supervision. State statute provides for judicial review of the Commissioner's decisions to the Colorado Court of Appeals. The Commissioner also has the power to issue subpoenas, require attendance, and to issue cease and desist orders. Additionally, the Commissioner is authorized to suspend or remove officers or employees of a credit union for a variety of offenses and assess fines against credit unions.

Members of a credit union are designated as having one vote, whatever their shareholdings. A credit union is required to hold elections for appointments to its board of directors, supervisory committee, and credit committee. The statute prescribes the duties of the credit committee, the supervisory committee, and the board of directors, including setting loan policies and surety bond requirements for elected and appointed officials.

A credit union's authority to borrow money may not exceed 50 percent of the credit union's shares, deposits, and undivided earnings. A credit union is prohibited from loaning more than 10 percent of its assets to one member or to another credit union. The statute establishes who may borrow from a credit union.

There are two levels of credit union reserve requirements. The reserve requirement is determined by whether the credit union holds assets greater than $500,000 or less than $500,000. Each category of credit union must set aside a certain percentage of their gross income. The Commissioner is empowered to decrease the reserve requirements or require special reserves to protect members in some cases. Share insurance provided by the NCUA or comparable insurance approved by the Commissioner is required of all credit unions.

The Commissioner has certain requirements detailed in statute that address suspension, liquidation, and revocation provisions. Procedures for conversion from a state to federal credit union or vice versa are outlined. Such conversion must be approved first by the credit union's board of directors and then by a two-thirds affirmative vote of the credit union membership. Furthermore, the statute establishes certain procedures for the merger of credit unions. At least two-thirds of the members present at a meeting specifically convened for that purpose must approve the merger. The applicants for the merger must create a certificate of merger and by-laws. Both documents must be approved by the Commissioner.

Credit unions are exempt from taxation except as to real estate owned. Furthermore, the shares of a credit union are not subject to a stock transfer tax when issued by the corporation or when transferred from one member to another.

Savings and Loan Associations

Articles 40 through 46 of Title 11, C.R.S., provide for the regulation of savings and loan associations and their operation under the supervision of the Division. The Commissioner is empowered to approve mergers between associations, changes of ownership, and applications to incorporate new state-chartered savings and loan associations. The Commissioner also has the authority to issue subpoenas and to institute and prosecute suits and actions and to enjoin for violations of the statute. The Commissioner may suspend or remove directors, officers, or employees of a savings and loan association; assess civil money penalties; and, take possession of such associations and liquidate all assets.

The definition of a savings and loan association is established in statute along with a discussion of how net earnings should be calculated. The requirement to file and publish an annual report as well as penalties assessed for untimely reports is further discussed in statute. Fees for administration, supervision, and examination are payable to the Division.

The penalty for willfully circulating any falsities concerning the management or the financial state of a savings and loan association is a misdemeanor. Any lawful suit interfering with the business of an association shall not be granted unless approved by the Attorney General and the Commissioner.

Statutory criteria concerning organization and powers of savings and loan associations are defined along with the restriction that the use of the title "savings and loan association" is unlawful for any entity unless it meets the statutory criteria for doing business.

The statute imposes the requirements for articles of incorporation for a savings and loan association. It also states that all appropriate documentation regarding the articles of incorporation must be approved and deposited with the Commissioner who subsequently must file all necessary documents with the Office of the Secretary of State.

The powers of a savings and loan association include the acquisition, holding, and mortgage of real estate and personal property. The statute also outlines the powers of savings and loan associations: to act as a trustee, custodian, or manager; to become members of a federal home loan bank; and, to borrow funds, up to a certain limit, from that bank subject to the approval of the Commissioner. Statutory guidelines are established defining how savings and loan associations may determine and charge interest rates on loans and how they may invest funds.

A savings and loan association must obtain and maintain insurance of its shares and of its obligations as provided in statute. Furthermore, savings and loans are authorized to make loans and advances of credit and purchases of obligations. Additionally, the statute defines the types of loans that may be made by savings and loan associations, specifies conditions for said loans, requirements for receiving loans, and guidelines for loan repayment. The conditions under which affiliated branches may be opened and how mergers, transfers, and consolidations may be executed are defined by the statute.

There is no fee required to obtain membership in a savings and loan association. A board of directors with no less than five members must be established and there must be public notice of all special elections, meetings, and vacancies of offices. The statute also states that all members on record are entitled to vote by proxy or in person and a majority of votes is necessary to determine any issue.

No officers or directors of any savings and loan association may receive any gifts or commissions; neither may they negotiate any loan for themselves without approval from the Commissioner**.** There must be a two-third approval of voting members and a signed certificate of approval by the Commissioner before an amendment to the articles of incorporation or reorganization may be adopted.

Guidelines for the dissolution of a savings and loan association state that an affirmative vote of the majority of the directors is required to proceed with its dissolution. The board of directors shall act as trustee for liquidation and the association is subject to the supervision of the Commissioner.

Public Deposit Protection Act

Article 47 of Title 11, C.R.S., defines public deposits and creates a regulatory scheme within the Division. The purpose of the Savings and Loan Association Public Deposit Protection Act (PDPA) is to ensure that public funds held on deposit in savings and loan associations are protected in the event that the institution holding the public deposits becomes insolvent. The Division currently regulates a total of 12 savings and loan associations that are designated to hold Colorado public deposits. Eight savings and loan public depositories are federally chartered and four are state-chartered.

The Commissioner, under supervision of the Board, is charged with monitoring compliance with the PDPA. To qualify as a public depository, a savings and loan association must provide specific information to the Division describing the capital funds of the institution. An eligible public depository is also required to collateralize a specified portion of the public monies on deposit so that the public deposits are available immediately should the need arise. In addition, savings and loan associations must have procedures and practices for identification, classification, reporting, and collateralization of public deposits.

In very general terms, the official custodian of a public unit, which includes a state, county, municipality, or political subdivision, is insured at least up to $100,000 per institution. The PDPA requires institutions to deliver eligible assets (usually mortgage loans or securities) to a third party to be held in safekeeping, and such assets are pledged to the Division. The eligible collateral required to be pledged or maintained is held in escrow by financial institutions such as another savings and loan association in Colorado, a state or national bank in Colorado, or by any federal home loan bank or branch bank. The statute sets forth percentages of public funds that an eligible public depository must collateralize. That amount varies depending upon the assets of the institution and other factors. In the event that an institution becomes insolvent, the Commissioner will seize and sell the pledged assets and distribute the proceeds to the public entities for the amount of their deposits not covered by federal deposit insurance.

Eligible public depositories are required to report the following to the Division: the total level of public deposits held; the amount of these deposits that are covered by federal deposit insurance; the amount of uninsured public deposits; and, on a quarterly basis, the market value of assets pledged to cover uninsured deposits.

State examiners periodically conduct examinations of the eligible public depositories to review their source records and procedures in order to ensure that their reports to the Division are prepared accurately. During these examinations, the collateral that is pledged to cover uninsured deposits also is reviewed to ensure that it complies with all applicable laws and regulations.

Life Care Institutions

Article 13 of Title 12, C.R.S., defines life care institutions and creates a regulatory scheme within the Division. The purpose of this regulation is to ensure that certain financial activities of life care institutions, which provide long-term residence and care for the elderly, are under the oversight of a state regulatory entity.

The Division is responsible for administering and enforcing the provisions of the statute. In doing so, the Division is responsible for conducting examinations whenever necessary, determining that life care institutions have established escrow agreements with appropriate Colorado facilities, and for reviewing the institutions' most recent audits to determine the level of operating expenses for the period under review. The statute further requires that the Division review the institution's life care contracts to ensure that the language is clear and coherent and that it includes the value of all amounts initially paid. The Division also is empowered to initiate enforcement action against life care institutions for violations of the law. The Division currently regulates six life care institutions.

Program Description and Administration

Staffing Overview and Budget

The State Commissioner (Commissioner) of the Division of Financial Services (Division) within the Department of Regulatory Agencies (DORA) administers and enforces the regulation of credit unions, life care institutions, savings and loan associations, and the Savings and Loan Association Public Deposit Protection Act. The Division employs 11 full-time equivalent employees (FTE). This includes the Commissioner, a supervising examiner, seven examiners, and two support staff. Table 3 below details the Division's expenditures for the past six fiscal years.

Table 3
Division of Financial Services Total Program Expenditures and FTE

Fiscal Year	Total Program Expenditure	FTE
1997-98	$849,200	10
1998-99	$846,320	10
1999-00	$896,869	10
2000-01	$1,010,263	11
2001-02	$987,390	11
2002-03	$1,071,354	11

Under the provisions of section 11-44-101.7(3)(f), Colorado Revised Statutes (C.R.S.), the Financial Services Board (Board) is required to establish fees and assessments for the administration of the Division. The Division is considered a cash funded agency because it receives the revenue to fund its budget from the institutions it regulates instead of from general tax dollars. While the Division receives the overwhelming majority of its revenue from semi-annual assessments determined by the asset value of the regulated institutions, examination fees also are charged to public depositories, life care institutions, and savings and loan associations. There is a statutory requirement that savings and loans be assessed an examination fee. Additionally, a base fee of $250 is assessed to all public depositories and $500 to all life care institutions because of the vast variations in their asset values.

Colorado currently has 77 state-chartered credit unions (including two central credit unions), 4 state-chartered savings and loan associations, 12 public depositories, and 6 life care institutions. As evidenced by Table 4 below, the number of institutions has remained fairly constant in the past five fiscal years.

Table 4
Type and Number of Financial Institutions in Colorado

Number of Institutions					
	1988-1999	**1999-2000**	**2000-2001**	**2001-2002**	**2002-2003**
Central Credit Unions	2	2	2	2	2
Credit Unions	77	77	77	75	75
S&L	4	4	4	4	4
PDPA	15	13	12	11	12
Life Care	5	5	5	5	6
Charter Applications Filed					
	1988-1999	**1999-2000**	**2000-2001**	**2001-2002**	**2002-2003**
Central Credit Unions	0	0	0	0	0
Credit Unions	0	2	2	1	1
S&L	0	0	0	0	0
PDPA	0	0	0	0	1
Life Care	0	0	0	0	2
Applications Approved					
	1988-1999	**1999-2000**	**2000-2001**	**2001-2002**	**2002-2003**
Central Credit Unions	0	0	0	0	0
Credit Unions	0	2	2	1	1
S&L	0	0	0	0	0
PDPA	0	0	0	0	1
Life Care	0	0	0	0	2
Applications Denied					
	1988-1999	**1999-2000**	**2000-2001**	**2001-2002**	**2002-2003**
Central Credit Unions	0	0	0	0	0
Credit Unions	0	0	0	0	0
S&L	0	0	0	0	0
PDPA	0	0	0	0	0
Life Care	0	0	0	0	0

Regulation of Life Care Institutions

The statute requires that life care institutions demonstrate fiscal responsibility in several areas: reserve requirements; production of annual reports; examinations by the Division; and the recordings of liens by the Commissioner. Presently, there are six life care institutions regulated by the Division.

Examinations

The foundation of Colorado's oversight of financial services is the examination process. For life care institutions, there are seven predominant regulatory components that the Division examines, which include: escrow account for entry fees; reserve requirements; content of the life care contract; register of residents; advertisements and solicitations; annual reports to prospective/current residents; and, required disclosures for prospective residents. A summary of the examination components of each follows:

1. **Escrows** Determines that the provider has established an escrow agreement with an appropriate facility in Colorado and it has been approved by the Commissioner if it is not a bank or trust company. Establishes that each pre-occupancy deposit received has been properly deposited with the escrow agent. Lastly, an examiner reviews whether the escrow agent has returned pre-occupancy deposits in accordance with the time limits designated in the regulations.

2. **Reserve Requirements** Determines that the amount of interest on debt secured by the provider's facility is included in the statutory reserves and that it is reported accurately. Reviews the institution's most recent audit to determine the level of operating expenses for the period under review. Furthermore, the examiner assesses the accuracy of the pro-rata allocation, the investments to determine whether they fulfill the reserve requirements, and the adequacy of the level of reserves.

3. **Contracts** Reviews providers' life care contracts to ensure that the language is clear and coherent and that they include the value of all amounts initially paid, services to be provided and the charges for those services, financial statement of the provider for the past 24 months, monthly service fees, and the rights of the residents to participate in management of the facility.

4. **Registers** Reviews the register of residents to determine whether the following items are included: resident's name, last previous address, age, next of kin, mother's maiden name, and person responsible for each resident's care.

5. **Advertisements and Solicitations** Reviews all advertising materials to ensure that they clearly state the financial responsibility assumed by any third parties.

6. **Annual Reports** Ensures that the provider, at least annually, provides written notice to the residents that a copy of the annual report is available.

7. **Disclosure Requirements** Reviews standard contracts to ensure that the mandatory language fulfills the regulatory requirements for form and content.

The level of reserves for the six operating life care institutions in Colorado is illustrated in Table 5 below. It is apparent that each institution exceeds Colorado's reserve requirement. Institution E is documented with zeros because currently it is in the process of constructing the facility and there are no residents. However, the institution is accepting pre-occupancy deposits and the Division has jurisdiction over these financial transactions.

Table 5
Residents, and Required and Actual Reserves of Colorado Life Care Institutions as of December 31, 2002

	Number of Residents	Required Reserves	Actual Reserves
Institution A	208	$1,428,720	$2,977,417
Institution B	330	$4,176,590	$4,190,518
Institution C	6	$39,082	$50,000
Institution D	2	$1,905	$5,107
Institution E	0	$0	$0
Institution F	328	$3,353,218	$4,347,684
TOTALS	**874**	**$8,999,515**	**$11,570,726**

Regulation of Credit Unions

To fulfill its goal of effectively regulating credit unions, the Division sets rules that establish the standards for credit unions to operate safely and soundly in protecting the financial interest of their members. Regulation is accomplished mainly through approving credit union charter applications; approving credit union mergers; approving field of membership requests; implementing the examination process; and, investigating consumer complaints. In addition to the 75 state-chartered credit unions that provide financial services to natural persons, the Division has chartered two central credit unions that primarily serve other credit unions. Membership in central credit unions is governed by a separate provision of state credit union law (§ 11-30-103(1), C.R.S.). The larger of the central credit unions is a corporate credit union that is a liquidity facility for both state-chartered and federal credit unions in Colorado and four other states. The small central credit union is sponsored by the Colorado Credit Union League to operate an agent VISA® credit card program that allows small credit unions in Colorado and two other states to offer credit cards to their own members.

The number of Colorado credit unions has remained almost constant for the past five years. However, the total assets of these same credit unions have increased significantly, as evidenced in Table 6 on the following page.

Table 6
Colorado State Credit Union Assets at End of Fiscal Years 1998/99 – 2002/03

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Total Credit Unions	77	77	77	75	75
Total Assets	$3,225,978,076	$4,358,210,960	$5,158,639,752	$5,704,419,037	$6,308,334,196
Total Central Credit Unions	2	2	2	2	2
Total Assets	$1,118,950,047	$778,954,563	$1,948,314,259	$2,058,108,346	$2,970,063,817

The wide distribution of total assets in Colorado's state-chartered credit unions is illustrated in Table 7 below. Of the 75 natural person, state-chartered credit unions in Colorado, 26 credit unions (34 percent) have over 90 percent of the market share.

Table 7
Colorado State-Chartered Credit Unions by Asset Category as of June 30, 2002

Asset Category	Number of Credit Unions/ Total Assets	Percent of Credit Unions/ Percent of Total Assets
Over $100 Million	14 / $4,344,950,986	18.1% / 76.1%
$50 to $100 Million	12 / $820,282,942	15.6% / 14.4%
$25 to $50 Million	8 / $256,765,269	10.4% / 4.5%
$10 to $25 Million	11 / $163,734,556	14.3% / 2.9%
$5 to $10 Million	9 / $68,126,152	14.3% / 1.2%
$2 to $5 Million	13 / $40,353,095	15.6% / 0.7%
Less than $2 Million	8 / $10,785,383	11.7% / 0.2%
Total*	75 / $5,704,998,383	100% / 100%

*Does not include the two central credit unions that provide services to other credit unions rather than natural persons. The total assets of the central credit unions equal $2,058,108,346.

As mentioned on the preceding page, an important component of the regulation of credit unions is the approval of requests for field of membership expansions. If the community application by an existing credit union involves a population of a proposed well-defined neighborhood, community or rural district of 25,000 persons or less, the Commissioner has the authority to approve such an application as an amendment to the credit union's bylaws. However, if the request is for an expansion of over 25,000 persons, the Commissioner refers the application to the Board for public notice, hearing, and decision.

Table 8 on the following page illustrates the frequency, number, and size of credit unions that have received approval for membership expansion during the past five fiscal years. Of the 37 community field of membership approvals, nine requests were for expansions of over 25,000 and were required to have a Board hearing. There have been two denials; one occurred in fiscal year 99-00, and one in fiscal year 02-03, and both were requests for expansion for populations of 25,000 persons or less. These credit unions were denied the ability to expand because the Commissioner questioned whether they had sufficient management capabilities to expand in a safe and sound manner.

Table 8
Community Field of Membership Expansion Approvals for Colorado Credit Unions

Population (thousands)	*FY 1998-99*	*FY 1999-00*	*FY 2000-01*	*FY 2001-02*	*FY 2002-03*
Up to 10,000	*0*	*0*	*0*	*2*	*3*
10,001-20,000	*1*	*1*	*3*	*2*	*1*
20,001-25,000	*2*	*3*	*3*	*4*	*3*
25,001-30,000	*0*	*1*	*1*	*0*	*0*
30,001-40,000	*0*	*0*	*0*	*0*	*0*
100,000-200,000	*0*	*1*	*0*	*2*	*1*
500,000-600,000	*0*	*1*	*0*	*1*	*1*
Total	*3*	*7*	*7*	*11*	*9*

There was one denial during fiscal year 99-00 and one denial for fiscal year 02-03.

<u>Examinations</u>

As with all entities regulated by the Division of Financial Services, the foundation of Colorado's state oversight is the examination. Oversight of credit unions is designed to assure that they remain financially healthy and that potential problems are identified and addressed before the soundness of the institution is threatened.

The examination of credit unions requires that the Division often work closely with federal regulators. As mentioned, state-chartered credit unions are required to maintain federal insurance or the equivalent to protect member deposits. Therefore, state-chartered credit unions are subject to federal examinations since the insuring agency has a strong interest in the health of any credit union that might cause losses to the insurance fund. Generally, federal regulators participate in a limited number of examinations of state-chartered credit unions each year. The reason for the low percentage is because the federal regulators identify those credit unions at risk for their participation. As part of the research for this sunset review, the Department of Regulatory Agencies met with the regional officials of the National Credit Union Administration. They reported that the present process of cooperative examinations is working well.

According to statutory requirements, all credit unions are required to be examined at least once in every 18-month period. The Division's policy provides for a 16-month interval between examinations, although actual examination frequency was 15 months as of March 31, 2003. Additionally, the Division utilizes a risk-based examination policy that provides guidelines for examination frequency for problem credit unions.

The Division conducts safety and soundness examinations of credit unions using an evaluation and rating system based on Capital, Assets, Management, Earnings and Liquidity (CAMEL), which yields a CAMEL code (further definitions are provided on page 23). Each credit union is afforded a composite rating that is predicated upon the evaluations of the five components comprising CAMEL. The composite rating also is based upon a scale of "1" through "5," in ascending order of supervisory concern. In arriving at a composite rating, each financial component must be weighed and due consideration given to the interrelationships among the various aspects of credit union operations. The delineation of the specific components does not preclude consideration of other factors that, in the judgment of the examiner, are deemed relevant to reflect accurately the overall condition, safety, and soundness of the credit union. However, assessment of the specific components represents the essential foundation upon which the composite rating is based.

The five CAMEL composite ratings are discussed below.

<u>CAMEL Composite 1</u>
Credit unions in this group are sound institutions in almost every respect; any critical findings are basically of a minor nature and can be handled as a routine matter. They are resistant to external economic and financial disturbances and are capable of withstanding the unexpected actions of business conditions.

<u>CAMEL Composite 2</u>
Credit unions in this group are fundamentally sound institutions but may reflect modest weaknesses that are correctable in the normal course of business. They are stable and able to withstand business fluctuations quite well; however, areas of weakness can be seen which could develop into conditions of greater concern. To the extent that the minor adjustments are handled in the normal course of business, the supervisory response is limited.

CAMEL Composite 1 and 2 rated credit unions receiving a Letter of Understanding and Agreement (LUA) or other written supervisory agreement are examined as often as deemed necessary. However, the examination will occur no less than once every 18 months, with on-site supervision contacts occurring as often as deemed necessary, but no less than once every nine months.

<u>CAMEL Composite 3</u>
Credit unions in this group exhibit a combination of weaknesses ranging from fair to unsatisfactory. They are only nominally resistant to the onset of adverse business conditions and could easily deteriorate if concerted action is not effective in correcting certain identifiable areas of weakness. Consequently, such credit unions are vulnerable and require more than normal supervisory attention.

Credit unions receiving a CAMEL Composite rating of 3 are examined once every 12 to 18 months, with on-site supervision contacts occurring every six to nine months between examinations. CAMEL Composite 3 rated credit unions that show signs of material deterioration of their condition are examined at the shorter end of these ranges.

<u>CAMEL Composite 4</u>
Credit unions in this group have more than a moderate volume of asset weaknesses, or a combination of other conditions that are unsatisfactory. Unless prompt action is taken to correct these conditions, they could reasonably develop into a situation that could impair future viability. A potential for failure is present but is not pronounced. Credit unions in this category require close supervisory attention.

CAMEL Composite 5
Credit unions in this group require immediate corrective action and constant supervisory attention. Their probability of failure is high.

Credit unions receiving a composite CAMEL Composite rating of 4 or 5 are examined once every 12 months, with on-site supervision contacts occurring every three to four months between examinations.

Capital Adequacy. The Division's examiner seeks to determine the strength of the credit union's capital position to withstand potential losses that could affect its capital reserves. To do this, an examiner looks at a variety of ratios. Two key ratios are the capital to assets and net capital to assets. Other ratios employed include solvency evaluation and capital, plus deposits to deposits, delinquent loans to capital, and classified assets to capital.

Asset Quality. In conducting the quantitative asset quality review, the examiner reviews soundness of the assets and the effect of those classified assets on the financial condition of the credit union. Key ratios used in the asset quality examination included delinquent loans to total loans, and net charge-offs to average loans.

Qualitative examinations attempt to determine that the credit union policies and procedures, especially those related to lending and investments, are being followed by management. The examination may seek to determine that the credit union conducts periodic reviews of its policies and procedures to make certain that goals and objectives are being met.

Management. Examination of management is an important part of the CAMEL rating. This portion of the examination results in a management rating on a scale from "1" through "5." A rating of "1" is assigned to fully effective management that demonstrates an ability to cope successfully with existing and foreseeable problems. A rating of "5" is assigned when management weakness is so severe that action must be taken before safety and soundness can be realized.

Management effectiveness is rated in relation to the other financially driven components of CAMEL, but additional factors in the review of management include compliance with regulations and statutes, written policies and procedures, conduct of annual audits, and record keeping that complies with accepted accounting practices.

Earnings. In the examination of earnings, all aspects of income and expenses are analyzed and then related to the overall condition of the credit union. A sound credit union has the ability to cover all expenses and still provide for capital growth, among other factors. CAMEL requires a minimum examination of seven ratios to evaluate the earnings of a credit union. The two key ratios are net income to average assets (before reserve transfers) and net operating expenses to average assets.

Qualitatively, the examiner must make three primary determinations: first, that the board of directors has in place a budget and the mechanisms that are needed to properly evaluate earnings on a continuing basis; second, that management is adhering to sound practices in carrying out policies of the board; and, third, that adjustments are made in a timely manner, which are supported by cost/benefit analysis. When making the qualitative review of earnings, the examiner also must determine that management decisions concerning the accounting treatment of income/expense items that have a material effect on earnings are made in compliance with regulatory accounting standards and Generally Accepted Accounting Principles.

Liquidity. A credit union's liquidity must be evaluated on the basis of its capacity to promptly meet the demand for payment of its obligations and to fulfill readily the reasonable credit needs of its members. In appraising liquidity, attention is directed at the credit union's average liquidity over a specific period of time, as well as its liquidity position on any particular date.

When evaluating liquidity, the concern is with the volatility of shares, the degree of reliance on interest-sensitive funds, the frequency and level of borrowing, and the availability of assets readily convertible to cash. In conducting the quantitative analysis of liquidity, the examination considers the following four key ratios: long term assets to assets; net long term assets to assets; regular share to total deposits; and, total loans to total shares.

The examination also considers whether or not the board has established asset-liability management policies based on the overall short and long-range goals and objectives of the credit union. The credit union's exposure and ability to adjust to interest rate fluctuations is considered, along with management's ability to actively control the liquidity position without unnecessary sacrifice of earnings potential.

Examiners analyze the effect that long-term assets could have on capital and the effect these assets could have on liquidity. Management's technical competence to manage liabilities and the existence of a plan to access lines of credit or other sources of cash, should the need arise, also is examined.

At the conclusion of the onsite examination, each credit union receives an overall CAMEL Composite score from “1” to “5.” When credit union examination fieldwork is completed and the examiner has prepared the report of examination (ROE), the supervising examiner reviews and edits the ROE in order to provide quality control. The supervising examiner reviews the ROE for overall completeness, compliance with policies and procedures, technical errors, grammar and punctuation errors, and proper support for the assigned CAMEL composite rating. The supervising examiner normally prepares and signs the transmittal letter that accompanies the ROE when the credit union's CAMEL composite rating is at least a "3." The supervising examiner drafts the transmittal letter for credit unions receiving a CAMEL composite rating of "4" or "5," and the Commissioner signs the transmittal letter after reviewing it and the ROE. Also, the Commissioner may review other ROEs and sign the transmittal letters when significant problems exist, regardless of CAMEL composite rating.

In accordance with Division policy, exit conferences are held following each examination and usually are scheduled for the last day of the examination. The examiner-in-charge is responsible for scheduling the exit conference and for conducting on-site management meetings that are held prior to the exit conference to discuss: 1) examination findings; 2) corrective actions, if any; and, 3) the Document of Resolution.

The review must be timely in order to meet the Division's policy on ROE turnaround. There is a required 30-day turnaround time for sending an examination report to a credit union, and a system is in place for tracking agency performance and timeliness. The average turnaround time from October 1, 2001 through March 31, 2003 was 26.3 days.

Tables 9 and 10 illustrate the number of examinations conducted, the frequency of follow-up examinations, and the CAMEL composite ratings for credit unions examined within the last five years. The number of CAMEL Composite scores rated as “1” and “2” far exceeds the number of ratings at the level “4” or “5,” illustrating the soundness of state-chartered credit unions. Generally, less than five percent of all state-chartered credit unions receive ratings of “4” or “5.”

Table 9
Frequency, Number and Results of Examinations
Conducted on Natural Person Colorado Credit Unions

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Credit Unions	77	77	77	75	75
Exams to be conducted	52	52	52	51	51
Exams conducted	55	61	61	63	56
CAMEL Composite Ratings[+] Assigned as a Result of Examinations Conducted	8 1 rated	13 1 rated	18 1 rated	9 1 rated	14 1 rated
	27 2 rated	32 2 rated	32 2 rated	33 2 rated	29 2 rated
	14 3 rated	11 3 rated	9 3 rated	18 3 rated	12 3 rated
	3 4 rated	4 4 rated	2 4 rated	2 4 rated	1 4 rated
	2 5 rated	0 5 rated	0 5 rated	0 5 rated	0 5 rated
Supervision contacts conducted	104*	40	28	33	32
Supervision Contacts Conducted on Credit Unions Differentiated by Camel Composite Ratings	0 1 rated	0 1 rated	0 1 rated	1 1 rated	0 1 rated
	7 2 rated	8 2 rated	3 2 rated	3 2 rated	4 2 rated
	5 3 rated	14 3 rated	14 3 rated	16 3 rated	17 3 rated
	4 4 rated	13 4 rated	11 4 rated	13 4 rated	11 4 rated
	10 5 rated	5 5 rated	0 5 rated	0 5 rated	0 5 rated
Number of examiners	5	6	6	6	6

* Includes 78 Y2K reviews
[+] See page 23 for definitions

Table 10
Frequency, Number and Results of Examinations Conducted on Central Colorado Credit Unions

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Credit Unions	2	2	2	2	2
Exams to be conducted	1	2	1	1	2
Exams conducted*	1 - 1 rated 2/4	2 – 1 unrated 1 rated 2/2	1 – 1 rated 2/2	1 – 1 unrated	2 – 1 unrated 1 rated 2/2
Supervision contacts conducted	Not available	Not available	Not available	2	5
Number of examiners	5	6	6	6	6

* One central credit union is not rated, as it is a small special purpose credit union with no natural persons as members. The rated credit union is a corporate credit union having only other credit unions as members and receiving two CAMEL composite ratings. The first rates empirical results and the second rates the management of key operating areas.

The Division sends out a questionnaire to each credit union that has undergone an examination to determine the level of satisfaction with the process. For the purpose of this sunset review, each response was read thoroughly and a table was compiled based on the credit union's response to each of the six questions. A rating was assigned to a scale from "1 – Strongly Agree" to "5 – Strongly Disagree." A rating of "1" or "2" is considered most positive.

In general, most credit unions assigned a rating of "1" or "2" to each question, ranging from 86 percent to 100 percent. The most frequent comments made in the evaluation are listed below:

- Examiners understand the operation and were able to recommend changes that would improve performance.
- Examiners were well organized, requested data in advance and created very little disruption.
- Examiners understand market and economic issues impacting credit unions.

Table 11
Examination Evaluation Questionnaire Results
Date of Examination December 2000 - January 2002

Question	Strongly Agree (1)	2	3	4	Strongly Disagree (5)
1. Conducted Exam in a Competent and Professional Manner	27	8	2	0	0
2. Communicated Matters of Concerns Effectively to Credit Union Officials	23	10	4	0	0
3. Examiner Had Good Understanding of Condition and Operations of Credit Union	23	14	0	0	0
4. Examiner Was Well Organized and Minimized Disruption to Credit Union	24	10	2	1	0
5. Overall Attitude of Examiner was Helpful to Credit Union	24*	10	1	0	0
6. Supervisory Action Taken was Reasonable and Appropriate	14+	18	1^	1	0
Total	**135**	**70**	**10**	**2**	**0**

*Two responses to Question 5 gave a rating of 1.5
+Two responses to Question 6 gave a rating of 1.5
^ One response to Question 6 gave a rating of 3.5

Mergers and Conversions

Colorado statute sets forth the provisions for mergers of credit unions. In a merger, following the two-thirds vote of credit union members present to approve the conditions of a proposed merger, the certification of the membership vote and proposed bylaws of the new credit union are sent to the Financial Services Board (Board). The Board is required within 30 days to determine whether the proposed merger complies with the law and will benefit the members. After making that determination, the Commissioner with delegatory authority from the Board issues a certificate of approval.

Federal credit unions desiring to convert to state charter must apply for a new charter and are subject to review of their past operations by the Commissioner. The review may include examination of audit reports to determine the fitness of management; that the credit union benefits its members; and, that the conversion is economically advisable. State-chartered credit unions converting to a federal charter also are required to follow statutorily outlined procedures. Upon completion and receipt of a federal charter, the Commissioner issues a Certificate of Approval for Cancellation of Charter, which is recorded with the Office of the Secretary of State.

Table 12 on the following page illustrates the number of conversions and mergers. The most significant activity is that the total number of federal to state mergers and conversions (14) exceeds the number of state to federal mergers and conversions (2).

Table 12
Credit Union Mergers and Conversions

	Fiscal Year 1998-99	Fiscal Year 1999-00	Fiscal Year 2000-01	Fiscal Year 2001-02	Fiscal Year 2002-03	Total
State/Federal Conversion	0	0	0	0	0	0
Federal/State Conversion	0	2	2	1	1	6
State/State Mergers	0	1	3	2	1	7
State/Federal Mergers	0	1	0	1	0	2
Federal/State Mergers	1	3	0	2	2	8
Total	**1**	**7**	**5**	**6**	**4**	**23**

Regulation of Savings & Loan Associations

Colorado participates in the dual chartering system, whereby savings and loan associations have the option of selecting a charter offered by the federal government or by the State of Colorado. The responsibility of the Division is to evaluate the safety and soundness of the state-chartered thrifts in Colorado to ensure that they remain solvent and that the deposits of Colorado consumers remain protected. As evidenced in Table 13 below, as of December 31, 2002, four state-chartered savings and loan associations in Colorado with a combined total of 18 locations had assets equaling $473,150,000. The 11 federal and state-chartered savings and loan associations that are regulated under the Public Deposit Protection Act (PDPA) have combined uninsured public deposits of $51,721,000.

Table 13
Savings and Loan Associations Assets

Calendar Years 1998-2002					
Savings and Loan Associations	12/31/98	12/31/99	12/31/00	12/31/01	12/31/02
Number of Institutions	4	4	4	4	4
Assets	$414,210,000	$414,981,000	$428,767,000	$447,278,000	473,150,000
PDPAs	As of 12/31/98	As of 12/31/99	As of 12/31/00	As of 12/31/01	As of 12/31/02
Number of Institutions	13	12	12	11	11
Public deposits	$42,432,000	$42,883,000	$60,504,000	$51,791,000	$51,721,000

Examinations

In the wake of the national savings and loan crisis, the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), passed by Congress in 1989, transferred federal regulation and insurance authority over savings and loan associations to the Treasury Department, Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC). The Congress granted OTS broad regulatory and examination authority over both federal and state-chartered, federally insured savings and loan associations. OTS has interpreted this authority to not accept examination reports prepared exclusively by state regulators. Therefore, in order to minimize duplication of effort, all examinations of Colorado-chartered savings and loans are conducted jointly by the Division and OTS. State and federal examiners work together to produce a single examination report that satisfies the statutory examination responsibilities of both agencies.

State statute does not delineate the interval within which savings and loan associations must be examined. Examination scope and intervals are determined by the risk profile of the institution. The risk profile is based on prior examination findings and ratings, current financial condition, and changes in core risk areas since the previous examination. Similar to credit unions, thrifts are evaluated on the basis of CAMEL composite ratings. Table 14 below illustrates the CAMEL composite ratings assigned to the four state-chartered savings and loan associations for examinations performed from January 2000 through March 2003. At the conclusion of the first quarter of 2003, each of the four was “well capitalized” under federal capital standards.

Table 14
CAMEL Composite Ratings for State-Chartered Savings & Loan Associations

	Examination Date/ CAMEL Composite Rating	Examination Date/ CAMEL Composite Rating	Examination Date/ CAMEL Composite Rating
S&L 1	5-22-2000/CAMEL 3	7-23-2001/CAMEL 2	3-17-2003/CAMEL 2
S&L 2	2-20-2001/CAMEL 1	9-30-2002/CAMEL 1	N/A
S&L 3	1-10-2000/CAMEL 1	10-01-2001/CAMEL 1	6-09-2003/CAMEL 1
S&L 4	3-27-2000/CAMEL 1	11-26-2001/CAMEL 1	7-07-2003/CAMEL 2

Regulation of Public Depositories

The Division of Financial Services is charged with determining compliance with the Public Deposit Protection Act (PDPA), by state-chartered as well as by federal savings and loan associations. To be an eligible public depository, a savings and loan association must provide specific information to the Division describing the assets of the institution. They must report quarterly their total public deposits, both insured and uninsured. Any deposits not covered by FDIC insurance require appropriate collateral with a market value at least as much as the amount not covered by the FDIC insurance. FDIC insurance generally covers a maximum of $100,000 of a deposit.

A public depository is required to collateralize a specified portion of the public moneys on deposits so that in the event of an institutional default uninsured monies can be recovered. That amount varies depending upon their capital level. In addition, the savings and loan association must have procedures and practices for identification, classification, reporting, and collateralization of public deposits.

Examinations

An important part of state regulation of savings and loan associations is the examinations conducted to determine compliance with Colorado's PDPA. The examination of public depositories is crucial for the protection of deposits.

The Division's examinations of public depositories include the review of source records and procedures to ensure that their reports to the Division are prepared accurately. During these examinations, the collateral that is pledged to cover uninsured deposits also is reviewed to ensure that it complies with all applicable laws and regulations. The Division accepts three types of non-cash collateral to secure public deposits: securities; insured and guaranteed loans; and, conventional mortgage loans.

Collateral pledged to uninsured public deposits is placed with a custodian. The Division conducts periodic direct verification of collateral pledged at each third party custodian. Based on the quarterly reports submitted to the Division, the PDPA staff examiner determines whether there are any under collateralized institutions. If a savings and loan association is under collateralized, Division staff contacts the savings and loan association to ensure that additional collateral is pledged quickly. Division examiners travel on-site periodically to verify the accuracy of the public deposit reports that are prepared and sent to the Division.

The Division has developed a risk-based examination program for public depositories that considers the tangible capital percentage when determining the maximum interval for an examination. OTS has established four percent as the threshold tangible capital percentage under which a savings and loan association is no longer considered to be adequately capitalized. If a public depository percentage is less than four percent, the penalty at the state level as created in Rule 4-8 is to require the depository to pledge additional eligible collateral to cover the uninsured public deposits. Table 15 below illustrates the Division's policy for risk-based examination scheduling.

Table 15
Risk Based Examination Scheduling for Public Depositories

Tangible Capital Percentage	Maximum Interval for Examination	Comments
>8%	24 months	>200% of Well Capitalized
>6%	18 months	150%-200% of Well Capitalized
>4%	15 months	Well Capitalized
≤4%	9 months	Require increasing collateral ranges

Table 16 below identifies the specific capitalization of the 11 Colorado public depository institutions as of September 30, 2002 and the interval established for the examination review process. These public depositories operate well above the established minimum of four percent tangible capital with the majority operating above the five percent level that is considered a well-capitalized institution.

Table 16
Capitalization of Colorado Public Depositories and Examination Intervals, as of September 30, 2002

Institution	Capital % @ 9/30/02	Interval in Months
Institution 1	8.9%	21.5
Institution 2	6.3%	17.5
Institution 3	8.6%	23.3
Institution 4	8.5%	21.0
Institution 5	8.9%	24.0
Institution 6	9.3%	23.6
Institution 7	6.6%	17.5
Institution 8	9.6%	21.3
Institution 9	8.1%	24.0
Institution 10	14.3%	23.3
Institution 11	8.2%	21.0

No public depositor has lost any money deposited in a Colorado savings and loan association. From 1988 through 1992, there were five instances in which the Division liquidated collateral to pay public depositors. There has not been any such state intervention to protect public deposits since 1992.

Complaints/Disciplinary Actions

Complaints

One of the responsibilities of the Division of Financial Services (Division) is the handling of complaints against life care institutions, state-chartered savings and loan associations, state-chartered-credit unions, and public depositories. The Division routinely screens complaints to make sure that the Division has jurisdiction to respond and that the complaint, if valid, would constitute a violation of law or rules. In addition, the Division acts as an intermediary between complainants and regulated institutions, when appropriate, to find a resolution acceptable to both parties.

Most of the complaints are received initially by telephone and pertain to credit unions. A majority of the credit union consumer complaints focus on the following: check holds; insufficient fund checks; insufficient fund check fees; offset of funds in a deposit account against delinquent loans (which is legal); closure of accounts without the member's knowledge; and, customer service. Other types of complaints include a wide range of topics, including: check-cashing fees assessed to non-members; failure to change the member's address in a timely manner; credit union's failure to refund moneys for fraudulent activity against a member's account; disputes with outside vendors; failure to offer a credit card rewards program; and, failure to release liens on vehicles.

Complainants are informed that they must submit the complaint in writing for the Division to initiate an investigation. Once the written complaint is received, the Division sends a letter to the institution whereby it must respond to the inquiry within 14 business days. The Division then reviews the response to determine if there is a violation of the statute or rules. Resolving the complaint involves a recommendation or directive to the institution to correct a problem or a dismissal of the complaint.

For the purposes of this sunset report, the Department of Regulatory Agencies reviewed the files of written complaints for the past two fiscal years. The Division received 60 complaints during fiscal year 01-02 and 50 complaints during fiscal year 02-03. The total number of days to resolve complaints varied from 1 day to 77 days with the majority being resolved within 40 days or less. The policy of the Division is to resolve a complaint within 45 days from the day it is received in writing. DORA's review of these files demonstrates that the Division effectively assisted the public in resolving disputes with institutions.

Disciplinary Actions

The Financial Services Board (Board) has a variety of enforcement mechanisms available to it that are created by statute, and include issuing subpoenas and cease and desist orders; suspending directors, officers, or employees of credit unions or of savings and loan associations; revoking charters; and, assessing civil money penalties.

Historically, the Division has not used enforcement actions for public depositories, savings and loan associations, and life care institutions. When matters have arisen that require regulatory attention, the Division has employed various informal actions that have proven to be very successful. In certain instances the Division has used verbal contact during the examination to correct routine matters, such as errors in calculations. If the examiner is satisfied with the institution's past record of correcting inaccuracies, the matter is discussed with the appropriate parties and considered closed. These matters usually are reviewed at the next examination.

If a matter is more serious, or perhaps a repeat of a past issue, the Division usually will address these matters in the examination report or by means of written correspondence to the appropriate party or parties at the institution, often requiring a written response. Historically, the Division has obtained excellent results using these methods to address regulatory matters in these programs.

Enforcement actions are imposed more often upon credit unions. Common deficiencies among problem credit unions include: an excessive percentage of delinquent loans; weak earnings; inadequate collection efforts; inadequate reserves held against potential losses; poor record-keeping; and, poor management. The Division often requires these credit unions to submit frequent updates on how these problems are being addressed, provides technical assistance to help resolve the problems, and re-examines the credit unions. During the supervision contacts, the examiner particularly reviews matters that were identified as problems during the previous examination. These contacts contribute to the minimal number of enforcement actions because the Division consistently scrutinizes credit unions to ensure that they remain economically viable institutions.

If a credit union does not correct its financial deficiencies through the remedial monitoring program, the Division may use a range of administrative sanctions. These actions usually begin with an informal agreement (i.e., letters of understanding) which is an official document signed by the Board that advises the credit union of the actions necessary to correct the problem. Generally, there is a date between 30 days and 6 months imposed, depending on the degree of the problem, when the credit union must rectify the problem. The credit union may be required to submit monthly or quarterly documentation to a state examiner attesting to its progress until the problem is corrected.

When necessary, the Division may issue cease and desist orders, remove directors or employees from office, and order charter revocations. Additionally, the Division may order involuntary liquidations of credit unions, require net worth restoration plans, or impose fines for late call reports. Involuntary liquidations are imposed only if a credit union is in an unsafe and unsound financial condition and does not merge with another credit union. State-chartered credit unions are subject to net worth restoration plans (NWRP) by federal law. The federal law establishes minimum capital ratios, and if the credit union drops below six percent capital, they must establish a NWRP demonstrating how they plan to increase the capital and maintain this increase for at least four consecutive quarters. Fines of $25 per day may be imposed for late "call reports" (financial reports) which are due quarterly to the Division.

Table 17 illustrates the type and number of enforcement actions that have been imposed on credit unions for the past five fiscal years (i.e., primarily late call report penalties). The figures substantiate that enforcement actions have been nominal during the past five fiscal years. In discussions with the federal regulators from the National Credit Union Administration, they reported that they also have issued a nominal number of disciplinary actions during the same time period. Both federal and state regulators report that credit unions have seen average balances in share and loan accounts rise steadily for the past several years as a result of the 1990s economic boom. This in turn has influenced the success of credit unions and, subsequently, the limited number of enforcement actions.

Table 17
Enforcement Actions Initiated Against Credit Unions

Fiscal Year	1998-99	1999-00	2000-01	2001-02	2002-03	Total
Letters of Understanding and Agreement	0	2	1	0	0	3
Cease and Desist Orders	1	0	0	0	0	1
Civil Money Penalties	0	0	0	0	0	0
Conservatorships	0	0	0	0	0	0
Involuntary Liquidations	0	0	0	0	0	0
Net Worth Restoration Plan	0	0	3	1	0	4
Late Call Report Penalties	13	5	10	8	10	46
Totals	**14**	**7**	**14**	**9**	**10**	**54**

Measuring the effectiveness of the Division requires more than simply analyzing the number of enforcement actions imposed on the financial institutions that it regulates. This program does more with preventive solutions to problems than with discipline. As discussed in the previous text, the Division was able to proceed with a risk-based examination schedule for both savings and loans and public depositories. Additionally, all the public depositories are well capitalized and a majority of the credit unions receive CAMEL Composite ratings of “1” or “2.” The main purpose of regulation is to provide oversight for financial institutions so they operate safely and soundly, thus protecting the financial interests of their customers.

Analysis and Recommendations

During the course of this sunset review, the Department of Regulatory Agencies (DORA) solicited input from a variety of sources. A number of significant issues were presented and considered including:

- Continued regulation of credit unions, savings and loan associations, life care institutions, and public depositories by the Division of Financial Services;
- Method of selection of credit union Credit Committee and Supervisory Committee members;
- Creation of an appeals process to the Financial Services Board regarding most decisions made by the Commissioner;
- Improvements to the credit union merger notification process; and,
- Records retention requirements.

Some of these issues are discussed in the recommendations that follow. Those that are not discussed were found to have fallen outside the scope of the statutory criteria sunset reviews.

Recommendation 1 – Continue the Division of Financial Services until 2013.

This sunset review examined the Division of Financial Services (Division) to determine whether its oversight structure and enforcement activities of credit unions, savings and loan associations, public depositories, and life care institutions ensures that these institutions operate soundly and responsibly, as a means of increasing the economic prosperity of the state and protecting consumers' interests.

The need for regulation of the financial services industry, particularly oversight of credit unions and savings and loan associations, is compelling. This section of the sunset review will discuss the general theory supporting continued regulation of these industries. Beyond the need for continued regulation, this section will explore alternatives to the existing regulation. Specifically, one alternative may be the efficiency to be gained by consolidating the regulation of financial institutions in Colorado. Support for this alternative is premised on the belief that separate regulators of banks and credit unions create duplicate bureaucracy and eliminate possible economies of scale that could be realized through combining the Division of Financial Services and the Division of Banking. The subject of the dual chartering system of savings and loan associations and credit unions also will be discussed.

The fundamental reason for regulation of financial institutions is protection of depositors' money. In Colorado, credit unions hold approximately $5.7 billion in assets with member deposits totaling $5.1 billion. Savings and loans account for another $473 million in assets while public depositories hold approximately $51 million in uninsured public deposits. The potential for catastrophic consequences to individual depositors without regulation is enormous.

One factor in regulatory theory that argues for oversight considers the ability or inability of consumers or the public to distinguish between good and bad institutions. This is clearly the case in the industries regulated by the Division. The examination process, discussed in greater detail earlier in this report, is crucial for the maintenance of the institutions' solvency and the protection of consumers' deposits. These examinations require detailed analysis of numerous ratios, including the extremely important capital to assets ratio. While it might be argued that a very small percentage of consumers may be capable of such analysis, it is not reasonable to assume that virtually all members of credit unions or savings and loans associations could conduct such analysis.

The Division assures that public depositories are in compliance with the law by requiring them to collateralize 100 percent of the public monies on deposit that exceed federally insured amounts so that these deposits are available immediately, should the need arise. In addition, these public depositories must have procedures and practices for identification, classification, and reporting of public deposits, which is reviewed by the Division during its examinations.

Depositors rely on regulatory oversight to assure that financial institutions are healthy. If such institutions begin to experience problems, depositors rely on regulatory intervention to establish corrective procedures while avoiding a "run" on the institution to withdraw deposits. Unlike transactions where goods and services are bought and sold, depositors become closely allied with the health and future of the financial institution.

Additionally, regulation of financial institutions contributes to a stable foundation upon which individuals conduct monetary transactions. Essentially, this means that regulation ensures that a stable payment system is in place. A stable payment system includes meeting the public's financial needs while discouraging or preventing practices that might disrupt the system. State regulation oversees these practices and intervenes if the public or the depositors are at risk.

Finally, the continuation of the Division continues state regulation of life care institutions. Because the cost of residing in life care institutions may range from an entrance fee of $20,000 to $400,000 and monthly payments vary from $200 to $2,500, state oversight of these communities is critical. Government regulation ensures that institutions have measurable standards and criteria regarding escrow accounts for entrance fees, reserve requirements, life care contracts, and required disclosure information. Legislation is necessary to ensure that residents – who are often vulnerable – are protected.

Consolidation of Regulation

Sunset statutory evaluation criteria direct this review to consider if regulation is necessary and whether the existing statutes and regulations are the least restrictive form of regulation consistent with the public interest, and considering other available regulatory mechanisms. It could be argued that consolidation of state regulation would result in the state saving money through reduced regulatory costs. In particular, proponents of this type of consolidation argue that consolidating Colorado's Division of Financial Services and Colorado's Division of Banking would result in a more efficient and cost effective regulation.

Consolidation would not save significant amounts of money. In essence, it appears that consolidation of Colorado's Division of Financial Services and the Division of Banking would result in total yearly savings of less than $120,000. This assumption is based on the elimination of one commissioner and a percentage of administrative support staff for that commissioner; that assumption is subject to some critique, though. It may be difficult or unreasonable to expect one commissioner to assume the duties of another full-time position without some adverse impact to his or her duties. It is more likely that additional staff would be required to handle delegated duties, and this may erode any cost savings realized by consolidating positions.

The Dual Chartering System

Colorado credit unions, either when applying for a charter or through later conversions, can choose between a federal or state charter. State savings and loan associations also have the option of choosing whether they want to be a federal or a state-chartered institution. The primary argument for the elimination of state chartering of these institutions is that it would save money in the state budget. However, the Division is a cash-funded agency because it receives the revenue to fund its budget from the institutions it regulates instead of from general tax dollars.

Another argument offered for the elimination of state charters is that Colorado depositors still would be protected because the National Credit Union Administration (NCUA) and the Office of Thrift Supervision (OTS) examine, respectively, federal credit unions and federal savings and loan associations. Although state and federal regulation of credit unions and savings and loan associations share many regulations, this dual regulatory system allows the state to decide the policies and procedures that are appropriate for the institutions it charters. Federal regulation is administered regionally and federal officials may be less accessible.

Proponents of the dual chartering system in Colorado maintain that they have greater access to their primary regulator. If a state-chartered savings and loan association or credit union has a regulatory question, it can obtain a much faster response from the Division than from the OTS or NCUA. Additionally, state-chartered savings and loan association officials note that there have been extensive personnel changes in OTS over the years that have resulted in communication breakdowns and inconsistencies in the regulatory process. If federal regulation is the only option, credit unions and savings and loan associations will be forced to deal with regulators out of state, which can be time-consuming and costly. Furthermore, it is not reasonable to expect federal officials to have as keen a grasp of Colorado's economic environment, as would the Commissioner or the Financial Services Board (Board).

State regulatory systems have generated the majority of credit union innovations. Since regulation at the federal level affects all federal credit unions across the nation, all with differing memberships and local economies, innovation is not always forthcoming. In fact, credit unions were chartered first at the state level. Also, innovations such as ATM access, real estate mortgage lending, home equity loans, and field of membership expansions began at the state level. Generally, these innovations have been positive for credit union members.

The Colorado credit union industry and the savings and loan associations are strongly supportive of the continuance of a dual chartering system and maintain that it allows Colorado to continue to control the regulation of its financial institutions. The existing dual regulatory system provides a competitive environment that is responsive to the needs of citizens and communities at the local and state as well as federal level. In addition, state regulation affords an opportunity for local legislative bodies to have input into the oversight and development of the credit union and savings and loan industries. In terms of accountability, lawmakers have more access to the regulators if they have a question or concern.

The Division plays a critical role in the preservation of the dual chartering system where savings and loan associations and credit unions have the option of choosing between a state and federal charter. As long as the state charters credit unions and savings and loan associations, the Division’s primary function, (e.g., to protect the public from potential losses of member deposits) will continue to be needed. This sunset review studied the question of whether Colorado should continue to charter and regulate credit unions and savings and loan associations, given that the federal government also performs this function. While some duplication was noted, this review concludes that the state benefits from maintaining control over its financial institutions and that it should continue to charter credit unions and savings and loan associations.

Recommendation 2 – Amend section 11-30-101.7, C.R.S., and replace the word "charter" with the term "field of membership."

The provision in Colorado statute that provides for the initial application for a credit union charter is found in section 11-30-101, C.R.S. Subsequent to receiving its initial charter, a credit union has the option of submitting an application for a community field of membership. The provisions in section 11-30-101.7, C.R.S., address hearing procedures for such community field of membership expansions by credit unions. While, the Division grants only one charter, a credit union may make multiple changes to its field of membership. Therefore, for clarity, the word "charter" in this section should be changed to "field of membership."

Recommendation 3 – Amend section 11-30-101.7, C.R.S., relating to the notice requirements for community charter public hearings.

The amended language should read as follows:

> The board shall give notice of a hearing on a community charter application at least thirty days before the hearing date, by registered or certified mail, ~~to the applicant~~, to each credit union, ~~savings and loan association, bank, or industrial bank~~ within the neighborhood, community, or rural district sought to be served by the proposed community credit union, and to such other persons OR credit unions~~, savings and loan associations, banks, or industrial banks~~ as the board may designate.

Section 11-30-101.7(3), C.R.S., pertaining to hearing procedures for community charter credit union applications requires that the Board send by either registered or certified mail, the notice of hearing to each credit union, savings and loan association, bank, or industrial bank within the neighborhood, community, or rural district to be served by the proposed credit union. These requirements are substantially more extensive than those for bank charter hearings, which require that a notice only be sent to banks within a three-mile radius of the proposed bank. Credit unions must bear the expense of this additional regulatory burden to a greater extent than banks.

Sunset criteria direct DORA to determine whether the existing statutes establish the least restrictive form of regulation. This recommendation to amend subsection (3) to limit notice to just credit unions within the proposed community would maintain the legislative intent of the statute and continue to provide oversight of credit unions.

Recommendation 4 – Amend section 11-30-104(1)(n), C.R.S., to clarify the requirement for credit union membership for loan participation between credit unions and other financial organizations.

The amended language should read as follows:

> Participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members ~~as determined by the board of directors of the credit union originating the loan~~. THE BORROWER MUST BE A MEMBER OF EITHER THE CREDIT UNION ORIGINATING THE LOAN OR THE CREDIT UNION PURCHASING A PARTICIPATION INTEREST IN THE LOAN.

The borrower involved in this type of loan must be either a member of the credit union originating the loan or the credit union purchasing a participation interest in the loan. The current statutory language does not specify that a credit union that purchases a "loan participation" be bound by the requirement that the loan be issued to a credit union member, which is a basic principle in normal credit union lending.

Additionally, the current statutory language hinders a credit union's participation in a loan originating from a bank or credit union service organization because the statute addresses the membership issue if the loan originator is a credit union, but not if it is another type of financial institution or organization. The revision of section 11-30-104(1)(n), C.R.S., would clarify the requirement for credit union membership.

Recommendation 5 – Amend Article 30 of Title 11, C.R.S., to require credit unions to provide notification to the Division of Financial Services that a credit union is opening or closing a branch office.

This recommendation is consistent with the operations of banks and savings and loan associations. Part 6 of Article 105 of Title 11 sets forth provisions for the operation of branches of financial institutions in Colorado. However, the definition of "financial institutions" does not include credit unions. The Division should be informed whenever a credit union chooses to open or close one of its branches.

This recommendation proposes that there be a provision in the credit union statute (similar to that found in Part 6 of Article 105 of Title 11) that requires notification of branch openings to include such information as name, address, telephone number, and date of opening. Notification of branch closings would occur no later than 90 days prior to the actual closing and would include a statement of the reasons for the decision to close, and provide statistical and other information in support of such reasons.

Recommendation 6 – Repeal subjective language in section 11-30-106(8)(a)(I), C.R.S., regarding the Commissioner's ability to suspend or remove any director, officer, or employee of a credit union.

The amended language should read as follows:

> § 11-30-106(8)(a)(I) The commissioner may suspend or remove any director, officer, or employee of a credit union ~~who in the opinion of the commissioner has~~ WHENEVER THE COMMISSIONER DETERMINES THAT THEY HAVE:

The use of the word "opinion" is very subjective. In fact, the *American Heritage Dictionary*, 2nd College Edition defines opinion as "a belief or conclusion held with confidence, but not substantiated by positive knowledge or proof." The recommended language is similar to that found in the Division of Banking statute at section 11-102-505(1), C.R.S.

Recommendation 7 – Revise section 11-30-109(1)(h), C.R.S., that addresses the records retention system for credit unions.

The statutory requirements for records retention are inflexible for they require all records to be kept for a period of six years unless they have been recorded on microfilm or other reproduction processes. Some records should be maintained from one examination or audit to the next. However records such as corporate governance documents should be kept in perpetuity, while other records such as paid notes and ledgers may be destroyed after a specific period of time. For greater flexibility and to allow financial institutions to adapt to ever-changing federal regulations, the more appropriate place for records retention schedules is in rules. The existing provision for records retention should be replaced with a provision that requires the Board to promulgate rules and regulations on record retention.

Recommendation 8 – Update section 11-30-117, C.R.S., regarding reserve requirements to comply with federal regulations.

The amended language should read as follows:

> ~~(1) At the end of each accounting period the gross income shall be determined. From this amount there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed under this article, sums in accordance with the following schedule:~~
> ~~(a) A credit union in operation for four or more years and having assets of five hundred thousand dollars or more shall set aside ten percent of gross income until the regular reserve shall equal four percent of the total of outstanding loans and risk assets, then five percent of gross income until the regular reserve shall equal ten percent of the total of outstanding loans and risk assets.~~

> ~~(b) A credit union in operation less than four years or having assets of less than five hundred thousand dollars shall set aside ten percent of gross income until the regular reserve shall equal seven and one-half percent of the total of outstanding loans and risk assets, then five percent of gross income until the regular reserve shall equal ten percent of the total of outstanding loans and risk assets.~~
> ~~(c) Whenever the regular reserve falls below the stated percent of the total of outstanding loans and risk assets, it shall be replenished by regular contributions in such amounts as may be needed to maintain the stated reserve goals.~~
> ~~(2) The commissioner may decrease the reserve requirement set forth in subsection (1) of this section when in his opinion such a decrease is necessary or desirable.~~ The ~~commissioner~~ BOARD may ~~also~~ require ~~special~~ reserves to protect the interest of members ~~either~~ by general rules and regulations. THE COMMISSIOMER MAY REQUIRE SPECIAL RESERVES ~~or~~ by an order directed to an individual credit union in any special case.

The issue addressed in this recommendation pertains to federal regulations adopted by the NCUA effective January 2001 that render obsolete the state's reserve requirements for credit unions (§ 11-30-117, C.R.S.). The federal regulations for credit unions (12 C.F.R. § 702) are a result of a 1998 change in federal law requiring creation of a system of Prompt Corrective Action (PCA). The NCUA developed a system of PCA to ensure the maintenance of capital standards for federally insured credit unions. The primary intent of the federal PCA law is to minimize the probability of credit union insolvency and ensure problems are resolved at the lowest possible cost to the National Credit Union Share Insurance Fund. Basically this law calls for increasingly restrictive regulatory actions as a credit union's capital falls below certain thresholds.

All natural person, state-chartered credit unions in Colorado are federally insured, thus the requirement that they adhere to federal regulations. Regardless of the net worth of a state-chartered credit union, current Colorado law requires that credit unions periodically reserve sums based solely on assets and gross income. The PCA requires that monies be set aside only when necessary to establish and maintain adequate net worth as defined under federal law. The Colorado statutory requirement is no longer necessary due to the adoption of federal requirements by the NCUA. The NCUA, in consultation with state regulators, has developed and adopted rules implementing the various PCA requirements. PCA dictates statutorily mandated regulatory actions to address declining net worth situations. Under PCA, credit unions are required only to set aside reserves if they are not adequately capitalized.

Currently, all natural-person, state-chartered credit unions must be federally insured, but state law permits the Commissioner to approve comparable private deposit insurance. If private insurance were ever approved, PCA would not apply to credit unions maintaining private insurance. Therefore, a provision should be added to section 11-30-117, C.R.S., to grant the Board the authority to promulgate rules establishing reserve requirements for privately insured credit unions.

Recommendation 9 – Amend section 11-30-117.5(4), C.R.S., regarding credit union information sharing provisions to include a federal home loan bank, a Federal Reserve Bank, the Division of Banking, and the Executive Director of the Department of Regulatory Agencies.

The amended language should read as follows:

> Neither the commissioner, nor the commissioner's deputy, nor any other person appointed by the commissioner, shall divulge any information acquired in the discharge of the person's duties, except insofar as the same may be rendered necessary by law or under order of court in an action involving the division or in criminal actions; except that any party entitled to appear in a hearing on an application for a community credit union charter shall have access to the applicant's proposed articles or amended articles of incorporation, application for charter, and proposed bylaws. The commissioner MAY FURNISH INFORMATION AS TO THE CONDITION OF A CREDIT UNION TO ~~may make available reports of condition and examination findings to~~ the national credit union administration board, to any qualified insuring organization, to any liquidating agent appointed by the commissioner, A FEDERAL HOME LOAN BANK, a FEDERAL RESERVE BANK, THE DIVISION OF BANKING, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES, or to any department or division of any other state having supervisory authority over credit unions, and may accept any report of examination made on behalf of such board, organization, liquidating agent, department, or division appropriate law enforcement agencies.

Provisions for sharing information regarding credit unions are not consistent with those for savings and loan associations and inhibit the Division from carrying out its regulatory responsibilities. This recommendation proposes allowing the Division to share credit union information with the appropriate federal home loan bank, the Division of Banking, a Federal Reserve Bank, and the Executive Director of the DORA.

Credit unions more frequently are becoming members of the Federal Home Loan Bank (FHLB) system, which is a federal government sponsored enterprise that provides funding for mortgages. Currently, the Division must contact each board of a credit union and request that they pass a resolution so that the Division may share information with FHLB. State bank and savings and loan regulators are authorized to share information directly with the appropriate FHLB. The Division, as state credit union regulator, is not authorized to share information, which results in additional paper work for the Division, the FHLB, and the credit union seeking FHLB membership.

Credit unions are also beginning to establish a relationship with the Federal Reserve Bank System and receive "daylight overdraft cap," which permits them to incur overdrafts up to a qualifying amount. Under the Federal Reserve Bank's Payment Systems Risk Program, a daylight overdraft occurs when a depository institution's Federal Reserve account is in a negative position at any point during the business day. This recommendation would grant the Division the authority to share information with the Federal Reserve Bank, which will enable the Federal Reserve Bank to determine timely and appropriate cap levels for the credit unions.

The authority to share information with the Division of Banking would assist the Commissioner in situations where the two agencies have joint regulatory authority. For example, three state-chartered credit unions are part owners of a state-chartered trust company, which is also considered to be a credit union service organization (CUSO) under federal and state credit union rules. Therefore, the Division has some regulatory jurisdiction over the trust company. In order to minimize duplication of effort, the Division of Financial Services and the Division of Banking (which chartered the trust company) chose to examine the trust company concurrently. The Division of Banking has the statutory authority to share its examination report with the Division of Financial Services, but technically, the Division of Financial Services has no authority to reciprocate. Finally, there may be instances where the Executive Director of DORA needs access to the information to resolve administrative issues.

Recommendation 10 – Revise the records retention system in section 11-44-121, C.R.S., by broadening the scope of records retention to include all records in the possession of the Commissioner.

The sole provision in statute that grants the Commissioner the authority to destroy records in his/her possession is found in section 11-44-121, C.R.S., of the savings and loan association statute. This section authorizes the Commissioner to destroy documents in his/her possession, but only after five years from the declaration of the final dividend and liquidation of a savings and loan association.

The current provisions in statute are too limiting and should be broadened in scope to include any records in the possession of the Commissioner, not just records pertaining to savings and loan associations. The amended language should be clarified so that the requirements for record retention conform to the laws covering the retention and destruction of public records located in Article 80 of Title 24.

Recommendation 11 – Amend exclusions from life care institutions in section 12-13-113, C.R.S.

The amended language should read as follows:

> EXCEPT FOR NURSING CARE FACILITIES AND ASSISTED LIVING RESIDENCES THAT ARE PART OF THE FACILTY OF A PROVIDER, AS DEFINED IN SECTION 12-13-101, t~~T~~he provisions of this article shall not apply to any hospital or other facility which the department of public health and environment is authorized to license pursuant to part 1 of article 1 and part 1 of article 3 of title 25, C.R.S.

This section of the statute relating to life care institutions excludes any institution from the financial oversight provisions of Article 13 of Title 12, if any portion of the entity is subject to licensure by the Department of Public Health and Environment (DPHE). This provision, in effect, negates any regulation the Division has over assisted living and long-term care institutions that offer life care contracts. There is no evidence that the Division's regulation of these institutions is duplicative. The DPHE regulates the quality of care in these facilities while the Division regulates the financial aspects. This recommendation does not expend the regulatory authority of the Division.

Technical Changes to the Division of Financial Services Statute

The current statute has provisions that are unclear and outdated. Technical changes are necessary to improve and update the statute. The following recommendations have been made in the order of the current statute for easier identification.

Recommendation 12 – Amend section 11-30-104(1)(m), C.R.S., to delete references to the banking statute.

The amended language should read as follows:

> Make loans to, or permit the assumption of loans by, officers or employees of the division who are members of the credit union, ~~notwithstanding the provisions of section 11-2-115, C.R.S.~~

Section 11-30-104(1)(m), C.R.S., refers to a provision in the banking statute regarding interests of officers and employees. This provision addresses conflicts of interest for employees of the Division of Banking, not the Division of Financial Services; therefore its inclusion is not relevant.

Recommendation 13 – Repeal the outdated provision regarding prepayment of loans in section 11-30-116, C.R.S.

The amended language should read as follows:

> A borrower may repay his OR HER loan in whole or in part any day the office of the credit union is open for business; ~~except that, if a loan is secured by an interest in real property the credit union may require that any partial prepayments be made on the date monthly installments are due and be in the amount of that part of one or more monthly installments which would be applicable to principal.~~

The provision regarding loan prepayments originating in 1984 is outdated and does not reflect the prepayment flexibility in the current mortgage market. This provision was created when computer capabilities for mortgage amortization schedules were substantially less and calculations were more often performed manually. The current statute requires that persons may only prepay mortgage payments on the due date, and only in increments of the exact monthly payment applicable to the principal. Nowadays there is flexibility with mortgage loans whereby customers may pay any additional amount that they desire and at anytime (e.g., monthly, quarterly, semi-annually, or yearly).

Recommendation 14 – Conform the provisions of section 11-30-119, C.R.S., regarding the handling of funds of expelled and deceased credit union members with the state's unclaimed property laws.

Certain provisions regarding the handling of deposited funds of expelled and deceased credit union members are in conflict with the state's unclaimed property laws. The Unclaimed Property Act (§ 38-13-101, *et seq*., C.R.S.) defines and addresses the procedures to be followed in regards to abandoned and unclaimed property. It outlines certain provisions whereby bank deposits and funds in financial institutions are presumed abandoned unless the owner initiates certain actions within five years. Section 38-13-104, C.R.S., lists the general rules for taking custody of intangible unclaimed property, and specifies that the unclaimed property is subject to the custody of the State of Colorado unless otherwise provided by statute. To the contrary, section 11-30-119, C.R.S, regarding provisions for regulating credit unions states, "Funds not claimed within a five-year period shall be transferred from accounts payable to regular reserve."

There is an inconsistency between the credit union statute and the Unclaimed Property Act regarding the disposition of unclaimed property. The position of the state administrator of the unclaimed property laws is that credit unions are subject to the unclaimed property provisions. As a result, the Division routinely examines credit unions for compliance with the unclaimed property laws and generally finds that they are complying. Yet there is uncertainty regarding this issue because of the more specific provisions found in section 11-30-119, C.R.S. Moreover, current statutory language may provide a disincentive for credit unions to locate the owner of the abandoned property.

To eliminate this inconsistency and to provide clarification that the unclaimed property laws apply to credit unions, this recommendation proposes amending the statute to conform the credit union statute to the Unclaimed Property Act. This also would ensure equal treatment as savings and loan associations are subject to the unclaimed property laws.

Recommendation 15 – Repeal obsolete language in section 11-40-106 (1)(a)(III), C.R.S.

> ~~In addition to each assessment established pursuant to subparagraphs (I) and (II) of this paragraph (a), for each fiscal year beginning July 1, 1992, and ending June 30, 1994, and for the period ending January 31, 1995, the commissioner shall collect a semiannual repayment of the fiscal year 1991-1992 general fund advance to the division in an amount equal to one-sixth of the amount of the commissioner's assessment that would have been collected in September 1992.~~

Section 11-40-106(1)(a)(III), C.R.S., contains references to a time period beginning July 1, 1992 and ending June 30, 1994. This provision is no longer needed in statute.

Recommendation 16 – Update references in sections 11-41-117 and 11-41-117.5, C.R.S., pertaining to the federal deposit insurer for savings and loan associatons and delete obsolete provisions in section 11-41-117(1), C.R.S.

The statute currently references the Federal Savings and Loan Insurance Corporation (FSLIC) and Title IV of the National Housing Act. The current deposit insurer of savings and loan associations is the Federal Deposit Insurance Corporation (FDIC). All references to both the FSLIC and Title IV should be deleted. New language should identify the current insurer and make provisions for any successor.

Additionally, obsolete language in section 11-41-117(1), C.R.S. should be deleted because the term "federal insurance reserve" was a term only used by the FSLIC.

> ~~While the shares of an association are insured, the contingent reserve, as provided under section 11-42-111, may be designated as the federal insurance reserve to the extent such insurance reserve is required to be set up and maintained. Any action taken by any savings and loan association prior to May 17, 1939, while under the provisions of articles 40 to 46 of this title, in connection with obtaining insurance of its shares with the federal savings and loan insurance corporation, is ratified and confirmed.~~

Recommendation 17 – Repeal section 11-41-120, C.R.S., that requires savings and loan associations to obtain a license and pay a fee before opening a branch.

The requirement for licensure of savings and loan association branches is inconsistent with state credit union and banking laws, which do not require such institutions' branches to be licensed. The banking industry removed the provision for licensure several years ago, while credit unions never had such requirement.

However, receiving notification of the openings and closings of branch offices is an important aspect of the Division's oversight of savings and loan associations. Currently, there are provisions in section 11-105-601, *et seq*., C.R.S., which set forth conditions for the operation of branches of financial institutions, including savings and loan associations.

Recommendation 18 – Repeal the outdated references to Small Business Development Credit Corporations in section 11-44-101.8(1)(a), C.R.S.

Pursuant to a recommendation in the 1993 Sunset Review of the Division of Financial Services, the General Assembly, in 1994, repealed the authorizing statutes for Small Business Development Credit Corporations, so such references are now obsolete.

Recommendation 19 – Consolidate and revise the conflict of interest provision for credit unions and savings and loan associations by deleting and amending provisions in section 11-44-102, C.R.S.

Delete the following language in section 11-44-102, C.R.S., to read as follows:

> (1) The head of the division of financial services shall be the state commissioner of financial services, referred to in this article as the "commissioner". The commissioner of savings and loan associations serving on July 1, 1989, shall continue in his office as the commissioner. ~~The commissioner shall not be interested, directly or indirectly, either as a shareholder, stockholder, officer, employee, or borrower in any entity regulated by the division, except he may exercise full membership rights in a credit union.~~
>
> (2) The commissioner may appoint, pursuant to section 13 of article XII of the state constitution, a deputy commissioner of financial services, a secretary, and such other employees as he may deem necessary for the proper conduct of the division. ~~The deputy commissioner shall not be interested, directly or indirectly, either as a shareholder, stockholder, officer, employee, or borrower in any entity regulated by the division, except he may exercise full membership rights in a credit union.~~

~~(5) The commissioner, his deputy, and all his employees shall devote their entire time and attention to the duties of their several positions and shall not during their terms of service receive any salary or compensation whatsoever from any savings and loan association.~~

Insert new language in statute to read as follows:

> NO EMPLOYEE OF THE DIVISION SHALL BE AN OFFICER, DIRECTOR, COMMITTEE MEMBER, ATTORNEY, OR STOCKHOLDER IN ANY CREDIT UNION OR SAVINGS AND LOAN ASSOCIATION OR RECEIVE, DIRECTLY OR INDIRECTLY, ANY PAYMENT, GRATUITY OR COMPENSATION FROM ANY INSTITUTION OVER WHICH THE DIVISION HAS SUPERVISORY CONTROL. THIS SECTION SHALL NOT PROHIBIT BEING A DEPOSITOR, ACCOUNT HOLDER, BORROWER, OR USER OF OTHER AVAILABLE FINANCIAL SERVICES ON THE SAME TERMS AS ARE AVAILABLE TO THE GENERAL PUBLIC OR MEMBERSHIP. FURTHER, THIS SECTION SHALL NOT PROHIBIT THE CREDIT UNION OR SAVINGS AND LOAN MEMBERS OF THE FINANCIAL SERVICES BOARD, PROVIDED FOR IN SECTIONS 11-44-101.6(2)(a) AND (2)(b), FROM BEING EXECUTIVE OFFICERS IN CREDIT UNIONS AND SAVINGS AND LOAN ASSOCIATIONS AND FROM RECEIVING BONA FIDE COMPENSATION AS SUCH OFFICERS.

Current conflict of interest standards for Division employees are established in a piecemeal manner. There is a need for comprehensive conflict of interest standards similar to those that apply to employees of the Division of Banking. The standards should be updated to cover all available financial services from an institution regulated by the Division and strengthened to require that all financial services, including loans and deposits, provided to a Division employee are on the same terms as are available to the general public (or membership, generally, in the case of a credit union). Mandating that there be no preferential treatment in providing services to Division employees is an improved approach than to restrict the types of services that can be provided.

Recommendation 20 – Update language in sections 11-45-101(1)(c) and 11-45-103(1), C.R.S., by replacing references to the Federal Home Loan Bank Board with references to the Office of Thrift Supervision, or its successor.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) abolished the Federal Home Loan Bank Board. It transferred its supervisory and regulatory responsibilities with respect to thrift institutions and their holding companies to the Office of Thrift Supervision.

Recommendation 21 – Update language in sections 11-47-102(1), 103(9) and (10), 108(1), 112(6), 113(1)(b) and (e), 118(1), and 120, C.R.S., by replacing references to the Federal Savings and Loan Insurance Corporation with references to the Federal Deposit Insurance Corporation, or its successor.

The statute currently references the FSLIC, which was once the federal entity responsible for insuring the deposits at savings and loan associations. In 1989, the FDIC assumed the deposit insurance for savings and loan associations. All references to the FSLIC should be deleted. New language should identify the current insurer and make provisions for any successor.

Recommendation 22 – Repeal provisions in section 11-47-105 (1) and (2), C.R.S., regarding obsolete language in the Public Deposit Protection Act.

The amended language should read as follows:

> (1) Every state-chartered savings and loan association and every federally chartered savings and loan association having an office in this state which is otherwise eligible to be an eligible public depository and which desires to accept and hold, ~~or to continue to accept and hold,~~ public deposits in an amount in excess of the amount insured by the federal deposit insurance corporation or its successor shall, ~~within ninety days after July 1, 1975~~, file with the commissioner, on a form provided by him for such purpose, a statement signed and sworn to by an executive officer of such association electing to accept and become subject to the provisions of this article and setting forth the amount of its capital funds and the aggregate amount and nature of all public deposits held by it ~~as of July 1, 1975~~. Upon the filing of such statement and acceptance, the commissioner shall forthwith designate such savings and loan association as an eligible public depository and shall issue an appropriate certificate evidencing such designation.
>
> ~~(2) Any state-chartered savings and loan association or any federally chartered savings and loan association having an office in this state which fails to file a statement and acceptance within the period of time provided for in this section but which thereafter desires to become an eligible public depository and any such association hereafter organized to carry on a savings and loan business in this state which desires to become an eligible public depository may, at any time, file with the commissioner a statement signed and sworn to by an executive officer of such association stating the amount of its capital funds as of the date of said statement and declaring that it has elected to accept and become subject to all the provisions of this article, and, upon the filing of said statement and acceptance, the commissioner shall forthwith designate such association as an eligible public depository and shall issue an appropriate certificate evidencing such designation.~~

Repeal part of subsection (1) and all of subsection (2) to recognize that initial statutory provisions requiring application for designation as an eligible public depository within 90 days of July 1, 1975 are no longer necessary.

Recommendation 23 – Repeal section 11-47-106, C.R.S., regarding public depository collateral pooling. Make conforming amendments in sections 107, 110, 114, 115, and 116.

The amended language should read as follows:

> ~~Minimum amount of eligible collateral required to be maintained as security for public deposits. (1) When the commissioner certifies that at least one-fourth of the state-chartered or federally chartered savings and loan associations holding at least one-fourth of the total resources held by all savings and loan associations in the state of Colorado have elected to secure public deposits, as provided in this section and section 11-47-107, and have been designated as eligible public depositories or on and after the date of its designation as an eligible public depository, whichever is later, every eligible public depository shall thereafter maintain, as security for that portion of all public deposits accepted and held by it which is not insured by the federal savings and loan insurance corporation, eligible collateral as defined in section 11-47-103 (5) (a) and (5) (c) having a market value, at all times, equal to at least fifty percent of the average daily amount of the uninsured portion of said deposits accepted and held by it during the six-month period ending on the valuation date next preceding, unless it has elected to pledge eligible collateral as provided in section 11-47-108. Prior to the commissioner's certification as provided in the first sentence of this subsection (1), all eligible public depositories shall secure public deposits as provided in section 11-47-108, and the provisions of section 11-47-114 shall not apply pending such certification.~~
>
> ~~(2) In the case of an eligible public depository which held no public deposits during the preceding six-month period in excess of the amounts insured by the federal savings and loan insurance corporation but which accepts and holds such deposits during the ensuing six-month period, said depository shall maintain, as security therefor, eligible collateral as defined in section 11-47-103 (5) (a) and (5) (c) having a market value, at all times, equal to at least fifty percent of the average daily amount of public deposits, not insured by the federal savings and loan insurance corporation, accepted and held by it during said ensuing six-month period, unless it has elected to pledge eligible collateral as provided in section 11-47-108.~~
>
> ~~(3) The market value of eligible collateral maintained or pledged shall be determined and calculated in accordance with the rules and regulations prescribed by the financial services board from time to time. The market value of eligible collateral on any valuation date shall be presumed to be its market value to and until the next following valuation date.~~

The collateral pooling option for securing uninsured public deposits in savings and loans associations has been in statute since the law's enactment in 1975 but the option has never been utilized. The industry clearly prefers the alternative method of 100 percent collateralization provided for in section 11-47-108, C.R.S.

Recommendation 24 – Repeal obsolete language in sesction 11-47-117, C.R.S.

> ~~No impairment of obligations. Nothing contained in this article shall be construed so as to impair the obligation of any contract or agreement made and entered into prior to July 1, 1975.~~

Section 11-47-117, C.R.S., contains a reference to "prior to July 1, 1975." This language is no longer necessary.

Recommendation 25 – Amend sections 11-105-601, 602 and 605, C.R.S., to repeal provisions that are redundant, unnecessary or unenforceable regarding savings and loan associations.

The amended language should read as follows:

> **11-105-601. Legislative declaration.** (1) The general assembly finds, determines, and declares that distinctions in function and services of various types of financial institutions have become so narrow that organizational and operational equality should be encouraged and facilitated in this state. It is the intent of the general assembly to enact legislation that will promote the safety and soundness of financial institutions for the benefit of the public, improve efficiency for the economic operation of those financial institutions, and ensure that the state of Colorado, by its appropriate action, will continue its control of those financial institutions within its jurisdiction.
>
> ~~(2) In order to provide equality among financial institutions, the banking board and the financial services board shall monitor and require reports on the activities of each financial institution conducting business at a location in Colorado.~~
>
> **11-105-602. Financial institutions - branches allowed - conversion of financial institutions to branches - acquisitions.**
> (3)(c) The banking board and the ~~commissioner~~ FINANCIAL SERVICES BOARD shall adopt policies and procedures by rule no more restrictive than federal regulatory policies and procedures relative to ~~application and~~ ~~approval~~ NOTICE of branches to be established under this subsection (3).
>
> **11-105-605. Rule-making by banking board and state commissioner of financial services.** (1) The banking board shall promulgate and adopt such rules as are necessary to accomplish the purposes of this part 6.
> (2) The ~~state commissioner of~~ financial services BOARD shall promulgate and adopt such rules as are necessary to accomplish the purposes of this part 6.

(3) The banking board and the ~~state commissioner of~~ financial services BOARD shall coordinate their rule-making that implements the provisions of this part 6 so that the procedures and time periods are the same for each type of financial institution to ~~make application for~~ GIVE NOTICE OF a branch thereunder.

Section 11-105-601(2), C.R.S., requires that the Banking Board and the Financial Services Board monitor and require reports on the activities of each financial institution conducting business at a location in Colorado. The requirement for these reports, which was repealed several years ago, pertained to loan and deposit activity reports for both state-chartered and federal financial institutions.

Sections 11-105-602(3)(c) and 605(2) and (3), C.R.S., should be amended to reflect the authority of the Financial Services Board to promulgate rules, and not the authority of the Commissioner to do so. Lastly, sections 11-105-602(3)(c) and 605(3), C.R.S., reflect the changes proposed in Recommendation 17 to delete the provisions that require savings and loan associations to obtain a license and pay a fee before opening a branch.

Appendix A – Sunset Statutory Evaluation Criteria

(I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;

(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;

(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;

(VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.