

**ORDER OF THE STATE OF WISCONSIN  
OFFICE OF CREDIT UNIONS  
ADOPTING RULES**

- 1 The Wisconsin Office of Credit Unions by this order creates ch. DFI—CU 74 relating to
- 2 incidental powers activity authority parity with federal credit unions.

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**Analysis Prepared by the Office of Credit Unions**

Statute(s) interpreted: ss. 186.115(1) and 186.235(21), Stats.

Statutory authority: ss. 186.115(2), 186.235(8) and 227.11(2), Stats.

Related statute or rule: None.

Explanation of agency authority: Pursuant to ch. 186, Stats., the Wisconsin Office of Credit Unions regulates state-chartered credit unions.

Summary of proposed rule: The objective of the rule is to create ch. DFI—CU 74 relating to incidental powers activity authority parity with federal credit unions. The purpose of this rule is to permit Wisconsin-chartered credit unions to provide certain loan-related products in the same manner that such products are provided by federally-chartered credit unions. The rule provides definitions; identifies prohibited practices; and sets forth certain requirements regarding fees, disclosures, and safety and soundness practices. The promulgation of this rule has been approved by the Credit Union Review Board.

Summary of and preliminary comparison with existing or proposed federal regulation: NCUA Rules and Regulations Part 721 authorizes a federal credit union to engage in activities incidental to its business.

Comparison with rules in adjacent states: Illinois (Authorizing Letter 05/07/02), Michigan (Interpretive Memorandum 06/18/04 and Declaratory Ruling 04-053-M), Minnesota (parity statute) and Iowa (parity statute) all authorize the providing of debt cancellation contracts and debt suspension agreements.

Summary of factual data and analytical methodologies: No factual data or analytical methodologies were necessary for the rule.

Analysis and supporting documentation used to determine effect on small business: The rule does not have an effect on small business.

Summary of Final Regulatory Flexibility Analysis: This proposed rule will have no adverse impact on small businesses.

Summary of Comments received by Legislative Review Committees: No comments were received.

**Agency Contact Persons**

For substantive questions on the rule, contact Suzanne Cowan, Director, Office of Credit Unions, P.O. Box 14137, Madison, WI 53708-0137, tel. (608) 267-2609. For the agency’s internal processing of the rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705.

Pursuant to the statutory authority referenced above, the Office of Credit Unions adopts the following:

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SECTION 1. DFI—CU 74 is created to read:

**CHAPTER DFI—CU 74**

**INCIDENTAL POWERS ACTIVITY AUTHORITY**

**PARITY WITH FEDERAL CREDIT UNIONS – DEBT CANCELLATION**

**CONTRACTS AND DEBT SUSPENSION AGREEMENTS**

**DFI—CU 74.01 Purpose.** This chapter authorizes a Wisconsin-chartered credit union to engage in certain activities incidental to its business in the same manner that the activities are available to federally-chartered credit unions.

**DFI—CU 74.02 Definitions.** In this section:

(1) “Actuarial method” means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) “Credit union” has the meaning set forth in s. 186.01(2), Stats.

(3) “Customer” means a member of a credit union who obtains an extension of credit from a credit union primarily for personal, family or household purposes.

19 (4) “Debt cancellation contract” means a loan term or contractual arrangement modifying loan  
20 terms under which a credit union agrees to cancel all or part of a customer’s obligation to repay  
21 an extension of credit from that credit union upon the occurrence of a specified event. The  
22 agreement may be separate from or a part of other loan documents.

23 (5) “Debt suspension agreement” means a loan term or contractual arrangement modifying loan  
24 terms under which a credit union agrees to suspend all or part of a customer’s obligation to repay  
25 an extension of credit from that credit union upon the occurrence of a specified event. The  
26 agreement may be separate from or a part of other loan documents. “Debt suspension  
27 agreement” does not include loan payment deferral arrangements in which the triggering event is  
28 the borrower’s unilateral election to defer repayment or the credit union’s unilateral decision to  
29 allow a deferral of repayment.

30 (6) “Director” means the director of the office of credit unions or an authorized representative of  
31 the director.

32 (7) “Incidental powers activity” means an activity that is necessary or requisite to enable a credit  
33 union to effectively carry on the business for which it is incorporated. An activity meets the  
34 definition of “incidental powers activity” if it is convenient or useful in carrying out the mission  
35 or business of a credit union, is the functional equivalent or logical out-growth of activities that  
36 are part of the mission or business of a credit union, and involves risks similar in nature to those  
37 already assumed as part of the business of the credit union.

38 (8) “Loan-related products” mean the products, activities or services a credit union provides to  
39 its members in a lending transaction that protect it against credit-related risks or are otherwise  
40 incidental to its lending authority. “Loan-related products” include debt cancellation  
41 agreements, debt suspension agreements, letters of credit and leases.

42 (9) “Residential mortgage loan” means a loan secured by 1-4 family, residential real property.

43 **DFI—CU 74.03 Debt cancellation contracts and debt suspension agreements.** A credit  
44 union may provide debt cancellation contracts and debt suspension agreements as an incidental  
45 powers activity in the same manner and to the same extent that the products are provided by  
46 federally-chartered credit unions.

47 **DFI—CU 74.04 Prohibited Practices. (1) ANTI-TYING.** A credit union shall not extend  
48 credit or alter the terms or conditions of an extension of credit conditioned upon the customer  
49 entering into a debt cancellation contract or debt suspension agreement with the credit union.

50 **(2) MISREPRESENTATIONS GENERALLY.** A credit union shall not engage in any practice  
51 or use any advertisement that is false, misleading or deceptive, or which omits to state material  
52 information, or otherwise would cause a reasonable person to reach an erroneous belief with  
53 respect to information that may be disclosed under this section.

54 **(3) PROHIBITED CONTRACT TERMS.** A credit union shall not offer debt cancellation  
55 contracts or debt suspension agreements that contain any of the following:

56 (a) Terms giving the credit union the right unilaterally to modify the contract unless the  
57 modification is favorable to the customer and is made without additional charge to the customer,  
58 or the customer is notified of any proposed change and is provided a reasonable opportunity to  
59 cancel the contract without penalty before the change goes into effect.

60 (b) Terms requiring a lump sum, single payment for the contract payable at the outset of the  
61 contract, where the debt subject to the contract is a residential mortgage loan.

62 **DFI—CU 74.05 Refunds of fees in the event of termination or repayment of the covered**  
63 **loan. (1) REFUNDS.** If a debt cancellation contract or debt suspension agreement is terminated,  
64 including when the customer prepays the covered loan, the credit union shall refund to the

65 customer any unearned fees paid for the contract unless the contract provides otherwise. A credit  
66 union may offer a customer a contract that does not provide for a refund only if the credit union  
67 also offers that customer a *bona fide* option to purchase a comparable contract that provides for a  
68 refund.

69 **(2) METHOD OF CALCULATING REFUND.** The credit union shall calculate the amount of a  
70 refund using a method at least as favorable to the customer as the actuarial method.

71 **DFI—CU 74.06 Method of payment of fees.** Except as provided in s. DFI—CU 74.04(3)(b), a  
72 credit union may offer a customer the option of paying the fee for a contract in a single payment,  
73 provided the credit union also offers the customer a *bona fide* option of paying the fee for that  
74 contract in monthly or other periodic payments. If the credit union offers the customer the  
75 option to finance the single payment by adding it to the amount the customer is borrowing, the  
76 credit union shall also disclose to the customer , in accordance with s. DFI—CU 74.07, whether  
77 and, if so, the time period during which the customer may cancel the agreement and receive a  
78 refund.

79 **DFI—CU 74.07 Disclosures. (1) CONTENT OF SHORT FORM DISCLOSURES.** The short  
80 form of disclosures required by this section shall include information relating to any of the  
81 following that is appropriate to the product offered:

- 82 (a) That the product is optional.
- 83 (b) Lump sum payment of fee.
- 84 (c) Lump sum payment of fee with no refund.
- 85 (d) Refund of fee paid in lump sum.
- 86 (e) Any additional disclosures.
- 87 (f) Eligibility requirements, conditions and exclusions.

88 (2) CONTENT OF LONG FORM DISCLOSURES. The long form of disclosures required by  
89 this section shall include information relating to any of the following that is appropriate to the  
90 product offered:

- 91 (a) That the product is optional.
- 92 (b) An explanation of debt suspension agreement.
- 93 (c) The amount of fee.
- 94 (d) Lump sum payment of fee.
- 95 (e) Lump sum payment of fee with no refund.
- 96 (f) Refund of fee paid in lump sum
- 97 (g) Use of card or credit line restricted.
- 98 (h) Termination of product.
- 99 (i) Eligibility requirements, conditions and exclusions.

100 **Note:** Copies of the short and long form, and instructions for using them may be obtained  
101 by writing to the Office of Credit Unions, P.O. Box 14137, Madison, WI 53708-0317 or  
102 by downloading it from the Department of Financial Institutions' website, [www.wdfi.org](http://www.wdfi.org).

103 (3) DISCLOSURE REQUIREMENT, AND TIMING AND METHOD OF DISCLOSURES. (a)

104 *Short form disclosures.* The credit union shall make the short form disclosures orally at the time  
105 the credit union first solicits the purchase of a contract.

106 (b) *Long form disclosures.* The credit union shall make the long form disclosures in writing  
107 before the customer completes the purchase of the contract. If the initial solicitation occurs in  
108 person, the credit union shall provide the long form disclosures in writing at that time.

109 (c) *Transactions by telephone.* If the contract is solicited by telephone, the credit union shall  
110 provide the short form disclosures orally and shall mail the long form disclosures, and, if

111 appropriate, a copy of the contract to the customer within 3 business days, beginning on the first  
112 business day after the telephone solicitation.

113 (d) *Solicitations using written mail inserts or “take one” applications.* If the contract is solicited  
114 through written materials such as mail inserts or “take one” applications, the credit union may  
115 provide only the short form disclosures in the written materials if the credit union mails the long  
116 form disclosures to the customer within 3 business days, beginning on the first business day after  
117 the customer contacts the credit union to respond to the solicitation, subject to the requirements  
118 of s. DFI—CU 74.08(3).

119 (e) *Electronic transactions.* Disclosures described in this section provided through electronic  
120 media shall be in a manner consistent with the requirements of the Electronic Signatures in  
121 Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

122 (4) FORM OF DISCLOSURES (a) *Understandable disclosures.* The disclosures required by  
123 this section shall be conspicuous, simple, direct, readily understandable, and designed to call  
124 attention to the nature and significance of the information provided.

125 (b) *Meaningful disclosures.* The disclosures required by this section shall be in a meaningful  
126 form.

127 **Note:** The following are examples of means that call attention to the nature and  
128 significance of the information provided in the disclosure: a plain language heading to  
129 call attention to the disclosures; typeface and type size that are easy to read; wide margins  
130 and ample line spacing; boldface or italics for key words; and distinctive type style, and  
131 graphic devices, such as shading or sidebars, when the disclosures are combined with  
132 other information.

133 (5) ADVERTISEMENTS AND OTHER PROMOTIONAL MATERIAL FOR DEBT  
134 CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS. The short  
135 form disclosures are required in advertisements and promotional material for contracts unless the  
136 advertisements and promotional materials are of a general nature describing or listing the  
137 services or products offered by the credit union.

138 **DFI—CU 74.08 Affirmative election to purchase and acknowledgement of receipt of**  
139 **disclosures required.** (1) AFFIRMATIVE ELECTION AND ACKNOWLEDGEMENT OF  
140 RECEIPT OF DISCLOSURES. Before entering into a contract the credit union shall obtain a  
141 customer's written affirmative election to purchase a contract and written acknowledgement of  
142 receipt of the disclosures required by s. DFI—CU 74.07(2). The election and acknowledgement  
143 information shall be conspicuous, simple, direct, readily understandable, and designed to call  
144 attention to their significance. The election and acknowledgement satisfy these standards if they  
145 conform with the requirements in s. DFI—CU 74.07(2).

146 (2) TELEPHONE SOLICITATIONS. If the sale of a contract occurs by telephone, the  
147 customer's affirmative election to purchase may be made orally, provided the credit union does  
148 all of the following:

149 (a) Maintains sufficient documentation to show that the customer received the short form  
150 disclosures and then affirmatively elected to purchase the contract.

151 (b) Mails the affirmative written election and written acknowledgement, together with the long  
152 form disclosures required by s. DFI—CU 74.07, to the customer within 3 business days after the  
153 telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts  
154 to obtain the documents from the customer.



155 (c) Permits the customer to cancel the purchase of the contract without penalty within 30 days  
156 after the credit union has mailed the loan form disclosures to the customer.

157 **(3) SOLICITATIONS USING WRITTEN MAIL INSERTS OR “TAKE ONE”**

158 **APPLICATIONS.** If the contract is solicited through written materials such as mail inserts or  
159 “take one” solicitations and the credit union provides only the short form disclosures in the  
160 written materials, then the credit union shall mail the acknowledgment of receipt of disclosures,  
161 together with the long form disclosures required by s. DFI—CU 74.07 of this chapter, to the  
162 customer within 3 business days, beginning of the first business day after the customer contacts  
163 the credit union or otherwise responds to the solicitation. The credit union may not obligate the  
164 customer to pay for the contract until after the credit union has received the customer’s written  
165 acknowledgment of receipt of disclosures unless the credit union does all of the following:

166 (a) Maintains sufficient documentation to show that the credit union provided the  
167 acknowledgement of receipt of disclosures to the customer as required by this section.

168 (b) Maintains sufficient documentation to show that the credit union made reasonable efforts to  
169 obtain from the customer a written acknowledgement of receipt of the long form disclosures.

170 (c) Permits the customers to cancel the purchase of the contract without penalty within 30 days  
171 after the credit union has mailed the long form disclosures to the customer.

172 **(4) ELECTRONIC ELECTION.** An affirmative election and acknowledgement made  
173 electronically shall be in a manner consistent with the requirements of the Electronic Signatures  
174 in Global and National Commerce Act, 15 U.S. C. 7001 *et seq.*

175 **DFI—CU 74.09 Safety and soundness.** A credit union shall manage the risks associated with  
176 debt cancellation contracts and debt suspension agreements in accordance with safety and  
177 soundness principles. A credit union shall establish and maintain effective risk management and

178 control processes over its debt cancellation contracts and debt suspension agreements. The  
179 processes include appropriate recognition and financial reporting of income, expenses, assets and  
180 liabilities, and appropriate treatment of all expected and unexpected losses associated with the  
181 products. A credit union shall assess the adequacy of its internal control and risk mitigation  
182 activities in view of the nature and scope of its debt cancellation contract and debt suspension  
183 agreement programs. The director may limit, restrict or prohibit a credit union from utilizing any  
184 incidental power if examination results indicate that the credit union is conducting its business in  
185 an unauthorized or unsafe manner or is violating any of the provisions of this chapter.

186 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: \_\_\_\_\_

Agency: \_\_\_\_\_

Suzanne Cowan, Director  
Office of Credit Unions