

Report From Agency

STATE OF WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS

RULE REPORT TO THE LEGISLATURE **Clearinghouse Rule 23-071**

Relating to correcting out-of-date cross-references, repealing obsolete provisions, modifying the structure of existing rules to conform to current drafting practices, and revising the definition of “member business loan” to conform to federal law.

Attached: Proposed rule, fiscal estimate and economic impact analysis, and Clearinghouse report to agency.

Governor’s approval: The governor approved this rule on April 10, 2024.

Basis and purpose of the proposed rule: The Department of Financial Institutions, Office of Credit Unions, proposes an order to revise chs. DFI-CU 51-75.

The proposed rule order seeks to amend rules administered by the Office in four respects:

First, the proposed revisions will correct several cross-references that have become outdated. For example, section DFI-CU 56.10 of the Wisconsin Administrative Code expressly adopted the pleading standard formerly contained in s. 263.28 of the 1973 version of the Wisconsin Statutes. Section 263.28 no longer exists, however. Following revisions to the Wisconsin Statutes, the substance of former section 263.28 now appears in modified form at section 802.09 (2). The proposed revisions would update this and other cross-references in DFI-CU that have become outdated.

Second, the proposed revisions will repeal certain rules that have become obsolete or unnecessary. Chapter DFI-CU 59, for example, is a 1972 rule authorizing credit unions to invest in “securities issued by hospitals, churches, sanatoria, seminaries, dioceses, and similar type institutions,” subject to certain regulatory restrictions. But such investments are uncommon for state credit unions today, and the rule is unnecessary in any event because there is already a statutory option for credit unions to seek regulatory approval for investments in specific instruments pursuant to Wis. Stat. s. 186.11 (1) (e).

Third, the proposed revisions modify the structure of existing rules to conform to current Wisconsin drafting practices. While none of these changes have any substantive effect, they will provide greater clarity and consistency with the drafting style of other statutes and rules administered by the agency.

Fourth, the proposed revisions would update s. DFI-CU 72.02 to reflect changes to the definition of “member business loan” set forth in the federal Economic Growth, Regulatory Relief, and Consumer Protection Act, which Congress enacted in 2018, and accompanying rules governing credit unions. DFI-CU 72.02’s definition of “member business loan” tracked the federal definition prior to those 2018 changes, and this amendment will ensure that the rule language continues to conform to federal law. The Office of Credit Unions previously promulgated a rule making those updates to DFI-CU 72.02, which were approved in early 2020 as provided under chapter 227 of the Wisconsin Statutes (see Clearinghouse Rule 17-063), but the rule was not timely published due to delays by the National Credit Union Administration (NCUA) in approving the final language of the updated definition. The Office has now obtained the NCUA’s final approval, but due to the passage of time, s. 227.14 (6) (d) of the Wisconsin Statutes requires the Office to promulgate the rule again.

Summary of comments, agency’s response, and explanation of any modifications as a result of comments or testimony at the preliminary public hearing:

At the preliminary public hearing held on November 16, 2023, the Department received three written comments regarding the scope statement. The Wisconsin Credit Union League (WCUL) and Capital Credit Union each submitted comments in support of the proposed rule, particularly the proposal to revise the definition of “member business loan” to mirror federal law. The Wisconsin Bankers Association submitted a comment opposing the scope statement as too narrow, contending that other provisions of DFI-CU 72 should also be revised to maintain consistency with federal law. The agency appreciates the comments received concerning the proposed rule and the scope statement. No modification to the scope statement was made.

Summary of comments received at the February 2, 2024, public hearing:

Paul Guttormsson of the Wisconsin Credit Union League appeared at the February 2, 2024, public hearing and submitted brief written comments in support of the rule.

Changes to analysis or fiscal estimate: None.

Response to legislative council recommendations: All three of the Council's recommendations, which related to clarity, grammar, punctuation, and use of plain language, were adopted. The Council did not raise any substantive concerns.

Final regulatory flexibility analysis, changes to energy impact report, housing impact analysis, and response to any report prepared by the SBRRB: Not applicable.

