

## **Notice of Rulemaking Pursuant to s. 186.118 (3), Stats.**

### **Financial Institutions – Credit Unions**

The Department of Financial Institutions Office of Credit Unions hereby amends Chapter DFI-CU 75 pursuant to s. 186.118 (3), Wis. Stats. The amended rule will become effective the day after publication in the *Administrative Register*.

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### **ANALYSIS**

#### **1. Statutes interpreted:**

Section 186.118 (3) of the Wisconsin Statutes.

#### **2. Statutory Authority:**

Section 186.118 (3) of the Wisconsin Statutes.

#### **3. Explanation of agency authority:**

Section 186.118 (3) (b) of the Wisconsin Statutes states as follows:

1. The office of credit unions shall promulgate a rule adding an activity or power to the list of activities and powers established under sub. (2) (a) if the office of credit unions determines under par. (a) that the activity or power authorized for federally chartered credit unions should also be authorized for credit unions organized under s. 186.02.

2. The office of credit unions shall submit the proposed rule under subd. 1. to the legislative reference bureau in an electronic format approved by the legislative reference bureau, and the legislative reference bureau shall publish the proposed rule in the notice section of the Wisconsin administrative register under s. 35.93.

3. Sections 227.114 (4) and (6), 227.115, 227.135, 227.137, 227.14 (2) (a) 6., (2g), (4), and (4m), 227.15, 227.16, 227.17, 227.18, 227.185, 227.19, and 227.30 do not apply to the office of credit unions in promulgating a rule under subd. 1. or to any rule promulgated by the office of credit unions under subd. 1. Guidelines prescribed by executive order of the governor do not apply to the office of credit unions in promulgating a rule under subd. 1.

#### **4. Related statutes or rules:**

12 C.F.R. part 702, subpart D.

## **5. Plain language analysis:**

Federally-chartered credit unions may exercise powers specified by federal law, including certain powers that are incidental to the core business of credit unions. Wisconsin law provides that state-chartered credit unions may exercise the same incidental powers as their federally-chartered counterparts, if the Office of Credit Unions determines that the power should be authorized for state-chartered credit unions and it issues a rule using the abbreviated process described in Wis. Stat. s. 186.118 (3) (b).

The Office of Credit Unions first issued an incidental powers rule in 2018, which was codified as chapter DFI-CU 75 of the Wisconsin Administrative Code. Among other incidental powers addressed in the rule, DFI-CU 75 authorizes state-chartered low-income credit unions to accept secondary capital accounts subject to the same federal requirements that apply to federally-chartered credit unions. *See* Wis. Admin. Code DFI-CU ss. 75.03 (1), 75.04 (1). At the time, those federal requirements were codified at title 12, section 701.34 of the Code of Federal Regulations, and that federal citation was expressly incorporated into DFI-CU s. 75.03 (1).

Since that time, however, federal law has changed. The subject matter of former section 701.34 of the Code of Federal Regulations has been reorganized and relocated to subpart D of part 702. Subpart D refers to secondary capital issued before January 1, 2022 as “grandfathered secondary capital,” while secondary capital issued after that time is referred to as “subordinated debt” and is subject to new requirements. 12 C.F.R. ss. 702.401, 702.402.

Within 30 days after this change in federal law, the Office of Credit Unions determined that state credit unions should be authorized to issue subordinated debt to the same extent as federally chartered credit unions, and that their secondary capital accounts should be treated in the same manner as grandfathered secondary capital under the new federal rules.

This rule updates DFI-CU 75 to authorize state credit unions to utilize “subordinated debt” and “grandfathered secondary capital” to the same extent as federal credit unions. The amended rule eliminates the now-obsolete reference to “secondary capital accounts” and 12 C.F.R. s. 701.34, and it replaces them with references to “grandfathered secondary capital,” subordinated debt,” and the applicable federal citations.

## **6. Summary of, and comparison with, existing or proposed federal regulation:**

Existing federal regulations governing federally-chartered credit unions are contained in 12 C.F.R. Part 702, subpart D. These regulations allow low-income designated credit unions and certain other credit unions to issue subordinated debt, subject to several conditions and safeguards.

## **7. Comparison with rules in adjacent states:**

Minnesota, Illinois and Iowa have not adopted a rule on this subject, but they have enacted statutes comparable to s. 186.118 authorizing state-chartered credit unions to exercise the same

incidental powers that federally-chartered credit unions may exercise. *See* 205 Ill. Comp. Stat. 305/65; Iowa Code s. 533.301.25; Minn. Stat. s. 52.04 subdiv. 3. Michigan added acceptance of secondary capital accounts by low-income designated credit unions as an incidental-power activity preapproved for its credit unions by administrative order.

## **8. Summary of factual data and analytical methodologies:**

In 2018, when it first adopted Wis. Admin. Code DFI-CU ss. 75.03 (1) and 75.04 (1) authorizing the acceptance of secondary capital in accordance with then-existing 12 C.F.R. s. 701.34, the Office of Credit Unions determined that this incidental power would be useful for eligible credit unions, without creating substantial new risks to their overall safety and soundness.

The Office has monitored activity under this rule in the years since it was issued as part of its routine examinations of low-income designated state-chartered credit unions, and it has not found any cause to revise those conclusions.

In January 2022, within 30 days of the changes in federal law described in section 5 above – namely the introduction of the concepts “subordinated debt” and “grandfathered secondary capital” for federally chartered credit unions – the Office of Credit Unions reviewed the provisions of 12 C.F.R. Part 702, subpart D, as well as applicable state law, and determined that these incidental powers enjoyed by federally-chartered credit unions would also be useful for eligible state-chartered credit unions, without creating substantial new risks to their overall safety and soundness.

## **9. Place where comments are to be submitted and deadline for submitting:**

Kim Santos, Director, Office of Credit Unions, PO Box 14137, Madison, WI 53708-0137. Tel. (608) 267-2608; e-mail Kim.Santos@wisconsin.gov. There is no deadline for submitting comments.

## **10. Agency contact person:**

Kim Santos, Director, Office of Credit Unions, PO Box 14137, Madison, WI 53708-0137. Tel. (608) 267-2608; e-mail Kim.Santos@wisconsin.gov.

## **TEXT OF RULE**

**SECTION 1.** DFI-CU 75.03 (1) is repealed.

**SECTION 2.** DFI-CU 75.03 (9m) and (14m) are created to read:

DFI-CU 75.03 **(9m)** “Grandfathered secondary capital” has the meaning set forth in 12 C.F.R. s. 702.402.

**(14m)** “Subordinated debt” has the meaning set forth in 12 C.F.R. s. 702.402.

**SECTION 3.** DFI-CU 75.04 (1) is repealed.

**SECTION 4.** DFI-CU 75.04 (9r) and (14r) are created to read:

DFI-CU 75.04 **(9m)** Grandfathered secondary capital.

**(14m)** Subordinated debt.