

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PROPOSED
Rule I, the amendment of ARM)	ADOPTION, AMENDMENT, AND
2.59.416, and the transfer and)	TRANSFER AND AMENDMENT
amendment of ARM 2.59.421)	
pertaining to credit union investments)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On April 14, 2016, the Department of Administration proposes to adopt, amend, and transfer and 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 March 28, 2016, 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) 841-2974; facsimile (406) 841-2930; or e-mail banking@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I INVESTMENT RULE – REVENUE BONDS (1) Credit unions may invest, without limitation, in revenue bonds issued by the state of Montana or its political subdivisions.

(2) Credit unions may invest up to 40 percent of their net worth, per issuer, in revenue bonds issued by any other state or its political subdivisions whereby the obligations are payable from pledged fee or tax revenue from designated sources.

(a) The issuing body must not have been in default regarding the payment of principal or interest on any of its obligations within five years preceding the date of the investment.

(b) The obligations must be rated investment grade or higher by a recognized national investment rating organization. Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the credit union's investment policy.

(3) Credit unions may invest up to 20 percent of their net worth, per issuer, in industrial development revenue obligations issued by a Montana political subdivision when repayment is dependent upon a nongovernmental obligor and when such issues are consistent with the commercial lending policy of the credit union.

AUTH: 32-3-401, 32-3-422, MCA
IMP: 32-3-401, 32-3-422, MCA

STATEMENT OF REASONABLE NECESSITY: The department adopted investment rules for credit unions in MAR Notice No. 2-59-533 in October 2015. The Montana Credit Union Network commented that they would like an investment rule allowing credit unions to invest in revenue bonds. The department agreed with that comment, but proposing a new rule at that point in the rulemaking process would have delayed adoption of the other rules.

This rule is adapted from ARM 2.59.1603, the revenue bond investment rule for banks. Because credit unions do not have capital to absorb losses as banks do, it is important to limit the risk that credit unions are allowed to undertake in their investment portfolios. Since credit unions are being allowed to invest in revenue bonds of the state and its subdivisions without limitation, those obligations must be backed by the full faith and credit of the state or its political subdivision to ensure the credit union will not lose money on its investment.

Where revenue bonds are payable from pledged fee or tax revenue from designated sources, credit unions are limited to 40 percent of their net worth because fee or tax revenues are less certain than the full faith and credit of the state or a political subdivision of the state.

In addition, it is too risky for credit unions to invest in a general obligation bond of any state or political subdivision that has defaulted on its obligations in the past five years. Five years was chosen because it is long enough to ensure that the state or its subdivision is financially able to repay its debt, thus limiting risk to the credit union, but not so long as to be economically punitive. It is also consistent with the bank rule, which also sets a five-year time frame for entities that have defaulted on their obligations. Therefore, the department by this rule seeks to ensure, as much as possible, that credit unions are making safe investment choices.

The safety and security of the bonds are also reasons for including (2)(b). The department seeks to ensure that the bonds are a safe investment but give credit union boards the latitude to choose a rating organization other than the nationally recognized rating services as long as the rating organization is identified in the credit union's investment policy and the gradations are generally equivalent to investment grade or higher.

Investments in industrial development revenue bonds are limited to 20 percent of net worth because they are dependent on a nongovernmental source for repayment and, therefore, are riskier. The investment in this type of bond must be within the credit union's commercial lending policy to ensure that the credit union board has assessed and provided for the type of risk that comes with commercial lending.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.59.416 NET WORTH DEFINITION – CALCULATION – DETERMINATION

(1) For purposes of ARM 2.59.417, ~~and 2.59.418,~~ and [NEW RULE I], "net worth" means the sum of regular reserves and undivided earnings. Net worth excludes the allowance for loan and lease losses. Net worth is calculated quarterly based on data from the previous call report.

(2) The department shall determine compliance with ARM 2.59.417, ~~and 2.59.418, and [NEW RULE I]~~ using quarterly net worth for the period in which the security is purchased.

(3) A security that complies with ARM 2.59.417, ~~and 2.59.418, and [NEW RULE I]~~ at the time of purchase is not in violation of ARM 2.59.417, ~~and 2.59.418, and [NEW RULE I]~~ at a later date due to a subsequent decline in net worth.

AUTH: 32-3-701, MCA

IMP: 32-3-701, MCA

STATEMENT OF REASONABLE NECESSITY: Reference to NEW RULE I is being added to ARM 2.59.416 because "net worth" is used in NEW RULE I as well.

5. The rule proposed to be amended and transferred provides as follows, new matter underlined, deleted matter interlined.

2.59.421 (2.59.430) DIRECTOR TRAINING (1) remains the same.

AUTH: ~~32-3-412~~ 32-3-422, MCA

IMP: ~~32-3-412~~ 32-3-422, MCA

STATEMENT OF REASONABLE NECESSITY: ARM 2.59.421 was adopted with the incorrect statute listed for rulemaking authority and implementation. Section 32-3-412, MCA, was repealed in 2015, necessitating the amendment to the citations. Section 32-3-422, MCA, was adopted in place of 32-3-412, MCA, and should have been used when the rule was adopted. In addition, this rule is being transferred to ARM 2.59.430 to allow space for NEW RULE I and other possible future credit union investment rules so they can be grouped together in the subchapter.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, 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; and must be received no later than 5:00 p.m., April 4, 2016.

7. 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 6 above no later than 5:00 p.m., April 4, 2016.

8. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent 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 less 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 state-chartered credit unions.

9. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. 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.

10. 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 which 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; or may be made by completing a request form at any rules hearing held by the department.

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

12. The department has determined that under 2-4-111, MCA, the proposed adoption and amendment of the above-stated rules will not significantly and directly affect small businesses.

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

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State February 22, 2016