BEFORE THE DEPARTMENT OF ADMINISTRATION

OF THE STATE OF MONTANA

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| In the matter of the adoption of New Rules I through LI pertaining to mutual savings and loan associations and the repeal of ARM 2.59.201 pertaining to savings and loan associations – real estate and 2.59.202 pertaining to examination and supervisory fees for savings and loan associations | )))))))) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL |

TO: All Concerned Persons

1. On January 12, 2022, at 1:30 p.m., the Department of Administration will hold a public hearing in Room 342 of the Park Avenue Building located at 301 South Park Avenue in Helena, Montana, to consider the proposed adoption and repeal of 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 December 29, 2021, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Department of Administration, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

 3. The rules proposed to be adopted provide as follows:

NEW RULE I APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE-CHARTERED MUTUAL ASSOCIATION (1) One or more individual incorporators desiring to organize a mutual association shall file with the department, an application for a certificate of authorization for a state-chartered mutual association. The department adopts and incorporates by reference:

(a) the Interagency Charter and Federal Deposit Insurance Application dated August 31, 2019, as the form that shall be completed when applying for a certificate of authorization; and

(b) the Interagency Biographical and Financial Report dated April 30, 2017, for use by individuals in conjunction with the Interagency Charter and Federal Deposit Insurance Application. The application and biographical and financial report are available at the department's website at banking.mt.gov.

(2) An application fee of $10,000 shall be paid to the department at the time of application and thereafter shall not be refundable in whole or in part.

(3) With the application, the applicant must submit:

(a) the proposed articles of incorporation and bylaws set forth in 32-2-805 through 32-2-807, MCA;

(b) an application for reservation of a name in accordance with 35-14-402, MCA, if reservation is desired by the incorporators and has not been previously filed; and

(c) information to demonstrate the proposed mutual association will satisfy the following requirements:

(i) a persuasive showing that there is a reasonable public necessity and demand for a new mutual association at the proposed location;

(ii) that the mutual association will be managed by persons of good moral character and financial integrity who have sufficient management experience to ensure that the mutual association will be operated safely and soundly;

(iii) a persuasive showing that the new mutual association will have sufficient volume of business to ensure solvency and that establishment of the new mutual association organized under the laws of this state will be in the public interest; and

(iv) the proposed minimum amount of initial capital contribution to be deposited, which must be set by the commissioner.

(4) In the event that an application is incomplete in any respect or if additional information is required, the applicants will be so notified by the department and allowed up to 60 days in which to perfect the application or provide additional information. An extension of this 60-day period may be obtained from the department by showing good cause why it should be extended.

(5) The department may request additional information from an applicant if, in its discretion, additional information is needed to reach a decision on the application.

AUTH: 32-2-801, MCA

IMP 32-2-801, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2021 Montana Legislature enacted Chapter 431, Laws of 2021 (Senate Bill 308), repealing the Building and Loan Act (Title 32, chapter 2, MCA) and implementing the Mutual Savings and Loan Association Act. Senate Bill 308 was signed by the Governor on May 7, 2021 and became effective on October 1, 2021. The department determined it is reasonably necessary to adopt New Rules I through LI and repeal certain rules to implement the legislation.

Senate Bill 308 was modeled after the Montana Bank Act to the greatest extent possible. In some cases, there are differences between banks and mutual associations and to that extent, the provisions of the Montana Bank Act were modified to recognize the unique characteristics of mutual associations in Senate Bill 308.

Likewise, to promote efficiency in administration and consistency in the financial industry, these rules are modeled after the rules adopted under the Montana Bank Act. In some cases, the proposed rules for mutual associations differ from banking rules in recognition of the differences between banks and mutual associations.

STATEMENT OF REASONABLE NECESSITY: To aid in compliance and administration, to the extent possible, the provisions in proposed New Rule I were made consistent with the equivalent application rule for state-chartered banks and the application forms used to apply for a state charter in other states. The Interagency Charter and Federal Deposit Insurance Application and the Interagency Biographical and Financial Report have been developed by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation as the uniform charter application forms for all financial institutions seeking to become chartered by any regulatory agency. Financial institutions include national banks, state banks, federal savings banks or associations, and state savings associations. The department believes these forms provide an efficient and uniform method to acquire the information necessary to make a decision concerning whether to charter a financial institution and seeks to adopt the application and biographical statement and financial report as the uniform forms to be used to apply for a state mutual association charter in Montana.

The department proposes to set the fee at $10,000 for new mutual association charters because the department's senior banking and legal staff will spend a significant amount of time reviewing and analyzing a new mutual association application. The department is self-funded through assessments on banks, mutual associations, and credit unions as well as licensing fees for other programs the department administers. The department receives no general fund appropriation. The application fee is necessary to make the fee commensurate with the associated costs. At this time, the department does not anticipate any new charters, so no known person will be affected by this fee and the cumulative amount anticipated for all persons is zero.

The department proposes (3) to demonstrate the applicant meets the standards listed in 32-2-801, MCA.

Section (4) allows the applicant 60 days to provide information requested by the department to complete the application. If applicants require more time, the department will allow an additional 60 days if the applicant submits a request and shows good cause for the needed extension.

The department proposes (5) to allow the department to request additional information required to make a decision on the application. It is preferable to allow the department to request additional information instead of denying the application for lack of evidence.

NEW RULE II PERSUASIVE SHOWING OF REASONABLE PUBLIC NECESSITY AND DEMAND (1) In determining whether a reasonable public necessity and demand is established in any case, the department requires that these words be given a meaning which will promote the public interest of the community as a whole in having a sound banking structure, reasonably competitive and adequate for the needs of the community.

(2) In making this determination the following are among the factors which the department may consider:

(a) the number of mutual associations already serving the area in which the proposed mutual association would locate;

(b) the size of the area;

(c) the population of the area;

(d) the wealth of residents of the area;

(e) the commercial and industrial development of the area;

(f) the socioeconomic trends of the area;

(g) the adequacy of the services being provided by existing mutual associations compared to the needs of residents and the services to be offered by the proposed mutual association, including a detailed list of banking services that will be offered the community to be served by the new mutual association;

(h) the capability of existing mutual associations to handle potential growth of the area;

(i) the convenience of the location of existing mutual associations to residents of the area as compared to convenience of the proposed mutual association;

(j) the size of financial institutions in the area;

(k) the history of financial institutions in the area;

(l) an indication of the support the proposed mutual association could reasonably expect to receive from representative segments of the businesses and residents of the area; and

(m) the probability of the success of the proposed mutual association.

AUTH: 32-2-801, MCA

IMP 32-2-801, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-801(2)(c)(i), MCA, requires an applicant to demonstrate that the proposed mutual association will satisfy the requirement for a persuasive showing of reasonable public necessity and demand. That requirement has been defined for purposes of the Montana Bank Act applications for a new charter. The same definition is proposed to be adopted here. The department strives to be consistent with the Montana Bank Act wherever possible.

NEW RULE III MANAGEMENT OF PROPOSED MUTUAL ASSOCIATION

(1) To establish reasonable assurance that the mutual association will be safely and soundly operated as required by 32-2-801, MCA, and recognizing that the ultimate responsibility for management of a mutual association reposes in its board of directors, the department will not issue a certificate of authority to a proposed mutual association if the department finds that any one or more of the proposed directors of the new mutual association has questionable moral character or lack of financial integrity and, therefore, does not command the confidence of the community in which the proposed mutual association is to be located.

(2) In the event that the application for a state mutual association charter does not include the name and qualifications of the proposed managing officer, the department will direct that if a charter is to be issued for the proposed mutual association it shall be conditioned upon the submission of the name and qualifications of a proposed managing officer to the department at least 60 days prior to the opening of the mutual association and that the department find the proposed managing officer unobjectionable.

AUTH: 32-2-801, MCA

IMP 32-2-801, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-801(2)(c)(ii), MCA, requires an applicant to demonstrate that the proposed mutual association will satisfy the requirement that the mutual association will be managed by persons of good moral character and financial integrity who have sufficient management experience to ensure that the mutual association will be operated safely and soundly. That requirement was defined previously for purposes of the Montana Bank Act applications for a new charter. The same definition is proposed to be adopted here. The department strives to be consistent with the Montana Bank Act wherever possible.

NEW RULE IV CAPITAL ADEQUACY OF PROPOSED NEW MUTUAL ASSOCIATIONS (1) The applicant must provide a reasonable assurance that the proposed new mutual association will have adequate initial paid-in capital sufficient to:

(a) absorb initial operating losses under foreseeable business conditions;

(b) permit the proposed investment in building, land, furniture, and fixtures within the limitation of 100% of capital and surplus as imposed by 32-2-933, MCA;

(c) provide protection for depositors' funds to the same extent that the average of all insured mutual associations in the proposed mutual association's peer group provides capital protection, measured by the most current peer group data available on total capital accounts as a percentage of total assets. The proposed mutual association's reasonably estimated total assets at the end of its first three years of operation shall be the basis upon which this standard shall be projected; and

(d) enable the mutual association to furnish competitive services that will ensure an amount of business sufficient to assure its success.

AUTH: 32-2-801, MCA

IMP 32-2-801, 32-2-808, 32-2-933, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-801(2)(c)(iv), MCA, requires an applicant to demonstrate that the proposed mutual association will satisfy the requirement that the applicant will have the proposed minimum amount of initial capital contribution to be deposited, which must be set by the commissioner. This rule is consistent with the rule for new bank charters in Montana. The department strives to be consistent with the Montana Bank Act wherever possible. The applicant must provide reasonable assurances that it will be able to deposit the minimum initial capital contribution when that amount is set by the commissioner.

NEW RULE V MUTUAL ASSOCIATIONS - FDIC INSURANCE REQUIRED

(1) To comply with 32-2-801 and 32-2-809, MCA, it has been determined by the department that it is in the public interest to require all mutual associations to be accepted by the Federal Deposit Insurance Corporation (FDIC) for the insurance of deposits. The department will not issue a certificate of authorization to a proposed new mutual association unless:

(a) the department has received official notice that the proposed mutual association has been accepted for insurance of deposits; or

(b) the department has received satisfactory assurance from the FDIC that the proposed mutual association will be accepted for insurance when the proponents comply with certain stated minor requirements imposed by the FDIC. Such "minor requirements" must be of a type and character which the department determines can be promptly complied with by the proponents without serious difficulty.

AUTH: 32-2-801, MCA

IMP 32-2-801, 32-2-809, MCA

STATEMENT OF REASONABLE NECESSITY: Financial institutions in Montana must have FDIC insurance. In order to charter new financial institutions in Montana, the applicants must either have FDIC insurance or prove that the institution has received satisfactory assurance from the FDIC that the proposed mutual association will be accepted for insurance when the proponents comply with certain stated minor requirements imposed by the FDIC. This rule is the same as the rule for new bank charters in Montana. The department strives to be consistent with the Montana Bank Act wherever possible.

NEW RULE VI PRO FORMA STATEMENT (1) An operational projection shall be submitted as part of the application for new mutual association charters, in order to show that the new mutual association will remain solvent while meeting the requirements set forth in [New Rule IV]. The pro forma statement will include, at a minimum:

(a) a projected three-year comparative balance sheet and income projection;

(b) information on start-up costs, including legal fees, and other costs that may be amortized; and

(c) costs associated with fixed assets and their maintenance.

(2) The statement will reasonably estimate the volume of business the new mutual association anticipates in the first three-year period, and will show its reasons for believing it will develop such business aggregates.

AUTH: 32-2-801, MCA

IMP 32-2-801, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-801(2)(c)(vi), MCA, requires an applicant to provide any other information the commissioner requires by rule. The commissioner requires banks seeking a new charter to provide a pro forma statement of the operational costs for the first three years in order to show that the new institution will remain solvent while meeting the requirements set forth in statute and rule. That requirement has been defined for purposes of the Montana Bank Act applications for a new charter. The same requirement is proposed to be adopted here. The department strives to be consistent with the Montana Bank Act wherever possible.

NEW RULE VII CONVERSION OF A NATIONAL MUTUAL ASSOCIATION TO A STATE MUTUAL ASSOCIATION (1) Upon conversion:

(a) the resulting state mutual association succeeds, without other transfer, to all the rights and property of the converted mutual association and is subject to all the debts and liabilities of the converted mutual association in the same manner as if the resulting state mutual association itself had incurred them;

(b) all rights of creditors of the converted mutual association and all liens upon the converted mutual association's property are unimpaired by the transfer, provided that the liens are limited to the affected property immediately prior to the time when the conversion became effective;

(c) title to all real, personal, and mixed property owned by the converted mutual association is vested in the resulting state mutual association without reversion or impairment and without the necessity of any instrument of transfer;

(d) the resulting state mutual association has all the liabilities, duties, and obligations of the converted mutual association, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(e) any pending action or other judicial proceeding to which the converted mutual association was a party may continue to be prosecuted to final judgment, order, or decree as if the conversion had not occurred, or the resulting mutual association may be substituted as a party to the action or proceeding.

(2) Upon conversion, a resulting mutual association that is organized under the laws of this state:

(a) shall designate and operate a location of the converted mutual association as its main banking house; and

(b) may maintain the branch mutual associations and other offices previously maintained by the converted mutual association.

AUTH: 32-2-704, MCA

IMP: 32-2-816, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule makes clear the types of rights, duties, and obligations that transfer to the resulting state mutual association. It also makes clear that the converted mutual association may designate a location as its main banking house and maintain any other existing offices and branches as existed prior to conversion.

NEW RULE VIII FEE FOR CONVERSION OF A NATIONAL MUTUAL ASSOCIATION TO A STATE MUTUAL ASSOCIATION (1) The fee for conversion of a federal mutual savings association to a state mutual savings association is $1,500.00.

AUTH: 32-2-704, MCA

IMP: 32-2-816, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to establish a $1,500 fee for applications for conversion to a state charter. The department proposes to set the fee at $1,500 because the department's senior banking and legal staff will spend a moderate amount of time reviewing and analyzing a conversion application. The department is self-funded through assessments on banks, mutual associations, and credit unions as well as licensing fees for other programs the department administers. The department receives no general fund appropriation. The application fee is necessary to make the fee commensurate with the associated costs. At this time, the department does not anticipate any conversions, so no known person will be affected by this fee and the cumulative amount anticipated for all persons is zero.

NEW RULE IX SEMIANNUAL ASSESSMENT (1) The department invoices mutual associations for semiannual assessments every June and December. The assessment is based on each institution's total assets provided in its previous March and September call reports.

(2) The fee is calculated based on the total assets of the mutual association multiplied by .0000375, plus the flat fee listed below.

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| --- | --- |
| Total Assets | Flat Fee ($) |
| $0 to $50 million | $0 |
| Over $50 to $100 million | $3,000 |
| Over $100 to $250 million | $5,000 |
| Over $250 million to $1 billion | $7,500 |
| Over $1 billion | $15,000 |

Example: Mutual association A reports total assets of $58,873,000 x .0000375 plus $3,000 equals $5,207.74.

(3) The assessment is due 30 days after each invoice date, or July 31 and January 31, whichever is later.

(4) The fee shall not exceed $300,000 for each semiannual assessment.

(5) In the event of a merger between Montana state-chartered mutual associations during the second or fourth quarter of the year, the assessment fee for the acquired institution must be paid by the surviving institution.

AUTH: 32-2-702, 32-2-704, MCA

IMP: 32-2-702, 32-2-704, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule will establish the formula for a semiannual assessment of state-chartered mutual associations and allow the department to recover its supervisory and examination costs. The department derived the formula by projecting the expenses of supervision of the state-chartered mutual associations at current levels and divided those expenses as evenly as possible among the state-chartered mutual associations. The flat fee is being imposed because larger institutions require more supervisory time than smaller institutions, and the flat fee is designed to reflect that.

At this time, there is one institution affected by this rule. If we use the total assets as of September 30, 2021, the latest data available, and assume zero asset growth in the next year, the total assessment for one year for that institution would be $18,167.96.

The department proposes to include (4) to place a cap of $300,000 per semiannual assessment, for a total of $600,000 per year. The department anticipates the revenue generated by the assessments with this cap in place will be commensurate with the cost of supervising state-chartered mutual associations.

The department proposes to include (5) to address mutual associations that are acquired during the second or fourth quarter and are not in existence to pay the assessment fee by the subsequent assessment due date. For example, mutual association A filed their first quarter call report and subsequently merged into mutual association B effective April 25, 2021. The department sent out the assessment billing on July 1, 2021, which is based on the total assets from the first quarter call report. Mutual association A shows up in the list, but it no longer exists and therefore cannot remit the assessment. Mutual association B had also filed their first quarter call report but had not acquired Mutual association A yet. Therefore, the department performed services for Mutual association A for the assessment period, October 1, 2020 through March 31, 2021, without receiving reimbursement. In an effort to project revenue accurately and receive reimbursement for services performed, the department proposes the surviving entity pay the assessment fees of the acquired mutual association.

NEW RULE X ADOPTION OF EXAMINATION PROCEDURE (1) The department adopts the revised Uniform Financial Institution Rating System as one of its examination procedures. The edition adopted is the December 19, 1996, edition as published in the Federal Register at 61 Fed. Reg. 67021. It may be viewed at fdic.gov/news/news/financial/1996/fil96105.pdf.

AUTH: 32-2-704, MCA

IMP: 32-2-701, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this rule to adopt the Uniform Financial Institution Rating System (UFIRS) as an effective internal supervisory tool for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special attention or concern.

The UFIRS was adopted by the Federal Financial Institutions Examination Council (FFIEC) on November 13, 1979. The agencies in the FFIEC are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau. The FFIEC recommended on December 9, 1996, that the all banking agencies adopt the updated rating system. The revised UFIRS became effective January 13, 1999, and was to be used in examinations of all commercial banks and thrifts commencing after that date.

The use of this system allows the department to be consistent with other federal regulators that examine mutual associations. This allows the regulators to use the same procedures when conducting joint examinations, which facilitates the process for both the regulators and the mutual associations. It allows financial institutions to deal with one set of rules and one examination by two sets of regulators, which make examinations more efficient and less time consuming.

NEW RULE XI MERGER APPLICATION (1) The application to merge one or more mutual associations located in Montana or to merge two or more mutual associations doing business in this state must be in the following form:

MUTUAL ASSOCIATION MERGER APPLICATION

Any individual or entity desiring confidential treatment of specific portions of the application shall specifically identify the information for which they request confidentiality, separately bind it, and label it "Confidential." The individual or entity shall follow the same procedure for a request for confidential treatment for the subsequent filing of supplemental information to the application. Inquiries concerning the preparation and filing of this or any other application with the department should be directed to the Montana Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546.

1. State the exact corporate name and address of each mutual association participating in the merger, and the proposed names of the resultant mutual association.

2. State the name and address of, and the dates of publication in, the newspapers in which the required notice is published.

3. For the resultant mutual association, a list of the names of the directors and principal executive officers, their titles, including a brief resume of the educational background, banking experience, and other qualifications of each and an explanation of the extent of common management of the participating institution and the length of time such common ownership or management has existed.

4. The date on which the proposed merger is to occur.

5. Attach the following documents:

(a) the resolution or an authentic copy of the resolution, authorizing the merger adopted by a majority of the board of directors;

(b) the terms and conditions of the proposed merger;

(c) the manner and basis of converting the shares of each merging association into shares of the surviving association;

(d) a statement of any changes in the articles of incorporation of the surviving association to be effected by the merger;

(e) other provisions with respect to the proposed merger deemed necessary or desirable; and

(f) the proposed articles of merger and plan of merger.

(2) An application fee of $2,000 plus $200 for each mutual association involved in the merger must be paid to the department at the time of application and may not be refunded in whole or in part.

(3) If an application is incomplete in any respect, or if additional information is required, the department shall notify the applicant and the applicant will be allowed up to 30 days in which to perfect the application or to provide additional information. An extension of this 30-day period may be obtained from the department by showing good cause why it should be extended. The department may delay processing, including extending the comment period for good cause.

(4) The application must be in letter form addressed to the commissioner of the department.

(5) The department will preliminarily approve or deny merger applications within 30 days of receiving a completed application.

(6) Within 90 days of the preliminary approval, the board of directors of the merging association shall submit the proposed merger to a vote of the members at any regular meeting or at any special meetings called for that purpose, after notice of the proposed merger has been given to all members entitled to vote thereon, in the manner provided in the bylaws. The notice of the meeting shall be in writing stating the purpose or purposes of the meeting and include or be accompanied by a copy or summary of the plan of merger. At the meeting, members may vote upon the proposed merger in person, or by written proxy, or by mailed ballot. The affirmative vote of the majority of the members voting thereon, shall be required for approval of the plan of merger. If the total vote of the association upon the proposed merger shall be less than 25% of the total membership of such association, the merger shall not be approved.

(7) Within 10 days of the membership vote, the board of directors shall certify the result to the department.

(8) Within 10 days after receipt of the certification, the department shall issue its final approval or denial of the application, based on the result of the membership vote.

AUTH: 32-2-704, MCA

IMP: 32-2-827, MCA

STATEMENT OF REASONABLE NECESSITY: The form of the application is being proposed because it is as consistent as possible with the form being used for banks, while recognizing the unique structure of mutual associations. Mutual associations do not have shareholders like banks do. Mutual associations are owned by their members. So, the transaction must be submitted to a membership vote in order to be approved. The rule sets forth the process to submit the merger proposal to the membership for a vote and the percentage of the membership necessary to approve the vote.

The process is designed to give the department the information it needs to give preliminary approval of the merger before it is taken to a membership vote. Obviously, if the department does not give preliminary approval, there is no need for a membership vote which is time-consuming and expensive. If the membership approves the merger, the department issues a final approval. If the membership denies the merger, the department would deny the merger application. The timeframes are selected to allow sufficient time to notice a meeting on the merger and hold it, to calculate the vote, and to have it certified by the board of directors, and to provide a deadline for the department to issue a final approval after the certification is received.

At this time, the department does not anticipate any mergers, so no known person will be affected by this fee and the cumulative amount anticipated for all persons is zero.

NEW RULE XII MERGER APPLICATION PROCEDURES (1) An application to merge one or more mutual associations located in Montana pursuant to 32-2-827, MCA, must be on the form in [New Rule XI].

(2) The application to merge must be filed with the department.

(3) The election and acknowledgment information satisfies these standards if it conforms to the following requirements:

(a) if the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided that the mutual association:

(i) maintains sufficient documentation to show that the customer received the short-form disclosures substantially similar to [New Rule XXXV(1)] and then affirmatively elected to purchase the contract;

(ii) mails to the customer the affirmative written election and written acknowledgment together with a long-form disclosure substantially similar to [New Rule XXXV(2)], within three business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the mutual association has mailed the long-form disclosures to the customer;

(b) if the contract is solicited through written materials such as mail inserts or "take one" applications and a mutual association provides only the short-form disclosures in the written materials, then the mutual association shall mail the acknowledgment of receipt of disclosures, together with a long-form disclosure as provided under [New Rule XXXV(2)], to the customer within three business days, beginning on the first business day after the customer contacts the mutual association or otherwise responds to the solicitation. A mutual association may not obligate the customer to pay for the contract until after the mutual association has received the customer's written acknowledgment of receipt of disclosures unless the mutual association:

(i) maintains sufficient documentation to show that the mutual association provided the acknowledgment of receipt of disclosures to the customer;

(ii) maintains sufficient documentation to show that the mutual association made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long-form disclosures; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the mutual association has mailed the long-form disclosures to the customer.

(4) An applicant for approval of a merger transaction shall publish notice of the proposed transaction on at least three occasions at approximately equal intervals in a newspaper of general circulation in the community or communities where the main offices of the merging institutions are located; or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest to the community.

(a) The first publication of the notice must be as close as practicable to the date on which the application is filed with the department, but no more than five days before the filing date.

(b) The last publication of the notice must be on the 25th day after the first publication; or, if the newspaper does not publish on the 25th day, on the publication date closest to the 25th day.

(5) The text of the public notice must include the following information:

(a) that an application for merger has been made to the Montana Commissioner of Banking and Financial Institutions;

(b) the name and address of all the parties to the merger;

(c) the identity of the surviving institution;

(d) that the public may submit comments to the Commissioner, Montana Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546;

(e) the closing date of the public comment period; and

(f) that the nonconfidential portions of the application are on file with the department and are available for public inspection during regular business hours.

(6) The comment period must be 30 days.

(7) The notice may be combined with any notice of an applicable state or federal regulator and published jointly.

(8) Where public notice is required, the department may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements.

(9) The applicant(s) shall provide the affidavit(s) of publication to the department after it is received.

AUTH: 32-2-704, MCA

IMP: 32-2-827, MCA

STATEMENT OF REASONABLE NECESSITY: The department is proposing to adopt this rule establishing merger application procedures that align with the federal rules promulgated by the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (FRB), and the Office of the Comptroller of the Currency (OCC). A merger application must be approved by the state regulator (the department) and at least one federal regulator. At times, several other state regulators, in addition to the department, are involved in merger approvals. Since the mutual associations must comply with all the regulations of all the regulators involved in the merger transaction, the department seeks to make its rules consistent with the federal rules in order to facilitate the merger, without compromising the needs of the state in obtaining the information it needs to understand and approve the merger.

The format of this new proposed rule is consistent with the format for bank mergers. A copy of the proposed merger application must be sent to the department to review the application for completeness and begin the approval process.

Montana law has always required notice of a proposed merger be published in the newspaper published where the offices of a bank is located and proposes that mutual associations follow suit. This language is identical to 12 CFR 303.65(a).

The department has chosen to adopt notice language that is generic so as to allow the applicant mutual associations involved in the merger to publish one notice and have it be acceptable to both the state and the federal regulators instead of having to publish two notices due to minor variations in wording between the required notices.

The length of the comment period is being specified in this notice.

The rule specifically states that any notice required under Montana law may be combined and published jointly with any notice required by an applicable state or federal regulator involved in the transaction. Both the FDIC and the FRB allow joint notices to be published. The department is seeking to make clear in this rulemaking that it too will allow joint publication of notices.

Section (8) is necessary because the department needs to have the same flexibility as the FDIC to review the publication requirements. In some instances, the merger must be accomplished on a quicker timeline than normal, and the department needs to create a publication timeline that is appropriate for the circumstances. This language is identical to 12 CFR 303.7 (f).

The affidavit of publication is required as part of the merger process because otherwise the applicant would have no way to prove the notice ran on the specific days required in the format required for notice. However, since it is an affidavit of publication, it cannot be made and sworn to until after the publication has been made. Thus, the affidavit is not available at the time the initial application is made. In (9), the department requires that the affidavit of publication be delivered to the department after it is received by the applicant.

NEW RULE XIII MUTUAL ASSOCIATIONS - DIRECT LEASING OF PERSONAL PROPERTY (1) Under authority granted by 32-2-824, MCA, the department permits state mutual associations to engage in the business of direct leasing of personal property under the following regulations:

(a) A mutual association may purchase personal property to be leased only after it has a valid and binding commitment from the prospective lessee to lease the specific property under terms acceptable to the mutual association.

(b) Lease agreements with any one lessee may not exceed 10% of the assets of the mutual association. If the lessee is also a borrower from the mutual association, this 10% must be reduced by the balance of loans to the lessee.

(c) Every lease agreement must provide for full payout to the mutual association of its full acquisition cost of the lease property during the initial term of the lease.

(d) Residual value of the property at the end of a lease agreement's original term may be considered by the mutual association to constitute partial recovery of its cost of acquisition if such residual value is not more than 25% of the cost of acquisition.

(e) No lease agreement shall extend for an initial period of more than ten years or the leased property's normal useful life, whichever is less, unless the mutual association receives from the department prior written approval of each lease agreement of longer term.

(f) Each lease agreement must include provisions whereby the lessee disclaims any liability of the mutual association for the condition of the leased property or its quality; and whereby the lessee assumes full responsibility for protection and maintenance of the leased property.

(2) Any formerly leased personal property returned to the mutual association by default, completion of the lease, or otherwise, must be disposed of by the mutual association by sale or lease within one year after gaining legal possession.

AUTH: 32-2-824, MCA

IMP: 32-2-824, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this rule to permit state mutual associations to engage in the direct leasing of personal property with a residual value at the end of a lease not to exceed 10% of the assets of the association. This limit applies to nationally chartered mutual associations pursuant to 12 U.S.C. 24. The rest of the rule is consistent with the rule for state-chartered banks.

NEW RULE XIV RETENTION OF MUTUAL ASSOCIATION RECORDS

(1) Records of customer accounts, as defined in (7), must be held in accordance with 32-2-950, MCA.

(2) The publication "Mutual Savings and Loan Association Record Retention Periods - Appendix A to [New Rule XIV]" (Appendix A) establishes the minimum period for retention of mutual association records other than those specified in 32-2-950, MCA. Appendix A is maintained by the department and may be updated not more than once a year. The July 9, 2021, edition of Appendix A is incorporated by reference as part of this rule. A copy of Appendix A can be obtained from the department's website at banking.mt.gov.

(3) When a mutual association reproduces records in any manner in the regular course of business as permitted by 32-2-951 through 32-2-953, MCA, the retention period of the reproduced records is the same as specified in Appendix A.

(4) Mutual associations shall comply with all applicable federal mutual association laws and regulations requiring specific retention periods for the records enumerated in those laws or regulations. If an applicable federal mutual association law or regulation concerning record retention conflicts with a retention period contained in 32-2-950, MCA, this rule, or Appendix A, a mutual association shall comply with whichever retention period is longer. Mutual associations shall comply with other applicable state laws governing retention of personnel records, corporation records, etc.

(5) If a mutual association does not maintain records set forth in Appendix A, but maintains similar records with equivalent information, the mutual association's similar records must be retained for the time set forth for records in Appendix A.

(6) Records not covered by this rule or 32-2-950, MCA, must be retained for a period of time determined appropriate by the mutual association's board of directors. Retention periods determined appropriate by the board must be maintained as a permanent part of the board's minutes.

(7) "Customer accounts," for record retention purposes under 32-2-950, MCA, and this rule, means customer deposit accounts including savings deposit accounts, checking accounts, demand deposit accounts, certificates of deposit, safety deposit boxes, trust accounts, Negotiable Order of Withdrawal (NOW) accounts, and money market deposit accounts.

AUTH: 32-2-950, MCA

IMP: 32-2-704, 32-2-950, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-704, MCA, allows the department to adopt rules which establish standards for bookkeeping and accounting as well as to set forth how mutual associations maintain credit information, information in connection with assets, or information in connection with charged off items. In addition, 32-2-950, MCA, addresses record retention of customer accounts and allows the department to adopt rules for retention schedules of mutual association records other than those of customer accounts.

In (2), the department proposes to establish the time period in which Appendix A can be updated, allowing it to be amended as needed but not more than once a year. Retention schedules for banks and credit unions indicate that it is typically not necessary to update more than once in a given year.

Section (4) clarifies which record retention period governs in the event of a conflict between applicable state and federal laws and regulations regarding records retention requirements.

Section (7) clarifies that "customer accounts" means customer deposit accounts and provides examples. Furthermore, it also clarifies that the types of deposit accounts included in the definition of "customer 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.

NEW RULE XV FORM TO REPORT DIRECTORS AND OFFICERS

(1) Mutual associations shall use the List of Officers and Directors form dated July 9, 2021, which is located on the department's website at banking.mt.gov to report the directors and officers elected at the annual meeting and the board meeting to the department. The form shall be submitted to the department within 30 days of the date of the last meeting at which an election of officers or directors was held.

AUTH: 32-2-701, 32-2-704, MCA

IMP: 32-2-701, 32-2-704, 32-2-820, 32-2-821, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-820, MCA, requires the board of directors to be elected at the annual meeting of the members. For the department to ensure that the residency and other requirements of 32-2-820, MCA, are met, mutual associations must report their directors to the department. Section 32-2-821, MCA, requires the board to elect the officers of a mutual association at one of its meetings. For the department to ensure that this has been properly done, mutual associations must report their officers to the department. The reports are combined into one form which is located on the department's website for ease of use. The report should be filed within 30 days after whichever meeting is later.

NEW RULE XVI DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Branch" means a banking house, other than the main banking house, maintained and operated by a mutual association doing business in the state and at which deposits are received, checks are paid, or money is lent. The term does not include a satellite terminal, as defined in 32-6-103, MCA, a loan production office, or the office of an affiliated depository institution acting as an agent under 12 U.S.C. 1828.

(2) "Consolidate" means a combination of two or more office locations within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Thus, for example, a consolidation of two branches on the same block following a merger would not constitute a branch closure. Mutual associations that are in doubt about whether a consolidation or a closure has occurred should consult the department. A consolidation is considered a relocation for purposes of [New Rules XXIII and XXVII].

(3) "Customer" means a person who opened an account at the branch location in question, is currently associated with that branch, or whose address is within the same municipal area as the branch, as the mutual association determines is appropriate.

(4) "Loan production office" means a staffed facility, other than a branch, that provides lending-related services to the public, including loan information and applications.

(5) "Principal city" means an area designated as a "principal city" by the federal Office of Management and Budget.

(6) "Relocate" means a movement within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Generally, relocations involve movement over a short distance.

(7) "Short distance" means:

(a) within a 1,000-foot radius of the current location of the branch if it is located within the principal city of a metropolitan statistical area (MSA);

(b) within a one-mile radius of the current location of the branch if the branch is not located within a principal city, but is within an MSA; or

(c) within a two-mile radius of the branch if it is not located in an MSA.

AUTH: 32-2-701, 32-2-704, 32-2-828, 32-2-830, MCA

IMP: 32-2-701, 32-2-704, 32-2-828, 32-2-830, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule defines "branch" and "loan production office" in the same manner as for banks.

A loan production office or a branch that is being consolidated with another location or relocated to a nearby area should not have to go through the process of closing one location and opening another one. The concepts of consolidation and relocation have been developed by the federal banking agencies to allow an institution to either combine locations that are close to one another or move a location a relatively short distance.

Consistent with FDIC regulations, these definitions have been developed to allow flexibility, while recognizing that the essence of the definition is whether the location serves the same immediate neighborhood. In Froid, a move of 1500 feet may not be a relocation, whereas in Billings it may be, depending on whether the location continues to serve the same immediate neighborhood after the move.

The definition of "customer" is needed to allow institutions to determine who should receive notices of closures or relocations.

NEW RULE XVII APPLICATION PROCEDURE FOR APPROVAL TO ESTABLISH A NEW BRANCH (1) An existing state-chartered mutual association that does not meet the criteria in shall file with the department an application for approval to establish and operate a new branch.

(2) Applications shall be submitted to the department using the Uniform Interstate Application/Notice form dated July 9, 2021, which can be found on the department's website at banking.mt.gov. Electronic submission of applications to banking@mt.gov is preferred.

(3) The applicant shall publish its notice of intent to establish a new branch using the following procedure:

(a) if the application for a new branch also requires the approval of either the federal reserve system or the federal deposit insurance corporation, the notice shall be published at the times and in the format required by the federal agency, except that the notice shall include the following information which may be rephrased as needed: "Comments regarding this application should be forwarded in writing via email to banking@mt.gov. Comments will also be accepted by mail addressed to the Commissioner of Banking and Financial Institutions, Department of Administration, P.O. Box 200546, Helena, MT 59620-0546. The application may be reviewed, during the comment period, at the above address by calling the commissioner's office at (406) 841-2920 and requesting an appointment";

(b) if the applicant does not fall under the regulatory jurisdiction of either the federal reserve system or the federal deposit insurance corporation, or if the publication requirement of the federal regulator has been eliminated, the notice shall be published, following a format obtained from the department, in a newspaper of general circulation in the community or communities where the main office of the mutual association and proposed branch are located. If there is no such newspaper in the community, then the notice shall be published in the nearest newspaper of general circulation. Publication shall be made at least once a week on the same day for two consecutive weeks.

(4) All written comments concerning the application must be received by the department no later than 15 calendar days following the date of the last publication of the notice of intent. Comments received more than 15 calendar days after the date of the last publication will not be considered in the decision to approve or deny the application.

(5) The application shall be emailed or delivered to the department not more than ten days subsequent to the first publication of notice.

AUTH: 32-2-704, 32-2-828, MCA

IMP: 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: SB 308 allows the department to adopt rules to define the application procedures for new branch applications.

Section (1) is proposed to make clear that mutual associations that do not qualify for summary notice, must submit an application to the department.

Section (2) is included to adopt the Uniform Interstate Application/Notice form and to make clear that email is the preferred method of delivery of applications.

Montana law has historically required banks (not eligible for summary notice) to publish notice of a proposed new branch in the newspaper where the main branch and proposed new branch are located. The department proposes to apply the same requirement to mutual associations as well. The language of the notice is intentionally generic so as to allow the applicant to publish one notice and have it be acceptable to both the state and the federal regulators instead of having to publish two notices due to minor variations in wording between the required notices. Additionally, (3)(a) also allows the published statement to be rephrased as necessary for readability provided that the substance of the notice remains intact.

Section (4) defines the comment period, which is comparable to the period for banks, and in the past experience of the department, allows sufficient time for public comment.

Section (5) requires mutual associations to submit the application via regular mail or email not more than ten days subsequent to the first publication of notice. Ten days was chosen because the department needs to be apprised of the application and the need to be prepared to produce the non-confidential portions of the application to the public if requested.

NEW RULE XVIII REVIEW PROCEDURE FOR APPLICATIONS FOR APPROVAL TO ESTABLISH A NEW BRANCH (1) The department shall process applications for new branches in the order in which they are received. If an application is incomplete, the department shall notify the applicant by e-mail. An application will not be considered to have been received until it is in a complete form. An application is complete when all information required by the application form has been submitted and received. The department may request additional information from an applicant even if the application is considered complete.

(2) Factors that will be considered when determining whether to approve an application to establish a new branch include, but are not limited to, the following:

(a) the financial history and condition of the applicant;

(b) the capital levels and capital structure of the applicant;

(c) the quality, financial and banking experience, and depth of management of the applicant and the proposed branch;

(d) the convenience and needs of the community to be served at the proposed location of the new branch as evidenced by a brief statement provided by the applicant;

(e) earnings prospects of the applicant after establishing the new branch; and

(f) any other factors the department considers that could adversely affect the safety and soundness of the applicant or the viability of the new branch.

(3) The department shall issue its order approving or denying the application within 45 days after:

(a) the date of the last publication of the notice of intent to establish a new branch; or

(b) the date on which a complete application is received, whichever is later;

(4) The 45-day deadline may be extended by the department when review of the complete application raises questions or concerns that require additional information from the applicant or any other entity or person. Once the additional information is received by the department, the 45-day deadline may be extended by no further than 14 calendar days.

(5) When the department approves an application to establish a new branch, it will provide written notification to the applicant and the appropriate federal regulatory agency(s). The notification will include any conditions subject to the approval. Summary notification of the decision will be mailed to all persons or entities that have submitted written comment to the application.

(6) When the department denies an application to establish a new branch, it will provide written notification to the applicant, the appropriate federal regulator(s), and all persons or entities that have submitted written comment to the application. The written notification to the applicant will include the reasons for the denial.

(7) If an administrative hearing is requested under MAPA on the denial of an application, the time for the filing of a request for a hearing must occur within 14 calendar days following the department's decision.

AUTH: 32-2-704, 32-2-828, MCA

IMP: 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule identifies the process the department uses to process branch applications. The department determined it is appropriate to use a process similar to the bank branch application process to promote efficiency in operations. Section (1) states that applications will be processed in the order they are received and provides information on how the applicant will be contacted in the event of an incomplete application or if the department requires additional information.

Section (2) identifies the factors the department will consider when determining if a branch application should be approved. These factors have been useful when evaluating bank branch applications

Section (3) sets the timeframe in which the department will provide an approval or denial of the application.

Section (4) allows for an extension to submit additional information requested by the department and a deadline for the department to approve or deny the application after receiving that information. Based on its experience with banks, the department believes these timeframes are appropriate for mutual associations as well.

Section (5) requires the department to forward its approval of the new branch to the applicant, appropriate federal regulators, and any persons or entities that provided comment regarding the application to ensure all interested parties continue to be informed about the application status.

Likewise, (6) requires the department to forward its denial of the new branch to the applicant, appropriate federal regulators, and any persons or entities that provided comment regarding the application to ensure all interested parties are aware of the outcome.

Section (7) makes clear that an applicant for a branch license who is denied a license may request an administrative hearing under MAPA if they make the request within 14 days after the denial. This is consistent with the time allowed to request hearings when other financial institution applications are denied and provides the applicant sufficient time to advise the department of the applicant's intent to contest the agency decision.

NEW RULE XIX PROCEDURE FOLLOWING APPROVAL OF AN APPLICATION TO ESTABLISH A NEW BRANCH (1) A mutual association must open an approved branch within 18 months of the date of branch approval. Upon written request by the applicant and a finding of good cause by the department, the 18-month period may be extended by the department for a maximum of an additional six months.

(2) During the formation and establishment of the new branch, the applicant must inform the department of significant changes affecting any of the commitments, representations, or projections contained in the original application. Significant changes include, but are not limited to, the location of the new branch, the services to be offered by the new branch, and the staffing or management of the new branch. Significant changes may be sufficient to void the department's approval.

AUTH: 32-2-704, 32-2-828, MCA

IMP: 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this rule to require that a mutual association must open an approved branch within 18 months of the department's approval. If the branch is unable to open, the mutual association may request a six-month extension. Since the conditions of a mutual association can change over time, if the branch is still unable to open, the mutual association must submit a new branch application.

In addition, (2) requires a mutual association to provide the department with any significant changes in information from the initial branch application which may or may not void the department's approval.

NEW RULE XX BRANCHES (1) A mutual association organized under the laws of this state that is a qualifying institution, as set forth in (2), may establish a branch in Montana upon summary notice and approval by the department. The notice shall be given using the Request for Summary Approval of Branch form dated July 9, 2021, which is located on the department's website at banking.mt.gov.

(2) In order to qualify for summary notice, the mutual association shall:

(a) have received its mutual association charter at least five years prior to making the request;

(b) be well-capitalized as defined in 12 CFR Part 324 by the Federal Deposit Insurance Corporation, if the mutual association is a nonmember mutual association; or as defined in 12 CFR 208.43(b)(1) by the Federal Reserve Board of Governors, if the mutual association is a member mutual association of the Federal Reserve System;

(c) have received a CAMELS composite rating of one or two on its most recent state or federal safety and soundness examination;

(d) have received a management rating of one or two on its most recent state or federal regulatory examination; and

(e) not be a party to any formal or informal enforcement action initiated by a state or federal regulatory agency.

(3) The mutual association shall certify that it is a qualifying institution as of the date of the request.

(4) A mutual association that is not a qualifying institution as of the date of the request shall comply with [New Rules XVII and XIX].

(5) The department shall approve or deny a summary notice and application within 15 business days of receipt of a complete notice and application.

AUTH: 32-2-701, 32-2-704, 32-2-828, MCA

IMP: 32-2-701, 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: In this rule, the department allows institutions that do not present regulatory concerns a streamlined process to establish a branch. The criteria that an institution must meet to avail itself of the streamlined branching process are located in (2). Based on past experience with other financial institutions, the department determined a mutual association that qualifies for the summary notice procedures in (2) is in sufficient condition to not present regulatory concerns regarding branching. The notice gives the department the information it needs to process the request to branch. Upon receipt of the notice, the department can determine if a mutual association should be allowed to branch as requested.

However, the department maintains its ability to supervise institutions that may seek to branch while there are supervisory concerns at the institution. In those instances, the institution must comply with the full application, notice, and comment requirements of the current rules.

Given the streamlined approval process described in this rule for qualifying institutions, it is appropriate for the department to approve or deny a summary notice and application within 15 business days of receipt of a complete notice and application.

NEW RULE XXI MONTANA MUTUAL ASSOCIATIONS BRANCHING OUTSIDE MONTANA (1) In order for a mutual association organized under the laws of this state to request approval for a branch outside of Montana, the mutual association must submit copies of all required regulatory filings or notices required by the host state and federal agencies and comply with [New Rule XX] and the branching requirements of the state into which it seeks to branch.

AUTH: 32-2-701, 32-2-704, 32-2-828, MCA

IMP: 32-2-701, 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: A mutual association organized in this state that seeks to branch into another state must comply with the branching laws and regulations of both Montana and the state into which it seeks to branch. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 authorized financial institutions to open an initial branch in a host state by establishing a de novo branch at any location at which a financial institution chartered by the host state could establish a branch, and upon approval of the home state and appropriate federal regulator. New Rule XX sets forth the department's process to allow mutual associations organized in Montana to branch into another state.

NEW RULE XXII MUTUAL ASSOCIATIONS ORGANIZED OUTSIDE OF MONTANA BRANCHING INTO MONTANA (1) Mutual associations organized under the laws of a state other than Montana or of a national mutual association must submit copies of all required regulatory filings or notices required by the home state and federal agencies and comply with [New Rule XX] in order to branch into Montana.

AUTH: 32-2-701, 32-2-704, 32-2-828, MCA

IMP: 32-2-701, 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: Pursuant to 32-2-828, MCA, a mutual association organized under the laws of a state other than Montana that seeks to branch into Montana must comply with the branching laws and rules of Montana and get the approval of its organizing state and the appropriate federal regulator. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 authorized financial institutions to open an initial branch in a host state by establishing a de novo branch at any location at which a financial institution chartered by the host state could establish a branch. New Rule XX sets forth the process by which that can occur.

NEW RULE XXIII CLOSURE OR RELOCATION OF A BRANCH (1) A Montana state-chartered mutual association that desires to relocate or close a branch temporarily or permanently shall give notice to its customers using the customer Notice of Relocation of Mutual Association Branch form (relocation form) dated July 9, 2021, or customer Notice of Closure of Mutual Association Branch form (closure form) dated July 9, 2021. The forms are located on the department's website at banking.mt.gov. A mutual association may amend the form as needed or include additional information in the form as appropriate.

(2) The relocation or closure form shall be provided to customers of the branch by posting it at the branch at least 30 days before the relocation or closure of the branch. The relocation or closure form shall be provided to the department at the same time. The mutual association shall also notify its customers at least 30 days before the relocation or closure, by any effective method.

(3) The department reserves the right to request additional information regarding closure or relocation of a branch.

AUTH: 32-2-701, 32-2-704, 32-2-828, MCA

IMP: 32-2-701, 32-2-704, 32-2-828, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-2-828, MCA, requires that a mutual association notify its customers and the department of any closure or relocation of a branch. This rule provides the process for that notification as well as the form to be used to provide the notice to mutual association customers and the department. The form is located on the department website for ease of use.

NEW RULE XXIV TEMPORARY EMERGENCY CLOSURE OF BRANCH

(1) A mutual association that closes a branch under the authority of 32-2-1032(1), MCA, for 48 hours or less shall notify the department using the Temporary Emergency Branch Closure form dated July 9, 2021, located on the department's website at banking.mt.gov.

AUTH: 32-2-701, 32-2-704, MCA

IMP: 32-2-701, 32-2-704, 32-2-1030, 32-2-1031, 32-2-1032, 32-2-1033, 32-2-1034, MCA

STATEMENT OF REASONABLE NECESSITY: Mutual associations may have to close branches for a short period of time due to an emergency. Some examples of this are: weather events that make travel so hazardous employees and customers cannot access the branch for a short time, flooding which can be remediated in 48 hours or less, or circumstances that preclude safe travel. Under these conditions, 32-2-1032, MCA, allows the officers of the mutual association the authority to close a branch for up to 48 consecutive hours, without requesting the approval of department. However, the mutual association must provide notice of the closure to the department as promptly as possible. The temporary emergency closure form facilitates notification. It is provided on the department's website to allow mutual associations to quickly access and submit the form.

NEW RULE XXV EMERGENCY CLOSURE OF BRANCH (1) A mutual association that closes a branch under the authority of 32-2-1032, MCA, for more than 48 hours shall notify the department using the Emergency Branch Closure form dated July 9, 2021, located on the department's website at banking.mt.gov.

AUTH: 32-2-701, 32-2-704, MCA

IMP: 32-2-701, 32-2-704, 32-2-1030, 32-2-1031, 32-2-1032, 32-2-1033, 32-2-1034, MCA

STATEMENT OF REASONABLE NECESSITY: A mutual association branch that closes for more than 48 consecutive hours on an emergency basis as set forth in 32-2-1032, MCA, must notify the department of the closure and request approval to stay closed for longer than 48 consecutive hours. Examples of such events include flooding that damages all the wiring and computers of the branch so badly it had to be closed for a complete remodel, fires, earthquakes, and other casualty events that severely damage the branch. The department created a form to allow the mutual association to notify the department of the circumstances of the closure and to request approval to stay closed until the emergency abates. The form is located on the department's website to allow mutual associations to quickly access and submit the form.

NEW RULE XXVI LOAN PRODUCTION OFFICE ACTIVITIES (1) A loan production office may conduct any of the following activities, which shall not, individually or collectively, cause the loan production office to be considered a branch:

(a) solicit loans on behalf of the mutual association or a branch of the mutual association;

(b) assemble credit information;

(c) make property inspections and appraisals;

(d) secure title information;

(e) prepare applications for loans, including making recommendations with respect to action; and

(f) solicit investors to purchase loans from the mutual association and to contract with the mutual association for servicing of such loans.

(2) A mutual association shall not accept deposits or loan payments, originate deposits or savings or checking accounts, approve loans, or disburse loan funds at a loan production office established pursuant to this rule.

AUTH: 32-2-701, 32-2-704, 32-2-830, MCA

IMP: 32-2-701, 32-2-704, 32-2-830, MCA

STATEMENT OF REASONABLE NECESSITY: SB 308 set the requirements for mutual association branch and loan production office openings, relocations, and closures. This rule is necessary to provide guidance to institutions as to activities a loan production office can engage in, and what activities will cause the loan production office to be considered a branch, which will require licensure as a branch.

NEW RULE XXVII LOAN PRODUCTION OFFICE (1) A mutual association that desires to establish a loan production office in this state shall provide written notice to the department of its intent to do so at least 30 days prior to opening the loan production office using the Notice of Intent to Establish a Loan Production Office form dated July 9, 2021, located on the department's website at banking.mt.gov.

(2) A mutual association organized under the laws of Montana that intends to open a loan production office in another state shall submit copies of all required regulatory filings or notices required by the host state and federal agencies along with the items required in the Notice of Intent to Establish a Loan Production Office form, if they are not already included in the form, to the department.

(3) A Montana state-chartered mutual association that desires to relocate or close a loan production office temporarily or permanently shall give notice to its customers using the customer Notice of Relocation form (relocation form) dated July 9, 2021, or customer Notice of Closure form (closure form) dated July 9, 2021, located on the department's website at banking.mt.gov.

(4) The relocation or closure form shall be provided to customers of the loan production office by posting it at the loan production office at least fifteen days before the relocation or closure of the office. The relocation or closure form shall be provided to the department at the same time.

(5) The department reserves the right to request additional information regarding the opening, closure, or relocation of a loan production office.

(6) If the loan production office will be using an assumed name, compliance with 32-2-902, MCA, is required.

(7) Each loan production office shall be subject to examination and supervision by the department in the same manner and to the same extent as the mutual association.

AUTH: 32-2-701, 32-2-830, MCA

IMP: 32-2-701, 32-2-830, 32-2-1030, 32-2-1031, 32-2-1032, 32-2-1033, 32-2-1034, MCA

STATEMENT OF REASONABLE NECESSITY: SB 308 allows the department to require notice of the establishment, relocation, and closure of loan production offices. The department proposes this rule to implement these requirements. The notices will be available on the department's website to allow mutual associations immediate access to the forms and the procedures involving loan production offices. The Notice of Intent to Establish a Loan Production Office form will be used to obtain the information necessary for the department to determine which mutual association is opening a loan production office, where the office will be located, who will be running the office, when it will open, and what activities will be conducted there. This is the rudimentary information needed by the department to monitor banking activities in this state.

The rule also provides for online forms for the relocation of a loan production office and temporary or permanent closure of a loan production office. This allows mutual associations to use standardized forms and processes which are immediately available online to notify customers, and the department, of closures or relocations of loan production offices. One purpose of the notice is to inform customers when a loan production office is being relocated. The notice may also be used if the loan production office is being closed temporarily or permanently to notify customers of the date of closure and reason for the closure.

The rule also addresses permanent or temporary non-emergency closures for loan production offices. Emergency closures are governed by 32-2-1030 through 32-2-1034, MCA.

The rule allows the department to request additional information as needed regarding the opening, closure, or relocation of loan production offices.

The rule makes clear that if an assumed name is used for the loan production office, 32-2-902, MCA, applies.

The rule provides that loan production offices are subject to examination by the department in the same manner and to the same extent as the mutual association. This proposal ensures consistency in examinations and removes any suggestion that a loan production office is somehow disassociated from the mutual association that operates it.

NEW RULE XXVIII DEFINITIONS (1) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge. Under this method, a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) "Contract" means a debt cancellation contract or a debt suspension agreement.

(3) "Customer" means an individual who obtains from a mutual association an extension of credit that is primarily for personal, family, or household purposes. For purposes of this subchapter, the term means the same thing as "borrower."

(4) "Debt cancellation contract" means a loan term or contractual arrangement modifying loan terms under which a mutual association agrees, for a fee, to suspend all or part of a customer's obligation to repay an extension of credit from that mutual association upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The extension of credit to which it pertains may be a direct loan made by the mutual association or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the mutual association. In the case of an indirect loan in the form of a retail installment sales contract, the debt cancellation contract may be offered by the mutual association through a nonexclusive, unaffiliated agent contingent upon the mutual association purchasing or taking assignment of the indirect loan. The agreement may be separate from or a part of other loan documents. A debt cancellation contract may be offered and purchased either contemporaneously with the other terms of the loan agreement or subsequently.

(5) "Debt suspension agreement" means a loan term or contractual arrangement modifying loan terms under which a mutual association agrees, for a fee, to suspend all or part of a customer's obligation to repay an extension of credit from that mutual association upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The extension of credit may be a direct loan made by the mutual association or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the mutual association. In the case of an indirect loan in the form of a retail installment sales contract, the debt suspension agreement may be offered by the mutual association through a nonexclusive, unaffiliated agent contingent upon the mutual association purchasing or taking assignment of the indirect loan. The agreement may be separate from or a part of other loan documents. The term "debt suspension agreement" does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the mutual association's unilateral decision to allow a deferral of repayment.

(6) "Guaranteed asset protection (GAP) waiver or agreement" means a term of an extension of credit or contractual arrangement modifying terms of an extension of credit for the purchase of titled personal property under which a mutual association agrees to cancel the customer's obligation to repay the portion of the extension of credit that exceeds the amount paid by the primary insurer of the titled personal property upon the insurer's declaration that the titled personal property is a total loss or determination that the titled personal property is stolen and not recoverable.

(7) "Loan or extension of credit" means a direct or indirect advance of funds to a customer made on the basis of any obligation of that customer to repay the funds or that is repayable from specific property pledged by or on the customer's behalf. The term also includes any liability of a mutual association to advance funds to or on behalf of a customer pursuant to a contractual commitment.

(8) "Residential mortgage loan" means a loan for personal, family, or household purposes secured by a one- to four-family residential property.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: Definitions of the terms in (1), (2), (3), (4), (5), and (8) are substantially equivalent to the definitions of the same terms in 12 CFR 37.2. The department has determined that the federal definitions will be sufficient to serve the department's purposes and meet the Legislature's intent. Because these definitions already exist, the department saw no need to write its own original definitions.

The definition of "guaranteed asset protection (GAP) waiver or agreement" in (6) is substantially equivalent to and adapted from Office of the Comptroller of the Currency (OCC) Interpretive Letters #1028 and #1032 concerning GAP waivers or agreements as they relate to debt cancellation contracts. The department believes the OCC's description of GAP waivers or agreements in the interpretive letters is clear and that the definition adapted from the letters is sufficient to serve the department's purposes and meet the Legislature's intent.

The definition of "loan or extension of credit" in (7) is substantially equivalent to and adapted from 12 USC 84(b)(1). The definition was selected because it encompasses both advanced funds and commitments to advance funds such as letters of credit. The department chose to define "loan" or "extension of credit" for clarification purposes because the term is used throughout 12 CFR Part 37 upon which these rules are patterned, but the term is not defined in that part.

NEW RULE XXIX DEBT CANCELLATION AND DEBT SUSPENSION PROGRAMS – REQUIREMENTS (1) A mutual association offering debt cancellation contracts and/or debt suspension agreements shall:

(a) manage the risks associated with debt cancellation contracts and debt suspension agreements in accordance with mutual association safety and soundness principles by establishing and maintaining effective risk management and control processes over its debt cancellation contracts and debt suspension agreements to include:

(i) appropriate recognition and financial reporting of income, expenses, assets, and liabilities;

(ii) appropriate treatment of all expected and unexpected losses associated with the contracts; and

(iii) assessment of the adequacy of its internal control and risk mitigation activities in view of the nature and scope of the mutual association's debt cancellation and debt suspension program; and

(b) obtain and maintain in effect insurance from an insurer authorized or otherwise registered with the State Auditor and Commissioner of Insurance (State Auditor) to do business in Montana. The insurance must cover 100% of the at-risk loan balances to which the mutual association's debt cancellation contracts pertain.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: Subsection (1)(a) is substantially equivalent to 12 CFR 37.8. The department has determined that the federal regulation, together with (1)(b), will be sufficient to serve the department's purposes and meet the Legislature's intent.

Subsection (1)(b) adds a requirement that has no counterpart or equivalent in the federal regulations making this rule more stringent than 12 CFR 37.8. National mutual associations are permitted but not required to manage the risk associated with their debt cancellation contracts and debt suspension agreements by obtaining insurance coverage. The department believes the best practice, consistent with mutual association safety and soundness principles, is to require insurance coverage. The potential losses that a mutual association is exposed to when it offers debt cancellation contracts and debt suspension agreements could be significant. Ideally, a mutual association could maintain a robust and effective internal program of monitoring and managing the risk without insurance, but that ideal may not always be met. A mutual association may not fully appreciate the extent of its risk exposure at all times if, for example, it does not retain an actuarial consultant. The department believes this reality poses an unacceptable risk to the mutual association's safety and soundness.

Vendors offer services to mutual associations related to administration of the mutual associations' debt cancellation and debt suspension programs. The department does not believe that requiring a mutual association to obtain insurance coverage for its risks associated with offering debt cancellation contracts, for example, changes the essential character of the two-party debt cancellation contract or converts it to an insurance product.

Under SB 308, debt cancellation contracts and debt suspension agreements between customers and mutual associations under which there is no obligation on the part of a third-party insurer to pay the customer's loan balance or make loan payments on behalf of the customer upon the occurrence of the identified event are not insurance. By contrast, under an insurance contract between a mutual association and an insurer covering the mutual association's risks associated with offering debt cancellation contracts, for example, the insurer is obligated to pay the mutual association for the loss it sustains when a debt cancellation contract is activated by the occurrence of the identified event. Clearly, the latter transaction is an insurance transaction that is subject to the provisions of Title 33, MCA.

NEW RULE XXX REQUIRED DISCLOSURES (1) A mutual association shall provide the following disclosures to the mutual association's customer:

(a) notice of the prohibited acts or practices contained in [New Rule XXXI];

(b) the fee applicable to the contract and any payment options;

(c) the refund policy;

(d) whether the customer is barred from using the credit line to which it pertains if the debt cancellation contract or debt suspension agreement is activated;

(e) eligibility requirements, conditions, and exclusions;

(f) that a debt suspension agreement, if activated, does not cancel the debt, but only suspends payment requirements; and

(g) notice that cancellation of debt may result in a tax liability to the customer if activated.

(2) The requirements for the timing and method of disclosure are:

(a) the mutual association shall make the disclosures in (1) and the short-form disclosures under [New Rule XXXV] orally at the time the mutual association first solicits the purchase of a contract;

(b) the mutual association shall make the long-form disclosures under [New Rule XXXV] in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, the mutual association shall provide the long-form disclosure in writing at that time;

(c) if the contract is solicited by telephone, the mutual association shall provide the disclosures in (1) and the short-form disclosures under [New Rule XXXV] orally and shall mail the long-form disclosures, and, if appropriate, a copy of the contract to the customer within three business days beginning on the first business day after the telephone solicitation; and

(d) if the contract is solicited through written materials such as mail inserts or "take one" applications, the mutual association may provide only the disclosures in (1) and the short-form disclosure under [New Rule XXXV] to the customer within three business days beginning on the first business day after the customer contacts the mutual association in response to the solicitation, subject to the requirements of [New Rule XXXIV(3)(b)].

(3) The disclosures required by these rules must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. The methods may include use of plain language headings, easily readable typeface and size, wide margins and ample line spacing, boldface or italics for key words, and/or distinctive type style or graphic devices.

(4) The disclosures in the short-form disclosure under [New Rule XXXV] are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the mutual association.

(5) The disclosures described in these rules may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. or the Uniform Electronic Transactions Act, Title 30, chapter 18, part 1, MCA.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: Subsections (1)(b) through (1)(f) are substantially equivalent to 12 CFR 37.6. The department has determined that the federal regulation, when combined with (1)(a) and (1)(g) of this rule, provides sufficient information to enable a mutual association customer to make an informed decision concerning the purchase of a debt cancellation contract or debt suspension agreement.

Subsection (1)(a) requires a mutual association to give the customer notice of what acts or practices of a mutual association pertaining to debt cancellation contracts and debt suspension agreements are prohibited under New Rule XXXI. The department believes that customers with knowledge of the prohibited acts and practices can more effectively assert the protections that the law affords them. Subsection (1)(a) may also protect mutual associations from unfounded customer claims that the customer was unaware of relevant information or was misled.

Subsection (1)(g) has no equivalent or counterpart in the federal regulation pertaining to debt cancellation contracts and debt suspension agreements. While (1)(g) does not require a mutual association to give its customer tax advice on Internal Revenue Code §6050P or any other provisions of the tax code, it requires that the customer be given notice of the potential tax liability if a debt cancellation contract is activated. The requirement in (1)(g) makes this rule more stringent than 12 CFR 37.6. The department believes that it is important that the customer know of a potential tax liability.

NEW RULE XXXI PROHIBITED ACTS OR PRACTICES (1) A mutual association is prohibited from engaging in any of the following acts or practices:

(a) extending credit or altering the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation contract or debt suspension agreement with the mutual association. The prohibition is commonly referred to in the regulatory context as the anti-tying provision;

(b) engaging in any practice or using any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under [New Rule XXX], including what is being offered, the cost, and/or the terms of the contract;

(c) offering debt cancellation contracts or debt suspension agreements that contain terms:

(i) giving the mutual association the right unilaterally to modify the contract unless:

(A) the modification is favorable to the customer and is made without additional charge to the customer; or

(B) the customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect; or

(ii) requiring an up-front, lump-sum single payment for the contract if the extension of credit to which the contract pertains is a residential mortgage loan.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.3. The department believes that the federal regulation will serve the department's purposes and meet the Legislature's intent. This rule adds examples of the areas in which a customer could be misled or come to an erroneous belief as a result of a mutual association's practices or advertising. The examples were cited in a case in which a federal regulator imposed large civil penalties against a national bank related to its marketing of credit protection products. The department believes that inclusion of specific examples in (1)(b) provides more clarity to the rule. Based on past experiences with other financial institutions' debt cancellation and suspension programs, the department has determined prohibiting the identified practices will protect consumers.

NEW RULE XXXII REFUNDS OF FEES UPON TERMINATION OR PREPAYMENT OF COVERED LOAN (1) If a debt cancellation contract or debt suspension agreement is terminated, including, for example, when the customer prepays the covered loan, a mutual association shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise.

(2) A mutual association may offer a customer a contract that does not provide for a refund only if the mutual association also offers that customer a bona fide option to purchase a comparable contract that provides for a refund.

(3) A mutual association shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.4. The department believes that the federal regulation will be sufficient to serve the department's purposes, meet the Legislature's intent, and ensure fairness to a mutual association's customer by providing refund options as well as overall clarity to the refund issue.

NEW RULE XXXIII METHOD OF PAYMENT OF FEES (1) Except as provided in [New Rule XXXI(1)(c)(ii)], a mutual association may offer a customer the option of paying the fee for a debt cancellation contract or a debt suspension agreement in a single payment, provided the mutual association also offers the customer a bona fide option of paying the fee for that contract in periodic installment payments.

(2) If a mutual association offers the customer the option to finance the single payment by adding it to the loan principal, the mutual association must also disclose, in accordance with [New Rule XXXII], whether the customer may cancel the agreement and receive a refund, and, if so, the time period during which the customer may do so.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.5. The department believes that the federal regulation will be sufficient to serve the department's purposes, meet the Legislature's intent, and, together with New Rule XXXIII, provide overall clarity to the refund issue.

NEW RULE XXXIV AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES (1) Before entering into a debt cancellation contract or debt suspension agreement, a mutual association shall obtain the customer's written affirmative election to purchase the contract and a written acknowledgment of receipt of the disclosures required under [New Rule XXX].

(2) The election and acknowledgment information must be conspicuous, simple, direct, readily understandable, and designed to call attention to its significance.

(3) The election and acknowledgment information satisfies these standards if it conforms to the following requirements:

(a) if the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided that the mutual association:

(i) maintains sufficient documentation to show that the customer received the short-form disclosures substantially similar to [New Rule XXXV(1)] and then affirmatively elected to purchase the contract;

(ii) mails to the customer the affirmative written election and written acknowledgment together with a long-form disclosure substantially similar to [New Rule XXXV(2)], within three business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the mutual association has mailed the long-form disclosures to the customer;

(b) if the contract is solicited through written materials such as mail inserts or "take one" applications and a mutual association provides only the short-form disclosures in the written materials, then the mutual association shall mail the acknowledgment of receipt of disclosures, together with a long-form disclosure as provided under [New Rule XXXV(2)], to the customer within three business days, beginning on the first business day after the customer contacts the mutual association or otherwise responds to the solicitation. A mutual association may not obligate the customer to pay for the contract until after the mutual association has received the customer's written acknowledgment of receipt of disclosures unless the mutual association:

(i) maintains sufficient documentation to show that the mutual association provided the acknowledgment of receipt of disclosures to the customer;

(ii) maintains sufficient documentation to show that the mutual association made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long-form disclosures; and

(iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the mutual association has mailed the long-form disclosures to the customer.

(4) The affirmative election and acknowledgment may be made electronically in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. or the Uniform Electronic Transactions Act, Title 30, chapter 18, part 1, MCA.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR 37.7. The department believes that the federal regulation is sufficient to serve the department's purposes, meet the Legislature's intent, and protect both the mutual association and its customer. Section (4) includes a citation to state law relating to electronic transactions that is not included in 12 CFR 37.7. The addition of the reference to state law will clarify for mutual associations that a customer's affirmative election and acknowledgment pertaining to the purchase of a debt cancellation or debt suspension contract may be in electronic form.

NEW RULE XXXV DISCLOSURE FORMS (1) The department adopts as a model, but not as a requirement, the Comptroller of the Currency's model short form disclosure at 12 CFR 37 Appendix A revised as of January 1, 2010. The form must be adapted by the mutual association to include the disclosures required under [New Rule XXX(1)(a) and (g)].

(2) The department adopts as a model, but not as a requirement, the Comptroller of the Currency's model long-form disclosure at 12 CFR 37 Appendix B revised as of January 1, 2010. The form must be adapted by the mutual association to include the disclosures required under [New Rule XXX(1)(a) and (g)].

(3) The model forms in (1) and (2), which are available at Title 12, Volume I, Part 37, Appendices A and B in the Code of Federal Regulations, are not mandatory, but a mutual association that provides disclosures in a form substantially similar to the adapted model forms will be deemed to have satisfied the disclosure requirements applicable to the mutual association concerning its debt cancellation and/or debt suspension program.

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is substantially equivalent to 12 CFR Part 37, Appendices A and B, except this rule requires a mutual association to adapt the federal forms to include the requirements imposed by these rules that have no counterpart or equivalent in federal regulations so that the disclosures are consistent with these rules.

NEW RULE XXXVI GUARANTEED ASSET PROTECTION (GAP) FEATURE

(1) A GAP waiver or agreement is a type of debt cancellation contract. A debt cancellation contract with a GAP feature offered in connection with an extension of credit for the purchase of titled personal property for personal, family, or household use is a single product. A mutual association offering a debt cancellation contract with a GAP feature may do so through nonexclusive, unaffiliated agents such as automobile dealers. The fee arrangement between a mutual association and a nonexclusive, unaffiliated agent through which the debt cancellation product is offered does not create a separate contract that violates the anti-tying provision of [New Rule XXXI(1)(a)].

AUTH: 32-2-704, MCA

IMP: 32-2-909, MCA

STATEMENT OF REASONABLE NECESSITY: This rule pertaining to Guaranteed Asset Protection features of debt cancellation contracts derives from OCC Interpretative Letters #1028 and #1032 addressing whether GAP features are debt cancellation products, whether they run afoul of the anti-tying provision in New Rule XXXI(1)(a), and whether they may be offered through nonexclusive agents such as automobile dealers. Based on the numbers and types of inquiries from national banks to the OCC over the years about GAP features of debt cancellation contracts, the department believes that in the absence of this rule, there would likely be confusion about such matters among mutual associations. The department believes this rule is necessary to clarify that potential area of confusion.

NEW RULE XXXVII NONCONFORMING LOANS AND EXTENSIONS OF CREDIT (1) A loan or extension of credit within a mutual association's legal lending limit when made will not be deemed a violation but will be treated as nonconforming if the loan or extension of credit is no longer in conformity with the mutual association's lending limit because:

(a) the mutual association's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the lending limit or capital rules changed;

(b) collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value; or

(c) in the case of a credit exposure arising from a derivative transaction or a securities financing transaction and measured by either the current exposure method or the Basel collateral haircut method specified in [New Rule LI] and Appendix B to [New Rule LI], the credit exposure subject to the lending limits of 32-2-925, MCA, or this rule increases after execution of the transaction.

(2) A mutual association shall use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of (1)(a) into conformity with the mutual association's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(3) A mutual association shall bring a loan or extension of credit that is nonconforming as a result of circumstances described in (1)(b) into conformity with the mutual association's lending limit within 30 calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond the mutual association's control prevent it from taking action.

AUTH: 32-2-925, MCA

IMP: 32-2-925, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to put mutual associations on notice of the level of regulatory response that can be expected concerning lending limit irregularities. The rule distinguishes between a loan or extension of credit that flatly violates a lending limit and a loan or extension of credit that, in the circumstances described in (1)(a) and (1)(b), warrants a designation of "nonconforming." The distinction could conceivably make a difference in a mutual association's CAMELS ratings in the appropriate circumstance. The dual corrective action requirements in (2) and (3) are intended to be proportionate to the seriousness of the circumstance that triggered the "nonconforming" designation. This rule introduces a circumstance that would warrant a "nonconforming" treatment when a lending limit irregularity arises from increases in a mutual association's credit exposure during the term of a derivative transaction or securities financing transaction so long as the credit exposure was properly measured using authorized methods and models in the first instance.

NEW RULE XXXVIII U.S. TREASURY AND U.S. GOVERNMENT AGENCY ISSUES (1) There is no dollar limit on a mutual association's investment in the following U.S. treasury securities:

(a) bonds;

(b) notes; or

(c) bills.

(2) There is no dollar limit on a mutual association's investment in U.S. treasury bonds and notes in the form of separate trading of registered interest and principal of securities (STRIPS).

(3) There is no dollar limit on a mutual association's investment in the following U.S. government agency ordinary debt issues:

(a) farm credit system (FCS):

(i) consolidated FCS bonds;

(ii) federal land bank bonds (FLB);

(iii) federal intermediate credit bank bonds (FICB);

(iv) banks for cooperatives bonds (BC); and

(v) federal agricultural mortgage corporation (FAMC);

(b) farmers home administration (FmHA);

(c) federal housing administration (FHA);

(d) federal home loan banks (FHLB);

(e) federal home loan mortgage corporation (FHLMC);

(f) federal national mortgage association (FNMA);

(g) student loan marketing association (SLMA); and

(h) United States postal service (USPS).

(4) There is no dollar limit on a mutual association's investment in the following U.S. government agency mortgage-backed securities (MBS), collateralized mortgage obligations (CMOs), and real estate mortgage investment conduits (REMICs):

(a) instruments issued by the federal home loan mortgage association (FHLMC);

(b) instruments issued by the federal national mortgage association (FNMA);

(c) instruments issued by the government national mortgage association (GNMA);

(d) instruments issued by the federal agricultural mortgage corporation (FAMC);

(e) FHLMC MBS pass through securities (PCs);

(f) GNMA I, single issuer pass through PCs; and

(g) GNMA II, single and multiple issuer pass through PCs.

AUTH: 32-2-701, 32-2-704, 32-2-908, MCA

IMP: 32-2-701, 32-2-704, 32-2-908, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks, which is based on an identical statute. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XXXIX OTHER APPROVED QUASI-GOVERNMENT SECURITIES (1) Certain other securities are approved for mutual association investment. There is no dollar limit on a mutual association's investment in:

(a) general services administration (participation certificates);

(b) maritime administration (bonds and notes); and

(c) Washington metropolitan area transit authority (bonds).

(2) A mutual association's investment is limited to 50% of capital in:

(a) Asian development bank (bonds and notes);

(b) financing corporation (FICO) (bonds);

(c) Inter-American development bank (bonds);

(d) resolution funding corporation (REFCORP) (bonds);

(e) Tennessee valley authority (TVA) (bonds); and

(f) world bank (bonds and notes).

AUTH: 32-2-911, MCA

IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XL STATE, COUNTY, AND MUNICIPAL ISSUES (1) Mutual associations may invest, without dollar limitation, in the general obligation of any state which is part of the United States of America.

(a) The obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the state responsible for repayment of the general obligation.

(2) Mutual associations may invest, without dollar limitation, in the general obligations of any Montana political subdivision.

(a) The obligations must be issued pursuant to the Constitution or statutes of the state of Montana or the charter or ordinances of the respective county or city within the state of Montana.

(b) The obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the Montana political subdivision responsible for repayment of the general obligation.

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

(3) Mutual associations may invest up to 40% of their capital, per issuer, in the general obligations of any out-of-state political subdivision.

(a) The obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the out-of-state political subdivision responsible for repayment of the general obligation.

(b) The default requirements of (2)(c) must be met, and the obligations must have been rated in one of the four highest grades 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 mutual association's investment policy.

(c) Mutual associations that have branches in other states, as that term is defined in [New Rule XVI], may also invest without limitation in general obligations of the political subdivisions of the states in which the offices are located.

(4) Mutual associations may invest, without limitation, in revenue bonds issued by the state of Montana or its political subdivisions.

(a) Mutual associations that have branches in other states may also invest without limitation in revenue bonds issued by those states or their political subdivisions.

(5) Mutual associations may invest up to 40% of their capital 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 default requirements of (2)(c) must be met, and the obligations must have been rated in one of the four highest grades 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 mutual association's investment policy.

(6) Mutual associations may invest up to 20% of their capital per issuer, in industrial development revenue obligations issued by a political subdivision of the state of Montana, when repayment is dependent upon a nongovernmental obligor and when such issues are in general accord with the commercial lending policy of the bank.

AUTH: 32-2-911, MCA

IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLI CORPORATE BONDS (1) Mutual associations may invest up to 20% of their capital, per issuer, in corporate bonds.

(2) These bonds must be investment grade, i.e., rated in one of the four highest grades 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 mutual association's investment policy. Corporate bonds should be reviewed as necessary to assure the mutual association's board of directors that bond quality has not fallen below investment grade.

AUTH: 32-2-911, MCA

IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLII MUTUAL FUNDS (1) Under the authority of 32-2-908(1)(b), MCA, and subject to its restrictions, mutual associations may invest in mutual funds whose shares represent only those United States obligations listed in [New Rule XXXVIII].

(2) Members must have a proportionate undivided interest in any mutual fund utilized under this rule.

(3) Members must be shielded from personal liability for acts or obligations of the mutual fund.

(4) The mutual association's investment policy, as formally approved by its board of directors, must specifically provide for such investments. Prior approval of the board of directors must be obtained for initial investments in specific mutual funds and recorded in the official board minutes. Procedures, standards, and controls for managing such investments must be implemented prior to the investment being made.

AUTH: 32-2-911, MCA

IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLIII OTHER APPROVED INVESTMENTS (1) Certain other instruments which may have investment characteristics are approved for state-chartered mutual associations. They are the following:

(a) mutual associations may invest, on a per issuer basis, in certificates of deposit (CDs) or deposit notes from insured financial institutions up to the greater of 20% of their capital or the maximum amount of federal deposit insurance available for deposits. This limitation applies to the deposit and any accrued interest;

(b) mutual associations may invest up to 20% of their capital, per issuer, in commercial paper provided the commercial paper is rated A1 or P1, at the time of purchase, by a recognized national investment rating organization. Equivalent ratings from other established and generally recognized national rating organizations may be substituted;

(c) mutual associations may invest up to 20% of their capital, per issue, in privately issued CMOs and REMICs;

(d) privately issued CMOs and REMICs will not represent more than 40% of a mutual association's investment portfolio, or more than 400% of a mutual association's capital, whichever is the lesser; and

(e) mutual associations may invest up to 20% of their capital, per issuer, in trust preferred securities. These bonds must be investment grade, i.e., rated in one of the four highest grades 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 mutual association's investment policy.

AUTH: 32-2-911, MCA

IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is similar to the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLIV DEBT SECURITIES FOR DEBTS PREVIOUSLY CONTRACTED (1) Debt securities received by a mutual association in good faith, in satisfaction of debts previously contracted, are not subject to the limitations of the applicable provisions of [New Rules XXXVIII through XLIII], if the book value of such obligations in excess of the limitations of the rule is reduced to the amount allowed within six months after the date the obligations are acquired.

AUTH: 32-2-911, MCA

IMP: 32-2-908, 32-2-911, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is the same as the rule for banks. The department strives to be consistent with bank rules where possible, and the department has determined the approved investment rules for banks are also appropriate for mutual associations.

NEW RULE XLV DEFINITIONS For purposes of [New Rules XLVI through L], the following definitions apply:

(1) "Commitment to lend or extend credit" includes, but is not limited to:

(a) undisbursed portions of operating, construction, or other lines of credit, up to limits established by a written agreement between the lender and the borrower;

(b) undisbursed portions of credit lines established to cover overdrafts;

(c) undisbursed portions of credit card plans; and

(d) standby letters of credit.

(2) "Loan" or "extension of credit" includes, but is not limited to:

(a) direct loans, whether on the mutual association's books or charged off the mutual association's books, subject to the exclusions in [New Rule L];

(b) loans, extensions of credit, or participation in loans or extensions of credit sold with recourse to or guaranteed by the mutual association;

(c) letters of credit, other than standby letters of credit;

(d) overdrafts, excluding intra-day overdrafts for which the mutual association receives payment prior to its close of business; and

(e) any credit exposure of a mutual association to a counterparty arising from a derivative transaction or a securities financing transaction as defined in ARM 2.59.125.

(3) "Person" means an individual, a corporation, a government, governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, a limited liability company, two or more persons having a joint or common interest, or any other legal or commercial entity.

AUTH: 32-2-925, MCA

IMP: 32-2-925, 32-2-911, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The proposed legal lending limit rules, New Rules XLVI through L, are the same as for banks. The bank rules have proven effective and are well-understood in the financial services industry in Montana. The department strives to be consistent with bank rules where possible.

NEW RULE XLVI LEGAL LENDING LIMIT (1) If no direct benefit is received or no common enterprise exists, the combined loans or extensions of credit to a commonly owned or controlled group of borrowers shall not exceed three times the mutual association's lending limit.

AUTH: 32-2-925, MCA

IMP: 32-2-925, MCA

NEW RULE XLVII COMBINATIONS OR GUARANTEES (1) Loans or extensions of credit to a person will be combined with loans or extensions of credit to one or more other persons when:

(a) proceeds of a loan or extension of credit are to be used for the direct benefit of the other person; or

(b) a common enterprise is deemed to exist between the persons, to the extent that loan proceeds are used for the benefit of the common enterprise and repayment is dependent upon the common enterprise.

(2) A loan or extension of credit guaranteed by a person shall be aggregated with the person's other loans and extensions of credit only to the extent that the person receives direct benefit from the loan.

AUTH: 32-2-925, MCA

IMP: 32-2-925, MCA

NEW RULE XLVIII DIRECT BENEFIT (1) A direct benefit exists when the proceeds of a loan or extension of credit to a person are deemed to be used to the advantage of another person. The amount of the loan will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to the other person. If the proceeds are used to acquire property, goods, or services through a bona fide arm's length transaction, a direct benefit does not exist regarding the seller of the property, goods, or services. A bona fide arm's length transaction is an actual transaction, performed in good faith, between two or more parties, with each party acting in their own self-interest.

AUTH: 32-2-925, MCA

IMP: 32-2-925, MCA

NEW RULE XLIX COMMON ENTERPRISE (1) A common enterprise occurs when two or more persons combine to acquire, operate, or control a business enterprise or property interest.

(2) Credit to a common enterprise includes:

(a) loans or extensions of credit to two or more persons when the loans or extensions of credit are used for a common purpose; the expected source of repayment for each loan or extension of credit is the same for two or more of the persons, and those persons lack another source of income from which the loans or extensions of credit, together with the person's other liabilities, may be fully repaid; and

(b) loans or extensions of credit made to persons who are related directly or indirectly through common control, including where one person is directly or indirectly controlled by another person; and if substantial financial interdependence exists between or among the persons. Substantial financial interdependence is deemed to exist when 50% or more of one person's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other person.

AUTH: 32-2-925, MCA

IMP: 32-2-925, MCA

NEW RULE L EXCLUSIONS (1) The following items will be excluded when calculating the amount of a person's total loans and extensions of credit:

(a) loans or extensions of credit, and participation in loans and extensions of credit, that have been sold, if:

(i) the loan, extension of credit, or the portion of the loan or extension of credit sold as a participation is sold without recourse to the selling mutual association; or

(ii) the participation agreement provides for a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event;

(b) loans, or extensions of credit, including portions thereof, that have been charged off the books of the mutual association in whole or in part, provided that the amounts charged off are:

(i) unenforceable by reason of discharge in bankruptcy;

(ii) no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or no longer legally enforceable for other reasons, provided that the mutual association maintains sufficient records to demonstrate that the loan is unenforceable;

(iii) credit exposures arising from securities financing transactions in which the securities financed are Type I securities, as defined in 12 CFR 1.2(j);

(iv) intraday credit exposures arising from a derivative transaction; or

(v) all other loans or portions of loans specifically exempted by provisions of 32-1-432, MCA, or other applicable laws.

AUTH: 32-2-925, MCA

IMP: 32-2-925, MCA

NEW RULE LI CREDIT EXPOSURE ARISING FROM DERIVATIVES AND SECURITIES FINANCING TRANSACTIONS (1) For purposes of determining a mutual association's lending limit under 32-2-925, MCA, the mutual association's credit exposure arising from a derivatives transaction or a securities financing transaction entered by a mutual association must be calculated in accordance with the methods and models contained in Appendix B to [New Rule LI] dated July 14, 2021, which is adopted and incorporated by reference, and available on the department's website at banking.mt.gov.

AUTH: 32-2-911, 32-2-925, MCA

IMP: 32-2-911, 32-2-925, MCA

STATEMENT OF REASONABLE NECESSITY: The department deems it necessary and consistent with safety and soundness principles to establish permissible models or methods for measuring credit exposure arising from derivative transactions and securities financing transactions and require that the same model be used for all derivative transactions except as provided in (2)(D) of Appendix B. The department deems consistency in measuring credit exposure key to a mutual association's awareness of its aggregate exposure and to its effective management of the credit exposures. The models and methods give mutual associations the means of measuring credit exposure for purposes of lending limit determinations and benchmarks for comparing actual outcomes against model-based projected outcomes pertaining to derivative transactions and securities financing transactions.

Requiring use of the specific models and methods specified in Appendix B is necessary to enable the department to more easily review a mutual association's determination of its derivative transaction and securities financing transaction credit exposures and verify whether the mutual association is in compliance with lending limits. The department believes that required use of the Appendix B models and methods will provide a good foundation for responsible use of derivative and securities financing transactions.

 4. The department proposes to repeal the following rules:

2.59.201 SAVINGS AND LOAN ASSOCIATIONS – REAL ESTATE

AUTH: 32-2-401, 32-2-403, MCA

IMP: 32-2-407, MCA

2.59.202 EXAMINATION AND SUPERVISORY FEE (ANNUAL)

AUTH: 32-2-110, MCA

IMP: 32-2-110, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2021 Montana Legislature enacted Chapter 431, Laws of 2021 (Senate Bill 308), repealing the Building and Loan Act, Title 32, chapter 2, parts 1 through 5, MCA. Senate Bill 308 eliminated the authority for the provisions governing the operation of a building and loan associations. The bill passed and the statutes supporting these rules were repealed on May 7, 2021. Therefore, these rules are no longer applicable and should be repealed.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kelly O'Sullivan, Legal Counsel, Department of Administration, 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. Comments must be received no later than 5:00 p.m., January 20, 2022.

6. Kelly O'Sullivan, Legal Counsel for the Department of Administration, Division of Banking and Financial Institutions, has been designated to preside over and conduct this hearing.

7. An electronic copy of this proposal notice is available through the department's website at https://doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website 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 Heather Hardman, 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on May 26, 2021.

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

By: /s/ Misty Ann Giles By: /s/ Don Harris

Misty Ann Giles, Director Don Harris, Rule Reviewer

Department of Administration Department of Administration

Certified to the Secretary of State December 14, 2021.