

STATEMENT OF SCOPE

Department of Financial Institutions

Rule No.: DFI-CU (multiple chapters)

Relating to: Clean-up of obsolete and outdated rules

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The proposed revisions would repeal or amend outdated sections of the Wisconsin Administrative Code governing credit unions, as follows:

- (1) Amending DFI-CU 56.03 to eliminate paper-filing requirements and to extend (from 30 to 60 days) the time by which an adverse determination may be appealed to the Credit Union Review Board;
- (2) Amending DFI-CU 56.05 to authorize filing of documents by email;
- (3) Repealing DFI-CU chs. 57 and 73, which are unnecessary because they are less stringent than parallel federal regulations that credit unions are required to follow to maintain federal share insurance, 12 C.F.R. § 741.215 & parts 715, 748 and 749;
- (4) Repealing DFI-CU ch. 58 because it is redundant of Wis. Stat. § 186.36;
- (5) Amending DFI-CU 54.03 (“Limitations on Real Estate Mortgage Loans”) to authorize the Director of the Office of Credit Unions to waive the limitations therein for good cause shown, which will enable the Office to flexibly address specific situations in which loans with longer terms are warranted and in the best interests of the public;
- (6) Amending DFI-CU 63.01 to remove a reference to the division of savings and loan, which no longer exists;
- (7) Repealing DFI-CU 63.03, a 40-year-old rule requiring credit unions to give advance notice to the Office of Credit Unions before changing ATM locations, because such notices are burdensome and unnecessary to protect the public interest; and
- (8) Repealing DFI-CU ch. 66, which authorizes “limited service offices” out-of-state, because the rule is no longer relevant given subsequent statutory changes permitting out-of-state branch offices, 1995 Wis. Act 151.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The proposed revisions serve the purposes of modernization and clarity. They eliminate provisions of the administrative rules that have become unnecessary due to changes in the law or technology.

Revisions to reflect changes in state law. Items (4), (6), and (8) from the numbered list above propose revisions that are warranted as a result of changes in state statutory law, as follows:

Item (4). DFI-CU ch. 58, which requires all commissions on the sale of insurance in connection with credit union loans to be paid to the credit union, was promulgated prior to the 1973 enactment of

Wis. Stat. § 186.36, which carries the same mandate. Given the statute, there is no further need for the administrative rule.

Item (6). DFI-CU 63.01 references the division of savings and loan, which was eliminated in the 1999 budget bill. 1999 Wis. Act 9. The proposed revision would remove this outdated reference.

Item (8). DFI-CU ch. 66 was promulgated to solve a problem that no longer exists. When it was promulgated in the 1980s, credit unions were statutorily barred from opening out-of-state branch offices. The administrative rule authorized a narrower option, the “limited service facility,” as a means for a state-chartered credit union to establish an out-of-state location. Since that time, however, the Wisconsin Statutes were amended to permit out-of-state branch offices. 1995 Wis. Act 151. Therefore, DFI-CU ch. 66 is no longer necessary.

Revisions to reflect areas where federal law regulates more comprehensively than state law. Item (3) from the numbered list above concerns state administrative rules that have become unnecessary due to comprehensive federal regulation by the National Credit Union Administration on those topics.

First, the NCUA extensively regulates the security and preservation of credit union records, including the issuance of detailed procedures for safeguarding member information, complying with the Bank Secrecy Act, records retention, and catastrophic event preparedness. See 12 C.F.R. parts 748 & 749 (including appendices); 12 C.F.R. §§ 741.214 & 741.215 (requiring federally insured credit unions to comply with parts 748 and 749). State regulation on those subjects is far less comprehensive and adds no requirements not otherwise addressed in the NCUA regulations. See DFI-CU ch. 57. For those reasons, the Office of Credit Unions is proposing to repeal DFI-CU ch. 57.

Second, the NCUA also extensively regulates annual audits and verifications for credit unions, the requirements of which depend on a credit union’s size. See 12 C.F.R. §§ 715.6, 715.7 & App’x A (“Supervisory Committee Audit – Minimum Procedures”). State-chartered credit unions are required to follow the NCUA rules or state rules concerning audits, “whichever audit is more stringent.” 12 C.F.R. § 715.6(b). Because the NCUA rules offer fewer options for compliance, they are “more stringent” than the state audit rules set forth in DFI-CU ch. 73 – and therefore state-chartered credit unions must follow the federal rules rather than DFI-CU ch. 73. For that reason, the Office of Credit Unions is proposing to repeal DFI-CU ch. 73.

Revisions to reflect modern technology and practices. Items (1), (2), (6), and (8) above propose revisions to accommodate technological and industry changes, as follows:

Items (1) and (2). Those changes would eliminate certain paper-filing requirements to enable transmission by email. Most such documents are sent by email in the first instance anyway; these changes would merely remove the requirement that senders also provide a paper copy by mail. In addition, the time for appealing adverse determinations to the Credit Union Review Board would be extended from 30 to 60 days to match the 60-day period provided under Wis. Stat. § 186.015(5).

Item (5). DFI-CU 54.03 sets certain limitations on loans secured by real estate, including limits on the amount that can be financed and the term length for such loans. While such limitations are generally appropriate under most circumstances, from time to time there are special situations where applying those limits to a given loan creates hardship for the borrower without adding any public benefit. Those special situations can be addressed by revising the rule to permit the Office of Credit Unions to waive the limitations of DFI-CU 54.03 for good cause.

Item (6). DFI-CU 63.03, which was first promulgated in 1978, requires credit unions to give notice to the Office of Credit Unions each time they add, remove, or change the services at any of their automated teller machines. While that rule may have served a cautionary and protective purpose when ATMs were still an emerging technology, that is no longer the case. ATMs are ubiquitous and their usage and practices are well-established. It no longer serves a public purpose to require credit unions to notify the Office of Credit Unions each time they add, remove, or relocate an ATM.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 186.235(8), Stats., authorizes the Office of Credit Unions, “with the approval of the credit union review board, [to] promulgate rules relating to the business of credit unions.” The Credit Union Review Board reviewed and voted to approve this scope statement at its regular quarterly meeting on March 10, 2020.

While s. 186.235(8) is sufficiently broad to cover each of the eight proposed revisions above, we note that some of the proposed revisions would also be covered by more specific rulemaking provisions of Chapter 186, Stats. With respect to revisions (1) and (2) of the numbered list above, Section 186.015(3g), Stats. further authorizes the Credit Union Review Board to “promulgate rules of procedure” for administrative proceedings before it. With respect to revision (5) of the numbered list above, Section 186.098(10) authorizes the Office of Credit Unions to establish rules for the making of loans secured by mortgages on real estate. With respect to revision (6) of the numbered list above, Section 186.113(15), Stats. authorizes the Office of Credit Unions to establish rules for the placement and operation of automated teller machines.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

80-100 hours

6. List with description of all entities that may be affected by the proposed rule:

State-chartered credit unions in Wisconsin

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

State-chartered credit unions must follow several regulations promulgated by the National Credit Union Administration, a federal agency, as a condition of maintaining mandatory share insurance. Federal and state rules overlap in two areas relevant to the proposed rule revisions.

First, the NCUA extensively regulates the security and preservation of credit union records, including the issuance of detailed procedures for safeguarding member information, complying with the Bank Secrecy Act, records retention, and catastrophic event preparedness. See 12 C.F.R. parts 748 & 749 (including appendices); 12 C.F.R. §§ 741.214 & 741.215 (requiring federally insured credit unions to comply with parts 748 and 749). State regulation on those subjects is far less comprehensive and adds no requirements not otherwise addressed in the NCUA regulations. See DFI-CU ch. 57. For those reasons, the Office of Credit Unions is proposing to repeal DFI-CU ch. 57.

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8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

These revisions would not have any material economic impact.

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