

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.59.402 pertaining to limited	)	AMENDMENT
income persons, 2.59.405 pertaining	)	
to credit union records retention, and	)	
2.59.407 pertaining to credit union	)	NO PUBLIC HEARING
debt cancellation contracts	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 22, 2014, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on September 12, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.59.402 CREDIT UNIONS - LIMITED INCOME PERSONS, DEFINITION

~~(1) Existing credit unions may include within their field of membership limited income persons for whom credit union services are not otherwise available.~~

(2)(1) A limited income person is ~~Limited income persons are defined as an individual~~ those persons whose annual income is less than that specified below based upon family size:

<u>Family/Household Size</u>	<u>Annual Income of Individual Applicant</u>
1	\$ <del>6,314</del> <u>11,670</u>
2	<del>8,075</del> <u>15,730</u>
3	<del>9,890</del> <u>19,790</u>
4	<del>12,675</del> <u>23,850</u>
5	<del>14,994</del> <u>27,910</u>
6	<del>16,927</del> <u>31,970</u>
<u>7</u>	<u>36,030</u>
<u>8</u>	<u>40,090</u>

For family/household units with more than ~~six~~ eight members, add ~~\$1,780~~ \$4,060 for each additional member.

(2) For purposes of this rule, the term "income" must include before-tax income of the following types:

- (a) earnings (wages, tips, and salary);
- (b) unemployment compensation;
- (c) workers' compensation;
- (d) social security;
- (e) supplemental security income;
- (f) survivor benefits;
- (g) pension or retirement income; and
- (h) self-employment earnings computed in accordance with the credit union's

written policies.

(3) Other forms of income that may, at the credit union's discretion and in accordance with the credit union's written policies, be included within the definition of income for purposes of this rule are:

- (a) cash public assistance benefits;
- (b) veterans' payments;
- (c) interest income;
- (d) dividend income;
- (e) rents;
- (f) royalties;
- (g) income from estates or trusts;
- (h) educational assistance such as work-study earnings and grants, but not

student loans;

- (i) spousal maintenance (formerly known as alimony);
- (j) child support;
- (k) assistance from outside the household; and
- (l) other miscellaneous sources.

(4) The term "income" does not include:

- (a) capital gains or losses; and
- (b) noncash benefits such as food stamps and housing subsidies.

(5) Credit union membership for immediate family members of persons within the credit union's field of membership under 32-3-304(2), MCA, does not extend to immediate family members of limited income persons who become members under 32-3-307, MCA. Nothing in this rule prevents immediate family members of limited income persons from independently qualifying for membership in their own right under either 32-3-304 or 32-3-307, MCA.

AUTH: 32-3-201, MCA

IMP: 32-3-307, MCA

STATEMENT OF REASONABLE NECESSITY: Section (1) is being deleted because it unnecessarily duplicates 32-3-307, MCA, contrary to rulemaking conventions.

The dollar amounts of an individual's income in renumbered (2) derive from 1990 U.S. Census Bureau poverty guidelines data. An amendment to update the income figures is necessary to ensure that the legislative intent is carried out. The amounts currently in the rule unreasonably deny access to credit union services by

persons of limited means, albeit means in excess of the income eligibility ceilings established under obsolete 1990 data. A credit union is unlikely to voluntarily participate in the limited income program under 32-3-307, MCA, if the pool of eligible applicants is so small that it is cost prohibitive to do so. The proposed amended income figures derive from the 2014 Poverty Guidelines for the 48 contiguous states, published in the Federal Register 79 FR 3593, pages 3593-3594, Doc. No. 2014-D1303, January 22, 2014, pursuant to Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981, 42 U.S.C. 9902(2). The OBRA requires that the Secretary of the Department of Health and Human Services update the poverty guidelines at least annually. The poverty guidelines are a simplified version of the poverty thresholds used by the U.S. Census Bureau for statistical purposes.

Amendment of the rule is also necessary to clarify that it is the individual membership applicant's annual income and not the combined income of all household members that determines the applicant's eligibility. The significance of the household size is simply that the larger the household, the greater the income that is needed for its support. It is appropriate that the income ceiling for eligibility purposes be raised in proportion to the size of the household. The term "limited income" has different meanings in different contexts. The department recognizes that even current poverty guidelines data is not the only means by which a limited income standard could be set that is suited to the purpose of 32-3-307, MCA, but it is perhaps the most easily updatable and most reliable data for most purposes.

Sections (2), (3), and (4) are being added to establish core components of income that must be considered by a credit union in determining an individual applicant's eligibility for membership under 32-3-307, MCA, discretionary components, and types of 'income' that may not be considered. The core components will help to ensure that the legislative intent is adhered to by credit unions while the discretionary components afford appropriate discretion to credit unions' boards of directors to establish the program that they desire.

The department is adding (5) to this rule to clarify the relationship between 32-3-304(2) and 32-3-307, MCA. The department believes (5) is consistent with the legislative intent with regard to 32-3-307, MCA, no evidence to the contrary being apparent. Immediate family members are mentioned only in 32-3-304(2), MCA. A "field of membership" based on a common bond under 32-3-304, MCA, is necessary to the establishment and continued existence of a credit union and the integrity of the field of membership must be preserved. Membership for limited income persons under 32-3-307, MCA, is an add-on or exception to the general rule. That exception cannot swallow the general rule of a membership comprised of persons within the credit union's field of membership having a common bond under 32-3-304, MCA.

2.59.405 RETENTION OF CREDIT UNION RECORDS (1) Credit unions are required to ~~preserve or keep their~~ retain records of ~~nonmember~~ member accounts, as defined in (7), for at least eight years after January 1 of the year following the time that the records are made; however, records showing unpaid balances in favor of members may not be destroyed.

(2) The ~~schedule~~ publication ~~Montana~~ Montana Credit Union Records ~~Publication~~ Retention Schedule, Appendix "A" to ARM 2.59.405 (Appendix A), establishes the minimum retention period for ~~retention of nonmember account~~ records other than

member account records for all state-chartered credit unions. ~~Credit Union Records Publication~~ Appendix "A" is maintained by the Commissioner of Banking and Financial Institutions, and may be updated at regular intervals not more than once a year by the commissioner. The ~~December 11, 2006, August 11, 2014,~~ edition of the ~~Credit Union Records Publication~~ Appendix "A" is incorporated by reference as part of this rule. A copy of ~~this document~~ Appendix A can be obtained from the Division of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546 or found on the department's web site at <http://banking.mt.gov/creditunion.mcp.x>.

(3) When a ~~bank~~ credit union microfilms, photographs, or uses other electronic or computer-generated data records in the regular course of business, the retention period of the microfilm, photographs, electronic, or computer-generated data must be the same as specified in ~~the Credit Union Records Publication~~ Appendix "A".

(4) Credit unions must comply with all applicable federal laws and regulations concerning credit union records retention requirements, requiring specific retention periods for the records enumerated in those laws or regulations. In the event that a an applicable federal law or regulation conflicts with a retention period contained in ~~Credit Union Records Publication~~ this rule or in Appendix "A", a credit union must comply with whichever retention period is longer. Credit unions must comply with other applicable state laws governing retention of personnel records, corporation records, etc.

(5) If a credit union does not maintain records set forth in ~~Credit Union Records Publication~~ Appendix "A", but maintains similar records with equivalent information, the credit union's similar records must be retained for the time specified within ~~Credit Union Records Publication~~ Appendix "A" as to the equivalent records.

(6) Records not covered by this rule, Appendix A, are to or applicable federal laws and regulations must be retained for a period of time determined appropriate by the credit union's board of directors. ~~Such~~ The board's minutes must reflect the record retention periods determined appropriate shall be noted and be maintained as a permanent part of the board's minutes.

(7) "Member accounts" for record retention purposes means member deposit accounts including share savings accounts, share draft accounts, share certificates, safety deposit boxes, and trust accounts, negotiable orders of withdrawal (NOW) accounts, and money market deposit accounts.

AUTH: 32-3-201, MCA

IMP: 32-3-204, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments are needed to correct an error in (1) and to clarify an ambiguity in (2). Section (1) governs the retention period for member accounts as defined in (7) rather than nonmember accounts as currently stated. Section (2) governs the retention period for "records other than member accounts" but (2) refers to those records by the ambiguous term "nonmember accounts." The ambiguous term is being replaced by "records other than member accounts" for clarification purposes. The correct name of the records retention publication is being inserted in (2) and its abbreviated form (Appendix A) is

being added to (2) and used throughout the rest of the rule. The August 11, 2014, version of Appendix A is adopted by reference in (2). The changes to it from the prior version are primarily of a housekeeping nature and the repeated references to retention "guidelines" in Appendix A were changed to "requirements" because the appendix is being incorporated by reference in the administrative rule and is therefore a requirement and not a guideline. That is especially important with respect to member account records since those are likely to be needed by courts and litigants in contract disputes having an eight-year limitation period. In addition, the retention period in (1) matches that statutorily required of banks under 32-1-491, MCA. There is no logical reason for the credit union record retention period for member account records to differ from the retention period for bank customer accounts. Appendix A has not been revised for seven years but may need revision before another seven years elapse. The department revises the publication on an as-needed basis so the term "at regular intervals" is being stricken. The cap on the frequency of revisions to once a year is being retained in the rule.

In (3) the term "credit union" is being substituted for the term "bank" to correct an error that likely arose from using a similar bank rule as a template in the drafting of this rule. The amendments to (4) and (6) are needed to clarify and limit the applicable federal laws and regulations to which the rule refers. Section (7) requires amendment to add two member deposit products to the definition of member accounts and to clarify that the types of deposit accounts included in the definition are not exhaustive. The amendments to (7) are also needed to clarify that the types of accounts included in the definition of "member accounts" do not have common or wholly consistent characteristics that would enable all of them to be classified collectively for any purpose other than records retention. The remaining amendments are for housekeeping and clarification purposes.

2.59.407 DEBT CANCELLATION AND DEBT SUSPENSION PROGRAMS – REQUIREMENTS (1) through (1)(b) remain the same.

(2) An insurer authorized by the insurance regulator in an out-of-state ~~bank's~~ credit union's home state that has issued a policy to the out-of-state ~~bank~~ credit union covering all of its debt cancellation contractual liabilities need not be authorized or otherwise registered with the State Auditor.

AUTH: 32-3-201, MCA

IMP: 32-3-609, MCA

STATEMENT OF REASONABLE NECESSITY: Amendment of (2) is necessary to replace the term "bank" which was used in error two times, and replace it with "credit union" which is the correct term. The error probably arose from the department's use of a similar bank rule as a template when drafting the credit union rule.

4. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to: Lorraine A. Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana

59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., September 19, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., September 19, 2014.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one person based on the eight existing state-chartered credit unions.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [banking@mt.gov](mailto:banking@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. The department has determined that under 2-4-111, MCA, the proposed rule amendments will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan  
Sheila Hogan, Director  
Department of Administration

By: /s/ Marjorie L. Thomas  
Marjorie L. Thomas, Rule Reviewer  
Department of Administration

Certified to the Secretary of State August 11, 2014.