

# Bulletin CU-16-1

TO: All Tennessee State Chartered Credit Unions

SUBJECT: Credit Union Dividends

DATE: February 18, 2016

This Bulletin is intended to clarify when a federally insured Tennessee state-chartered credit union (a "credit union") without available undivided earnings may declare and pay dividends without the prior approval of the Department.

In accordance with the statutes and rules described below, the Department has determined that a credit union without available undivided earnings may declare and pay dividends (via a transfer of funds from the credit union's regular reserve account to undivided earnings) without the prior approval of the Department so long as the following two conditions are met:

1. The credit union is "well capitalized" (as determined under Part 702 of the NCUA's Rules and Regulations); and
2. The payment of dividends will not cause the credit union's net worth classification to fall below "adequately capitalized" under subpart B or C of Part 702 of the NCUA's Rules and Regulations.

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Tenn. Code Ann. § 45-4-503(e) generally provides that a state-chartered credit union may not pay dividends in excess of its current earnings after the required reserve transfer, undivided profits, and the amount held in regular reserves in excess of legal requirements, without the prior written approval of the Commissioner.

Pursuant to Tennessee's "wild card" provision at Tenn. Code Ann. § 45-4-501 (9), however, a state chartered credit union may exercise any power or engage in any activity that it could exercise or engage in if it were a federally chartered credit union, subject to the regulation by the commissioner of financial institutions for the purpose of maintaining the credit union's safety and soundness.

NCUA Rule 702.403(b) provides that the board of directors of a "well capitalized" federally-insured credit union that has depleted the balance of its undivided earnings account may authorize a transfer of funds from the credit union's regular reserve account to undivided earnings to pay dividends, provided that either--

1. The payment of dividends will not cause the credit union's net worth classification to fall below "adequately capitalized" under subpart B or C of Part 702 of the NCUA's Rules and Regulations; or

2. If the payment of dividends will cause the net worth classification to fall below "adequately capitalized," the appropriate Regional Director and, if State-chartered, the appropriate State official, have given prior written approval (in an NWRP or otherwise) to pay a dividend.

The Department has determined that a "well capitalized" (as determined under Part 702 of the NCUA's Rules and Regulations) federally insured, Tennessee state-chartered credit union without available undivided earnings may pay dividends in accordance with NCUA Rule 702.403(b) without the prior approval of the Department, provided that such payment of dividends will not cause the credit union's net worth classification to fall below "adequately capitalized" under subpart B or C of Part 702 of the NCUA's Rules and Regulations. Should you have any questions, please contact Chief Administrator Anthony Rogers at (931) 980-6427.