

Final Clearinghouse Rule 20-052

ORDER OF THE OFFICE OF CREDIT UNIONS AMENDING AND REPEALING RULES

The Wisconsin Office of Credit Unions by this order repeals DFI-CU chapters 57 and 58, section 63.03, and chapters 66 and 73 of the Wisconsin Administrative Code; amends DFI-CU 56.03, 56.05, and 63.01; and creates DFI-CU 54.03(4).

The scope statement for this rule was authorized by the Credit Union Review Board on March 10, 2020; approved by the Governor on June 11, 2020; published in *Administrative Register* No. 774A3 on June 15, 2020; approved by unanimous vote at a meeting of the Credit Union Review Board on September 24, 2020; and approved by the Director for the Office of Credit Unions on October 6, 2020. The proposed rule was approved by the governor on January 28, 2021.

ANALYSIS

1. Statutes interpreted:

Chapter 186 of the Wisconsin Statutes.

2. Statutory authority:

Section 186.235(8) of the Wisconsin Statutes provides general rulemaking authority concerning the business of credit unions. Sections 186.015(3g), 186.098(10), and 186.113(15) provide supplemental authority in specific subject areas relevant to some of the proposed revisions.

3. Explanation of agency authority:

Section 186.235(8) of the Wisconsin Statutes 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 the scope statement for these proposed rule modifications at its regular quarterly meeting on March 10, 2020.

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

4. Related statutes or rules:

The below-referenced administrative rules each relate to Chapter 186 of the Wisconsin Statutes, which governs the business of credit unions in this state.

5. Plain language analysis:

The proposed revisions would repeal or amend outdated sections of the Wisconsin Administrative Code governing credit unions, as follows:

Repealing rules that have become obsolete due to changes in state statutory law. The proposed rule order modifies rules that are no longer relevant due to changes in state law, in three respects. First, it repeals chapter DFI-CU 66, Wis. Admin. Code, which authorizes “limited service offices” out-of-state. In an era when credit unions were restricted from opening out-of-state branch offices, the concept of limited service offices was important for credit unions contemplating business across state borders. But the legislature has since authorized credit unions to open out-of-state branch offices, 1995 Wis. Act 151 (codified at Wis. Stat. § 186.113(1)), and thus the administrative rules governing limited service offices are no longer relevant.

Second, the proposed rule order modifies § DFI-CU 63.01 to remove a reference to the “division of savings and loan,” which no longer exists. Its former duties are now carried out by the Division of Banking within the Department of Financial Institutions.

Third, the proposed rule order modifies § DFI-CU 56.03, which provides a 30-day window to seek review of an adverse action by the Office of Credit Unions, to eliminate an inconsistency with Wis. Stat. § 186.015(5), which provides a 60-day window. The modification adopts the 60-day window period established by Section 186.015(5).

Revising rules to reflect modern technology and business practices. The proposed rule order also modifies several rules to reflect modern technology and business practices, in three respects. First, it amends Sections DFI-CU 56.03 and 56.05, Wis. Admin Code, to authorize the electronic delivery of filings in administrative actions before the Credit Union Review Board. There is no reason to insist on hard-copy mail delivery of these documents, particularly given that most hard-copy records received by mail are scanned and stored electronically.

Second, the proposed rule order repeals Section 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. That rule may have been warranted in the early days of ATM implementation by financial institutions, but ATMs are now ubiquitous and their technology and security well-established. The Office no longer needs advance notice of ATM placements to protect the public interest.

Third, the proposed rules order modifies Section DFI-CU 54.03, which sets a 30-year limit on the duration of mortgage loans, to add a provision allowing the Director of the Office of Credit Unions to waive those limitations for good cause shown. While 30-year mortgages remain the norm, the proposed change 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.

Repealing rules that are redundant of (or less stringent than) governing state statutory or federal law. The proposed rule order repeals chapter DFI-CU 58 (“Sale of Credit Life and Health and Accident Insurance in Connection with Credit Union Loans”), which is substantively redundant of Wis. Stat. § 186.36 (“Sale of insurance in credit unions”). It also repeals chapters DFI-CU 57 and 73, which set state standards for records retention and auditing requirements for credit unions, because those standards are less stringent than parallel federal regulations on recordkeeping and audits. Credit unions must follow the more demanding federal standards to maintain federal share insurance, *see* 12 C.F.R. § 741.215 & parts 715, 748 and 749, and therefore the state requirements in chapter 57 and 73 serve no independent function and may foster confusion.

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

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* ch. DFI-CU 57. For those reasons, the Office of Credit Unions is proposing to repeal ch. DFI-CU 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 ch. DFI-CU 73—and therefore state-chartered credit unions must follow the federal rules rather than ch. DFI-CU 73. For that reason, the Office of Credit Unions is proposing to repeal ch. DFI-CU 73.

7. Comparison with rules in adjacent states:

We have reviewed rules administered by the Credit Union Section of the Illinois Department of Financial and Professional Regulation, the Iowa Division of Credit Unions, the Financial Institutions Division of the Minnesota Department of Commerce, and the Credit Union Division of the Michigan Department of Insurance and Financial Services. None appears to have rules in effect requiring notice of ATM placements, discussing limited service offices, or addressing other subjects of the proposed modifications and deletions described herein.

8. Summary of factual data and analytical methodologies:

The proposed changes are based on the input and experience of Office of Credit Unions staff in regulating credit unions in this state, as well as legal counsel's review of the administrative rules and statutes at issue and feedback from the Credit Union Review Board. The nature of these changes (primarily elimination of rules that are obsolete, redundant, or conflict with statutes) did not demand or lend itself to analysis of field data.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis:

These proposed rule changes have no material effect on small businesses.

10. Effect on small business:

None.

11. Agency contact person:

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Director, Office of Credit Unions
Wisconsin Department of Financial Institutions
PO Box 8861
Madison, WI 53708-8861
Kim.Santos@dfi.wisconsin.gov

12. Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule order is conducted. Information as to the place, date and time of the public hearing will be published in the Wisconsin Administrative Register.

By mail: Matthew Lynch, Chief Legal Counsel, Department of Financial Institutions, PO Box 8861, Madison, WI 53708-8861.

By e-mail: DFIComments@dfi.wisconsin.gov

Via the department's website: <http://www.wdfi.org/statutes/ProposedRules.htm>

Rule Text

SECTION 1. DFI-CU 54.03 (4) is created to read:

DFI-CU 54.03 (4). For good cause shown, the director may waive any limitations of this section.

SECTION 2. DFI-CU 56.03 is amended to read:

DFI-CU 56.03 Form of notice of appeal. Any interested person aggrieved by any act, order or determination of the director under ch. 186, Stats., may file with the director within ~~30~~ 60 days after the act, order or determination to be reviewed, ~~an original and eight copies of a~~ notice of appeal in the manner prescribed by s. DFI-CU 56.05 in the following form:

To the Wisconsin Credit Union Review Board:

The undersigned hereby appeals from the order of the Director of Credit Unions dated, _____, 2____ whereby it was ordered that (here set forth the substance of the order).

The nature of petitioner's interest is: (Here set forth the nature of petitioner's interest).

The grounds of appeal are the following: (Here set forth the exceptions or objections relied on, and if no answer has been filed, then also an answer to the findings of fact in the order in the manner prescribed by the Rules of Procedure for proceedings and hearings had before the Division of Banking).

Dated _____, 2____.

SECTION 3. DFI-CU 56.05 is amended to read:

DFI-CU 56.05 Service and filing of papers. Notice of hearing may be given by email or registered mail addressed to the party at the last known email or post office address, or to the attorney of record, ~~return receipt requested, and the return receipt signed by the addressee or agent shall be presumptive evidence that such notice was received by the addressee on the day stated on the receipt.~~ Papers required to be filed with the board may be transmitted by email to the director or mailed to the following address:

Credit Union Review Board
Office of Credit Unions
4822 Madison Yards Way, North Tower, 4th Floor
P.O. Box 8861
Madison, Wisconsin 53708

SECTION 4. Chapter DFI-CU 57 is repealed.

SECTION 5. Chapter DFI-CU 58 is repealed.

SECTION 6. DFI-CU 63.01 is amended to read:

DFI-CU 63.01 Joint rules. This chapter is promulgated as a joint rule by the office of credit unions, ~~the division of savings and loan~~ and the division of banking in accordance with s. 186.113 (15) (a), Stats.

SECTION 7. DFI-CU 63.03 is repealed.

SECTION 8. Chapter DFI-CU 66 is repealed.

SECTION 9. Chapter DFI-CU 73 is repealed.

SECTION 10. This rule shall take effect on the first day of the month following publication in the Wisconsin *Administrative Register* as provided in s. 227.22 (2) (intro.), Stats.

Date: October 6, 2020

By: /s/ Kim Santos

Kim Santos
Director, Office of Credit Unions