

Appendix B

Proposed Amendments – 8/22/19

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

50.08: Credit Union Service Organizations

50.09: Incidental Powers

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 50.08.

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.

Organization member. Any fraternal organization, voluntary association, partnership, limited partnership, corporation, limited liability company pursuant to relevant state law, or limited liability partnership pursuant to relevant state law, composed principally of individual members or stockholders who are themselves eligible to membership in a credit union. Said definition shall be effective as used in M.G.L. c. 171 and 209 CMR 50.00 *et seq.*

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.

Strong or Satisfactory Management. A credit union shall be deemed to have strong or satisfactory management if the credit union's management rating meets the definitions set forth in the Federal Financial Institutions Examination Council's Uniform Financial Institution Rating System (UFIRS).

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 and Managerial Requirements. Any credit union engaging in an activity pursuant to 209 CMR 50.00 *et seq.* must be well or adequately capitalized, and shall not be in troubled condition.

(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.

(3) Satisfactory CRA Rating Requirement. Any credit union applying to engage in an activity pursuant to 209 CMR 50.00 *et seq.* 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.

(4) 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 is well or adequately capitalized, and has not been notified that it is in troubled condition, may engage in any activity listed under 209 CMR 50.05(3) by submitting an application to, and receiving approval from the Commissioner before commencing the activity.

(2) Application. The application must include a complete description of the credit union's proposed activity, the credit union's investment in such activity, a description of the business purpose as well as the anticipated financial and business impact, the written policies required by 209 CMR 50.04(2), as well as a representation and undertaking 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 209 CMR 50.05(1):

(a) Temporary Branch Offices. A credit union may establish and operate a temporary branch office, to be open for less than a year, or on an intermittent basis at a designated site, 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 subject to the approval of the commissioner under M.G.L. c. 171, § 8.~~

~~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 50.08.~~

~~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.~~

~~4. Maximum investment. Shared branch offices shall be 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 and 209 CMR 50.06(3)(e) and 209 CMR 50.07(2)(i). In the event of a conflict between the investment limitations of M.G.L. c. 171, § 75 and the~~

~~maximum investment limitations of 209 CMR 50.08(2)(a)1.a. and b. governing CUSOs, the former provision shall control.~~

~~(c) 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.~~

(db) 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. The kind and amount of these benefits must be reasonable given the credit union's size, financial condition, and the duties of the employees. A credit union investment to fund an employee benefit plan obligation is not subject to the investment limitations of M.G.L. c. 171 and may purchase an investment that would otherwise be impermissible if the investment is directly related to the credit union's obligation or potential obligation under the employee benefit plan and the credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan. All activities under 209 CMR 50.05(3)(dc) shall conform to the procedural and substantive requirements of 12 CFR § 701.19.

(ec) Derivatives Authority.

A credit union may engage in derivatives activities as authorized pursuant to 12 CFR § 703, Subpart B. The credit union shall meet the eligibility standards pursuant to 12 CFR § 703.108(a), and all activities under 209 CMR 50.05(3)(ed) shall conform to the procedural and substantive requirements of 12 CFR § 703, Subpart B and 12 CFR § 741.219(b).

(fd) Pilot Investment Program. A credit union that is well capitalized and has not been notified that it is in troubled condition may apply to and receive written approval from the Commissioner to participate in a pilot investment program. The application must address the items outlined in 12 CFR § 703.19(b)(1) through 12 CFR § 703.19(b)(9). In approving a credit union's application for participation in a pilot program, the Commissioner may impose

such terms and conditions as he or she deems necessary.

(ge) Secondary Capital. A credit union designated in writing as “low income” by the Division of Banks and NCUA pursuant to 12 CFR § 741.204(b) may accept secondary capital accounts in accordance with 12 CFR § 701.34(b). Before accepting secondary capital, the low-income credit union must adopt a written Secondary Capital Plan that addresses the criteria stated in 12 CFR § 701.34 (b)(1) and submit the plan for approval to the Commissioner and NCUA. The credit union shall conform to all other procedural and substantive requirements of 12 CFR § 701.34(b), 12 CFR § 701.34(c), and 12 CFR § 701.34(d).

(hf) Private Label Investments. A credit union may invest in private label mortgage-related securities, as authorized pursuant to 12 CFR § 703.14(a). All activities under 209 CMR 50.05(3)(hg) shall conform to the procedural and substantive requirements of 12 CFR § 703, Subpart A, and such investments shall be made in accordance with a detailed written policy approved and reviewed annually by the credit union’s directors.

~~(i) Additional Powers.~~

~~1. General. The authorities provided in 209 CMR 50.05(3)(i) are only for those activities listed. A credit union may engage in other activities if they are permitted and determined by the NCUA to be incidental powers pursuant 12 CFR § 721 pursuant to regulations, guidelines or written opinions of the General Counsel of the NCUA only if the Commissioner affirmatively determines by regulation or in writing that the activity is reasonably related to an individual power set out in 209 CMR 50.05(3)(i).~~

~~2. Permissible Activities.~~

~~(a) Certain Correspondent Services.~~

~~1. Internal audits. A credit union may perform internal audits for other credit unions.~~

~~2. Other services. A credit union may provide the following correspondent services to other credit unions: loan processing, loan servicing, member check cashing services, disbursing share withdrawals and loan proceeds, cashing and selling money orders, and automated teller machine deposit services.~~

~~(b) Trustee or Custodial Services through Outside Vendors. A credit union may offer trustee or custodial services as defined at 12 CFR § 721.3 either directly or through outside vendors.~~

50.06: Notice Process to Conduct Certain Activities

(1) General. A credit union that is well or adequately capitalized and has not been notified that it is in troubled condition may engage in any activity listed under 209 CMR 50.06(3), by providing the Commissioner written notice 30 days prior to commencing the new activity. The Commissioner may modify, curtail, rescind, or otherwise limit any activity listed under 209 CMR 50.06(3) for safety and soundness reasons pursuant to 209 CMR 50.04(4). Notification of limitations will be provided within the 30 day notice period. 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 complete description of the activity conducted, the credit union's investment in such activity, and a representation and undertaking that the activity will be conducted in accordance with Massachusetts and federal law. Any credit union filing notice pursuant to 209 CMR 50.06(1) is deemed to have agreed to conduct the activity in a manner consistent with applicable guidelines. 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 209 CMR 50.06(1):

~~(a) Non-Member Monetary Instrument Services. As set forth in 12 CFR § 721 and NCUA Opinion Letter 02-0250, in order to provide monetary instrument services for non-members, a credit union may engage in the following: may establish a simplified membership program, with a non-dividend bearing membership account; with appropriate limitations may provide wire transfer services as a promotional activity pursuant to 209 CMR 50.07(2)(h)(2)g. and 209 CMR 50.06(3)(a); and in appropriate circumstances may provide wire transfer services as a charitable activity. A credit union may also offer check cashing and money transfer services to certain non-members within the credit union's field of membership including the following: the sale of negotiable checks, travelers checks, money orders and other similar money transfer instruments; the cashing of checks and money orders; and the receiving of international and domestic electronic fund transfers.~~

~~(b) Certain Finders Activities. A credit union may make insurance, mutual funds and annuities available to its members through outside vendors subject to the requirements of 12 CFR § 721 and Massachusetts law. A credit union may also provide additional finder activities.~~

~~(c) Operational Programs. A credit union may provide payroll services.~~

~~(d) Non-Member Deposits.~~

~~1. Low Income Designated Credit Unions. A credit union designated in writing as "low income" 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 aggregate of 20% of its existing deposits or \$3 million, whichever is greater. Said deposits shall not exceed federal or excess share insurance limits. Any acceptance of deposits made under 209 CMR 50.06(3)(d) shall be made in accordance with a detailed written policy approved and reviewed annually by the credit union's directors.~~

~~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 20% of its existing deposits or \$3 million, whichever is greater. Said deposits shall not exceed federal or excess share insurance limits. Any acceptance of deposits made under 209 CMR 50.06(3)(d) shall be made in accordance with a detailed written policy approved and reviewed annually by the credit union's directors.~~

~~(ea) Investments in Land, Building, Improvements, and Equipment. A credit union may invest in land, building, improvements and equipment. Notice is required if a credit union invests more than \$1,000,000 per one parcel of real estate or purchase of equipment per transaction.~~

~~(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 subject to providing notice to the commissioner under M.G.L. c. 171, § 8. Relocation and closure of any branch office shall be in accordance with the provisions of M.G.L. c. 171, § 8.~~

~~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 50.08.~~

~~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.~~

~~4. Maximum investment. Shared branch offices shall be 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 and 209 CMR 50.06(3)(a) and 209 CMR 50.07(2)(h). In the event of a conflict between the investment limitations of M.G.L. c. 171, § 75 and the maximum investment limitations of 209 CMR 50.08(2)(a)l.a. and b. governing CUSOs, the former provision shall control.~~

~~(f) Charitable Donation Accounts. A credit union may establish charitable donation accounts. All charitable donation accounts shall conform to the procedural and substantive requirements of 12 CFR § 721.3(b)(2).~~

50.07: Activities Requiring No Application or Notice

(1) **General.** A credit union that is well or adequately capitalized and has not been notified that it is in troubled condition 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) Real Estate Loan Participations. A credit union may, by written agreement, make or invest in real estate loan participations with any federally-chartered or federally-insured credit union, any federally-chartered or federally-insured bank, any state or federal government agency and any subdivision thereof, or any credit union service organization meeting the requirements of 209 CMR 50.078 subject to the terms and conditions applicable to federal credit unions found in 12 CFR §701.22.

(c) 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.