

STATEMENT OF SCOPE

Department of Financial Institutions

Rule No.: DFI-CU chs. 51-75.

Relating to: Correcting out-of-date cross-references, repealing obsolete provisions, modifying the structure of existing rules to conform to current drafting practices, and revising the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

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 seek to modify certain rules administered by the Department of Financial Institutions' Office of Credit Unions, 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First, the proposed revisions will correct several cross-references that have become outdated.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 The proposed revisions would update this and other cross-references in DFI-CU that have become outdated.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.

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 policy goals of this proposed rule are to ensure that the administrative rules governing credit unions are clear, up-to-date, and in alignment with requirements imposed by Congress and federal regulators.

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

Section 186.235 (8), Stats., provides: "The office of credit unions shall, with the approval of the credit union review board, promulgate rules relating to the business of credit unions."

Section 186.098 (10), Stats., provides: "Loans to members secured by mortgages on real estate may be made subject to the rules prescribed by the office of credit unions."

In addition, the changes seek to ensure that rules the Division administers are compliant with Wis. Stat., s. 227.14 (1), which requires that in drafting administrative rules "an agency shall adhere substantially to the form and style used by the legislative reference bureau in the preparation of bill drafts and the form and style specified in the manual prepared by the legislative council staff and the legislative reference bureau under s. 227.15 (7)," and with Wis. Stat., s. 227.29 (1), which directs agencies to address rules that are "unauthorized," "obsolete or that have been rendered unnecessary," or "duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction."

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

50-75 hours.

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

State-chartered credit unions.

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:

Title 12, section 1757a (c) of the United States Code and accompanying rules (12 C.F.R. part 723) define the term "member business loan" in a manner that is inconsistent with Wis. Admin. Code s. 77.02. In particular, in 2018 Congress amended 12 U.S.C. s. 1757a to exclude loans secured by 1- to 4- family dwellings from the definition of "member business loan." (Previously, the law only excluded such loans if the dwellings were owner-occupied). Wis. Admin. Code s. 77.02 has not yet been revised to reflect those recent federal changes.

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

The proposed revisions are definitional or non-substantive and will have little effect on small businesses.

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