

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of)	NOTICE OF PROPOSED
NEW RULE I pertaining to model bylaws)	ADOPTION, AMENDMENT, AND
and statutory reference for credit unions,)	REPEAL
the amendment of ARM 2.59.401 and)	
2.59.402 pertaining to supervisory and)	NO PUBLIC HEARING
examination fees and limited income)	CONTEMPLATED
persons, and the repeal of 2.59.404)	
pertaining to corporate credit unions)	

TO: All Concerned Persons

1. On November 21, 2016, the Department of Administration proposes to adopt, amend, and repeal 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 November 7, 2016, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

NEW RULE I ADOPTION OF MODEL BYLAWS AND STATUTORY REFERENCE FOR CREDIT UNIONS (1) The division adopts by reference the model bylaws of credit unions dated August 2016 and the model credit union bylaws statutory reference dated August 2016, to be used by incorporators when they want to start a new credit union. Both can be found on the division's web site at <http://banking.mt.gov/Home/Forms#164912241-credit-unions>.

AUTH: 32-3-201, MCA
IMP: 32-3-302, MCA

STATEMENT OF REASONABLE NECESSITY: The division is adopting by reference model bylaws of credit unions and statutory references to reflect the changes made in the 2015 Montana legislative session and to align with the National Credit Union Administration (NCUA) bylaws.

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

2.59.401 CREDIT UNIONS - SUPERVISORY AND EXAMINATION FEES

~~(1) A credit union means any credit union other than a corporate credit union.~~

~~(2) A corporate credit union is a credit union formed primarily for the purpose of serving other credit unions.~~

(1) The division invoices credit unions for semiannual assessments. The assessment is based on each credit union's total assets provided in its previous March and September financial performance reports.

(2) The fee is calculated based on the total assets of the credit union multiplied by .0000375, plus the flat fee listed in the table below.

<u>Total Assets</u>	<u>Flat Fee (\$)</u>
<u>\$0 to \$50 million</u>	<u>\$0</u>
<u>Over \$50 to \$100 million</u>	<u>\$3,000</u>
<u>Over \$100 to \$250 million</u>	<u>\$5,000</u>
<u>Over \$250 million to \$1 billion</u>	<u>\$7,500</u>
<u>Over \$1 billion</u>	<u>\$15,000</u>

Example: Credit Union A reports total assets of \$36,169,980 x .0000375 plus \$0 equals \$1,356.37.

~~(3) The following annual supervisory fees for both credit unions and corporate credit unions become due and payable on or before February 15 of the next succeeding year.~~

~~(a) Credit unions will be assessed based upon the December 31 total assets of each year.~~

~~(b) Corporate credit unions will be assessed based upon the average of the quarterly total assets as reported on the March 31, June 30, September 30, and December 31 National Credit Union Administration Form 5310 report.~~

<u>Total Assets</u>	<u>Fee</u>
\$2,500,000 or less	0.00030 x total assets
Over \$2,500,000, but not over \$10,000,000	\$750 plus 0.000225 x total assets in excess of \$2,500,000
Over \$10,000,000, but not over \$50,000,000	\$2,437.50 plus 0.0001425 x total assets in excess of \$10,000,000
Over \$50,000,000, but not over \$100,000,000	\$8,137.50 plus 0.00008250 x total assets in excess of \$50,000,000
Over \$100,000,000, but not over \$250,000,000	\$12,262.50 plus 0.00007850 x total assets in excess of \$100,000,000
Over 250,000,000	\$24,037.50 plus 0.00007500 x total assets in excess of \$250,000,000

~~(4) The fee for the regular examination will be calculated according to the following schedule:~~

<u>Total Assets</u>	<u>Fee</u>
\$2,500,000 or less	0.000225 x total assets
Over \$2,500,000, but not over \$5,000,000	\$562.50 plus 0.000215 x total assets in excess of \$2,500,000
Over \$5,000,000, but not over \$15,000,000	\$1,100.00 plus 0.0001875 x total assets in excess of \$5,000,000
Over \$15,000,000, but not over \$50,000,000	\$2,975.00 plus 0.000125 x total assets in excess of \$15,000,000
Over \$50,000,000, but not over \$100,000,000	\$7,350.00 plus 0.000105 x total assets in excess of \$50,000,000
Over 100,000,000, but not over \$250,000,000	\$12,600.00 plus 0.00009 x total assets in excess of \$100,000,000
Over 250,000,000	\$26,100.00 plus 0.000055 x total assets in excess of \$250,000,000

~~(5) A charge of \$25 per hour per examiner engaged in the examination will be made in addition to the above charges. The number of hours charged for examiners in training will be adjusted to exclude time devoted to training.~~

~~(6) Newly chartered credit unions will receive one examination at no cost during the first year of operation. A newly chartered credit union is defined as a credit union which began operation within the past 12 months.~~

~~(7) If a credit union is examined by the department more than once during a calendar year, subsequent examination(s) will be based on examiner(s) time spent at the credit union site and in department offices preparing the examination report. The fee will equal actual working hours, net of any training time, multiplied by the hourly rate of compensation for the personnel involved.~~

AUTH: 32-3-201, MCA
IMP: 32-3-201, MCA

STATEMENT OF REASONABLE NECESSITY: The department has always attempted to correlate the expenses of the department with the supervisory fees it charges state-chartered institutions. For several years now, the department has experienced the retirement of several senior staff and departure of junior staff, which has made budgeting and setting assessments difficult because the department could not plan on salaries and payouts being consistent over time.

The department has recently undertaken a review of both credit union and bank assessments in an effort to make them consistent with each other and set at the proper level to cover department expenses.

Currently, credit unions are assessed both a supervisory fee and an examination fee, while banks are only charged a supervisory fee. The reason for this inequity is unknown. Unfortunately, the current credit union examination fees impose a larger fee burden on smaller credit unions that, arguably, should pay less than larger credit unions based on the relatively less supervisory time spent on them.

The department has determined the budget it will need to supervise credit unions in the future and matched the supervisory assessment to that amount. The rule as proposed deletes the examination fee for credit unions and imposes only a supervisory fee to remove the higher fee for smaller credit unions and to make the credit union fees consistent with the bank fees.

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.

There are currently nine state-chartered credit unions in Montana. If we use the total assets of these credit unions as of December 31, 2015, the proposed rule will result in a reduction of revenues to the department of approximately \$183,000 annually. The amount that each credit union will pay is an individual calculation based on the total assets of the bank on the date of calculation. Overall, credit unions will pay less in assessments, but since the assessment is an individual calculation for each financial institution, assessments may vary.

2.59.402 CREDIT UNIONS - LIMITED INCOME PERSONS, DEFINITION

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

<u>Family Size</u>	<u>Annual Income</u>
1	\$ 41,670 <u>11,880</u>
2	45,730 <u>16,020</u>
3	49,790 <u>20,160</u>
4	23,850 <u>24,300</u>
5	27,910 <u>28,440</u>
6	31,970 <u>32,580</u>
7	36,030 <u>36,730</u>
8	40,090 <u>40,890</u>

For family/household units with more than eight members, add ~~\$4,060~~ 4,160 for each additional member.

(2) through (5) remain the same.

AUTH: 32-3-201, MCA

IMP: 32-3-307, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is being amended to reflect the 2016 Federal Poverty Level Guidelines upon which the annual income is based.

5. The department proposes to repeal the following rule:

2.59.404 CORPORATE CREDIT UNIONS found on ARM page 2-5983.

AUTH: 32-3-803, 32-3-804, MCA

IMP: 32-3-801, 32-3-802, 32-3-803, 32-3-804, MCA

STATEMENT OF REASONABLE NECESSITY: The purpose for the repeal of this rule is that there are no longer corporate credit unions in existence in the state of Montana.

6. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., November 14, 2016.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 6 above no later than 5:00 p.m., November 14, 2016.

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

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the

office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

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

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

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

Certified to the Secretary of State October 3, 2016.