

209 CMR 50.00 is hereby amended by striking out the text in its entirety and replacing it with the following:--

209 CMR 50.00: PARITY WITH FEDERAL CREDIT UNIONS

Section

50.01: Purpose and Scope

50.02: Definitions

50.03: Advisory Opinions

50.04: Credit Union Eligibility to Conduct Activities

50.05: Application Process to Conduct Certain Activities

50.06: Notice Process to Conduct Certain Activities

50.07: Activities Requiring No Application or Notice

50.01: Purpose and Scope

The purpose of 209 CMR 50.00 *et seq.* is to specify authorized powers and activities of credit unions, pursuant to M.G.L. c. 171, §6A, and to establish procedures and requirements, applicable to credit unions seeking to exercise powers granted to or conduct activities authorized for federal credit unions under federal law, to the extent that such powers are not otherwise prohibited. In determining whether or not to authorize any power or activity, the Commissioner shall also determine whether or not competition among credit unions will be unreasonably affected and whether public convenience and advantage will be promoted.

A credit union may, under M.G.L. c. 171, §6A and 209 CMR 50.00 *et seq.*, exercise only those powers and engage in only those activities expressly authorized by the Commissioner as set forth in 209 CMR 50.00 *et seq.* Powers and activities not so authorized are prohibited.

209 CMR 50.00 *et seq.* shall apply only to credit unions as defined by 209 CMR 50.02.

Any power authorized and exercised pursuant to 209 CMR 50.00 *et seq.* shall be independent from, and in addition to, any other powers granted to credit unions under applicable General Laws, or regulations promulgated thereunder. The

express powers granted to credit unions under the General Laws are not limited or otherwise restricted by 209 CMR 50.00 *et seq.*

Any lending power authorized and exercised pursuant to 209 CMR 50.00 *et seq.* shall be subject to the limitations on total obligations to one borrower found in M.G.L. c. 171, § 58, unless otherwise specified herein.

50.02: Definitions

As used in 209 CMR 50.00 *et seq.*, the following words shall, unless the context otherwise requires, have the following meanings:

Adequately Capitalized. A credit union shall be deemed adequately capitalized if the credit union meets the definition of an adequately capitalized institution as defined under the prompt corrective action provisions of the Federal Credit Union Act, 12 U.S.C. § 1790d, and the regulations promulgated by the NCUA.

Automobile. The word automobile shall include a motorcycle or a truck.

Credit union. A credit union chartered pursuant to M.G.L. c. 171 and subject to examination and supervision by the Commissioner under M.G.L. c. 167.

Commissioner. The commissioner of banks, including the Division of Banks.

CUSO. A credit union service organization authorized under 209 CMR 50.06.

Federal law. The Federal Credit Union Act, 12 U.S.C. § 1781 *et seq.*, and its implementing regulations; any other federal statute or regulation authorizing a federal credit union to engage in activities; and, any officially published interpretation or guideline issued thereunder, by the NCUA. An "officially published guideline" must be formally published and circulated by the NCUA or a commercial publisher and be generally available to the public. This phrase shall not include a private, unpublished staff attorney letter issued to a federal credit union.

NCUA. The National Credit Union Administration.

Real Estate Loan. The term real estate loan shall mean a loan secured by a mortgage on an owner-occupied one-to-four family property; on an owner-occupied unit of a condominium; or a loan secured by a mortgage on non-owner occupied, commercial or any other type of real estate that is authorized pursuant to M.G.L. c. 171 and 209 CMR 50.00. The term real estate loan shall also mean a loan secured by a mortgage on a manufactured home that is permanently affixed to the land, qualifies as real property by being titled as real property under the laws of the state where it is located, and qualifies for a home mortgage interest deduction under the Internal Revenue Code.

Troubled Condition. A credit union is deemed to be in troubled condition if notified of such by the Division or the NCUA pursuant to the Federal Credit Union Act and the regulations promulgated by the NCUA.

Well Capitalized. A credit union shall be deemed to be well capitalized if the credit union meets the definition of a well capitalized institution as defined under the prompt corrective action provisions of the Federal Credit Union Act, 12 U.S.C. § 1790d, and the regulations promulgated by the NCUA.

50.03: Advisory Opinions

The Commissioner may issue from time to time advisory rulings, pursuant to M.G.L. c. 30A, § 8, interpreting any provision of the regulations issued hereunder. Each regulation or officially published interpretation or guideline issued by the NCUA which interprets a provision of federal law, as defined by 209 CMR 50.02, similar in substance to a provision of 209 CMR 50.00 *et seq.*, shall, until rescinded by the NCUA, be deemed by the Commissioner to be an advisory ruling issued under M.G.L. c. 30A, § 8; provided, however, that the Commissioner, at any time, may reject such a regulation or officially published interpretation or guideline issued by the NCUA.

50.04: Credit Union Eligibility to Conduct Activities

(1) Financial, Managerial, and Community Requirements. In order to commence an activity pursuant to 209 CMR 50.00 *et seq.* a credit union at a minimum (a) must be well or adequately capitalized, (b) shall not be in troubled condition, and (c) must have received at least a satisfactory CRA rating at the most recent examination conducted by the Commissioner pursuant to M.G.L. c. 167, § 14. Additional requirements may apply depending on the specific activity and applicable federal regulation.

(2) Policy and Procedure Requirements. Any credit union engaging in an activity pursuant to 209 CMR 50.00 *et seq.* must have in place adequate policies and procedures governing the performance of such activity by the credit union and its employees, to minimize any credit, market, liquidity, operational, legal and reputational risks to the credit union. Any credit union engaging in an activity pursuant to 209 CMR 50.00 *et seq.* is deemed to have agreed to conduct the activity in a manner consistent with applicable guidelines.

(3) Review. Any activity undertaken by a credit union pursuant to 209 CMR 50.00 *et seq.* shall remain subject to periodic review by the Commissioner. The Commissioner may modify, curtail, rescind or otherwise limit a credit union's authority to conduct any activity pursuant to 209 CMR 50.00 *et seq.* through a formal or informal remedial action if a credit union ceases to meet any applicable requirements, based upon a report of examination conducted by the Commissioner or the NCUA, or based on other reliable information.

50.05: Application Process to Conduct Certain Activities

(1) General. A credit union that meets the requirements of 209 CMR 50.04(1) may engage in any activity listed under 209 CMR 50.05(3) by submitting an application to, and receiving written approval from the Commissioner before commencing the activity.

(2) Application. The application must include (a) a complete description of the credit union's proposed activity, (b) the credit union's investment in such activity, (c) a description of the business purpose, (d) a description of the anticipated financial and business impact, (e) the written policies required by 209 CMR 50.04(2), and (f) a confirmation that the activity will be conducted in accordance with Massachusetts and federal law. The application must also provide any other information the Commissioner may require.

(3) Activities subject to application and approval. A credit union may engage in the following activities pursuant to application and approval requirements of 209 CMR 50.05(1):

Subordinated Debt. A credit union may engage in subordinated debt activities as authorized pursuant to 12 CFR Part 702, Subpart D, including meeting the eligibility standards and complying with the procedural and substantive requirements contained therein.

50.06: Notice Process to Conduct Certain Activities

(1) General. A credit union that meets the requirements of 209 CMR 50.04(1) may engage in any activity listed under 209 CMR 50.06(3), by providing written notice to and receiving a written non-objection from the Commissioner before commencing the activity. The notice must be submitted at least 30 days before the credit union intends to commence the activity. At the time the notice is filed or at any time the notice is pending, a credit union may request that the Commissioner waive and the Commissioner may waive the remaining notice period.

(2) Notice. The written notice must include (a) a complete description of the activity conducted, (b) the credit union's investment in such activity, and (c) a confirmation that the activity will be conducted in accordance with Massachusetts and federal law. The Commissioner may require other information as deemed necessary.

(3) Activities Subject to Notice. A credit union may engage in the following activities pursuant to the notice and non-objection requirements of 209 CMR 50.06(1):

(a) Temporary Branch Offices. A credit union may establish and operate a temporary branch office, to be open at a designated site for less than a year or on an intermittent basis, subject to the investment limitations to purchase, hold and lease real estate suitable for the transaction of business, found at M.G.L. c. 171, § 75.

(b) Shared Branch Offices.

1. Authority. A credit union may establish and operate a branch office on a shared basis with one or more credit unions or federal credit unions. Relocation and closure of any branch office shall be in accordance with the provisions of M.G.L. c. 171, §§ 8 and 75.

2. Credit Union Service Organizations. Shared branch offices may be established through a CUSO or by written agreement among two or more credit unions. Such CUSO shall comply with 209 CMR 50.06.

3. Mandatory safeguards. Any such CUSO or agreement shall establish adequate safeguards relative to credit union liability for employee breaches of member confidentiality; loss against fraud or dishonesty; and any other risks associated with the operation of a shared branch office.

(c) Employee Benefits Funded by Impermissible Investments. A credit union may provide employee benefits, including retirement benefits, to its employees and officers, individually or collectively with other credit unions, that are funded by impermissible investments in conformance with the procedural and substantive requirements of 12 CFR § 701.19. A credit union investment to fund an employee benefit plan obligation is not subject to the investment limitations of M.G.L. c. 171.

(d) Derivatives Authority. A credit union may engage in derivatives activities in conformance with the procedural and substantive requirements of 12 CFR § 703, Subpart B and 12 CFR § 741.219(b).

(e) Pilot Investment Program. A credit union may participate in a pilot investment program in conformance with the procedural and substantive requirements of 12 CFR § 703.19(b)(1) through 12 CFR § 703.19(b)(9).

(f) Authority to Engage in an Activity that is Not Authorized as within a Credit Union's Incidental Powers. A credit union seeking to engage in activities as set forth in 12 CFR 721.4 that may be within the credit union's incidental powers but that would not be authorized pursuant to 209 CMR 50.07(2)(h) shall submit notice to the Division.

(g) Credit Union Service Organizations

1. General. A credit union may engage in activities relative to credit union service organizations (CUSOs) in conformance with the procedural and substantive requirements of 12 CFR Part 712 and 12 CFR § 741.222, provided however that a credit union may not engage in the activities described as prohibited activities in 209 CMR 50.06(3)(g)(2).

2. Prohibited Activities. A credit union may engage in any activity pursuant to 209 CMR 50.06(3)(g)1. unless it is prohibited by Massachusetts law.

50.07: Activities Requiring No Application or Notice

(1) General. A credit union that meets the requirements of 209 CMR 50.04(1) may engage in

the activities listed in 209 CMR 50.07(2) without filing an application or providing notice to the Commissioner, provided the activities continue to be deemed legally permissible by the Commissioner, and the activities are conducted in accordance with applicable Massachusetts or federal law.

(2) A credit union may engage in the following activities pursuant to 209 CMR 50.07(1):

(a) Additional Consumer Loan Participation Authority Not Included in M.G.L. c. 171. A credit union may, by written agreement, make or invest in consumer loan participations with any credit union service organization or any state or federal government agency and its subdivisions meeting the requirements of 209 CMR 50.07 subject to the terms and conditions applicable to federal credit unions found in 12 CFR § 701.22. For the purposes of 209 CMR 50.07(2)(a), a consumer loan is defined as a loan or line of credit, whether secured by collateral or security of any nature or unsecured, for consumer or other purposes other than a real estate loan.

(b) Deposits in Federally Insured Banks and Credit Unions.

1. Types of Deposits.

a. A credit union may invest in the deposits, including certificates of deposit, of federally insured banks located within or without the Commonwealth, provided such institutions are well capitalized under applicable federal share or deposit insurance laws and regulations.

b. A credit union may invest in the shares and deposits, including certificates of deposit, of federally insured credit unions located within or without the Commonwealth, provided such institutions are well capitalized under applicable federal share or deposit insurance laws and regulations.

c. Certificates of deposit authorized by 209 CMR 50.07(2)(b)1.a. and b. may exceed two years in maturity provided such investment is consistent with a credit union's formal asset liability management strategy.

2. Cash on Hand Requirements. Deposits or certificates of deposit authorized by 209 CMR 50.07(2)(c)1.a. and b. shall not qualify towards the cash on hand requirements of M.G.L. c. 171, § 71, unless the deposit or certificate of deposit meets the maturity and eligible depository requirements of M.G.L. c. 171, § 71.

(c) Interest Bearing Corporate Checking Accounts. To the extent permitted by federal law, a credit union may pay dividends on organization member share draft accounts and may permit such organization members to make withdrawals from such accounts by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties; provided, however, that the entire beneficial interest in such account shall be held by an organization member.

(d) Treasury Tax and Loan Depositories. A credit union may establish Treasury Tax and Loan

Remittance Accounts subject to the requirements and limitations of 12 U.S.C. § 1767(a) and 12 CFR § 701.37, its implementing regulations. Such authority shall not extend to acting as a fiscal agent or depository for the Commonwealth or its political subdivisions unless expressly authorized by Massachusetts law.

(e) Leasing.

1. Authority. A credit union may engage in automobile and personal property lease financing transactions with its members on a net, full payout basis. Such automobile and personal leasing activities may be conducted on either a direct or indirect basis and on either an open or closed end basis.

2. Conditions and Limitations. All credit union leasing activities shall strictly conform to the conditions and limitations set forth in 12 CFR Part 714, Leasing. Those requirements include, but are not limited to, provisions governing maximum residual value; salvage values over leased property; and, contingent liability insurance policy endorsements for leasing. Credit union leasing activities shall remain subject to applicable usury limits under Massachusetts law.

(f) Community Development Investments.

1. Investments in Community Development Credit Unions. A credit union may, individually or with other credit unions or federal credit unions, make deposits in, invest in, or lend to, a state or federally chartered credit union designated as a community development or low-income credit union located in the Commonwealth. A credit union's total deposits, investments and loans to all community development credit unions shall not exceed, in the aggregate, 5% of its total paid in and unimpaired capital and surplus, as of its last calendar year-end financial report.

2. Community Development Loan Pools. A credit union may, with other state or federally-chartered credit unions or banks, invest in, or lend to, a residential mortgage loan pool designed to promote affordable housing for low to moderate income persons residing in the Commonwealth for the purpose of meeting its obligations under the Massachusetts Community Reinvestment Act, M.G.L. c. 167, § 14. Such investments and loans shall not exceed, in the aggregate, 5% of the credit union's total paid in and unimpaired capital and surplus, as of its last calendar year-end financial report. Credit unions shall comply with the member business lending provisions found in NCUA Rules and Regulations Part 723 when lending to mortgage loan pools.

(g) Non-Member Deposits.

1. Low Income Designated Credit Unions. A credit union designated in writing as “low income” by the Division of Banks pursuant to G.L. c. 171, § 3 or by the Division of Banks and NCUA pursuant to 12 CFR § 741.204(b) may accept deposits for any purpose from any source up to the limitation set forth at 12 CFR 701.32(b)(1). Said deposits shall not exceed federal or excess share insurance limits. Any acceptance of deposits made under 209 CMR 50.07(2)(g)1. shall be made in accordance with a detailed written policy approved and reviewed annually by the credit union's directors. The authority at 209 CMR 50.07(2)(g)1. shall not apply to public units.

2. Non-low Income Designated Credit Unions. A credit union that is not designated as low income may accept deposits for any purpose from any credit union insured by the NCUA up to the limitation set forth at 12 CFR 701.32(b)(1). Said deposits shall not exceed federal or excess share insurance limits. Any acceptance of deposits made under 209 CMR 50.07(2)(g)2. shall be made in accordance with a detailed written policy approved and reviewed annually by the credit union's directors. The authority at 209 CMR 50.07(2)(g)2. shall not apply to public units.

(h) Incidental Powers

1. General. A credit union may engage in activities relative to incidental powers as authorized pursuant to 12 CFR § 721.3. All activities under 209 CMR 50.07(2)(h) shall conform to the procedural and substantive requirements of 12 CFR Part 721.

2. Prohibited Activities. Notwithstanding 12 CFR § 721.3, a credit union may not engage in foreign exchange activities for speculative purposes for its own account under “Member Monetary Instrument Services” under 12 CFR 721.3(j)2

(i) Services for Nonmembers with the Field of Membership. A credit union may engage in services for nonmembers within the credit union’s field of membership as set forth in 12 CFR § 701.30.

(j) Permissible Investment Activities.

1. Permissible Investment Activities. A credit union may engage in permissible investment activities as authorized pursuant to 12 CFR 703.13. All activities under 209 CMR 50.07(2)(j) shall conform to the procedural and substantive requirements of 12 CFR 703.13.
2. Prohibited Activities. Notwithstanding 12 CFR § 703.13, a credit union may not engage in the following investment activities, unless such activity is otherwise expressly authorized under M.G.L. c. 171:
 - a. Trading Securities pursuant to 12 CFR 703.13(f); and
 - b. Prohibited investment activities pursuant to 12 CFR 703.15.

(k) Permissible Investments.

1. Permissible Investments. A credit union may engage in permissible investments pursuant to 12 CFR 703.14. All activities under 209 CMR 50.07(2)(k) shall conform to the procedural and substantive requirements of 12 CFR 703.14.
2. Prohibited Activities. Notwithstanding 12 CFR § 703.14, a credit union may not engage in the following investments, unless such activity is otherwise expressly authorized under M.G.L. c. 171:
 - a. European Financial Options Contract pursuant to 12 CFR 703.14(g);

- b. Mortgage Servicing Assets pursuant to 12 CFR 703.14(m); and
- c. Prohibited investments pursuant to 12 CFR 703.16.

REGULATORY AUTHORITY

209 CMR 50.00: M.G.L. c. 171, § 6A.