

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Depository Institutions
(Amended After Comments)

808 KAR 3:050. Conduct of credit unions.

RELATES TO: KRS 286.6-095, 286.6-100, 286.6-225, 286.6-585, 286.6-715, 12 C.F.R. Part 701, 702, 704, 705, 723, 20 U.S.C. 1071

STATUTORY AUTHORITY: KRS 286.1-020, 286.6-070, 286.6-095, 286.6-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.6-070 authorizes the Department of Financial Institutions to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This administrative regulation establishes requirements to ensure the proper conduct of credit unions. KRS 286.6-095 states that, notwithstanding any other provision of law, the commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it reasonably necessary for the well-being of such credit unions. This administrative regulation enables the Department of Financial Institutions to recognize the National Credit Union Administration's low-income designation of state-chartered credit unions and affirms the ability of these credit unions to avail themselves of the low-income designation benefit of accepting non-member deposits.

Section 1. Definition. A "corporate credit union" means a credit union that:

- (1) Is operated primarily for the purpose of serving other credit unions;
- (2) Is designated by the National Credit Union Administration as a corporate credit union; and
- (3) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Section 2. Refund of Interest. When an interest refund is authorized by the board of directors under KRS 286.6-225(3), it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

Section 3. Fidelity Bond.

- (1) The minimum blanket fidelity bond required by KRS 286.6-225(2) shall be as follows:

Assets	Minimum Bond
\$0 to \$10,000	Amount equal to the credit union's assets
\$10,001 to \$1,000,000	\$10,000 for each \$100,000 or fraction thereof
\$1,000,001 to \$50,000,000	\$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000
\$50,000,001 to \$295,000,000	\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000
Over \$295,000,000	\$5,000,000

- (2) The board of directors of every credit union shall review their blanket fidelity bond coverage at least once each year to ascertain its adequacy.

Section 4. Stocks and Bonds. A credit union may invest a maximum of five (5) percent of members' shares in:

- (1) Stock of a corporation rated A+ by Standard and Poor's at the date of acquisition of the stock; and
- (2) A corporate bond rated AAA or higher by Standard and Poor's, or rated AAA by Moody's at the date of acquisition of the bond.

Section 5. State-chartered credit unions may invest their funds in any investment that is permissible for a federally chartered credit union under 12 C.F.R. Part 703.

Section 6. Risk Asset. For the purpose of establishing the regular reserve, an asset shall be a risk asset except for the following:

- (1) Cash on hand;
- (2) A share or deposit in a federally or state-insured bank, savings and loan association, or credit union that has a remaining maturity of five (5) years or less;
- (3) An asset, including a collateralized mortgage obligation that is comprised of government guaranteed mortgage loans, that has a remaining maturity of five (5) years or less and is insured by, is fully guaranteed as to principal and interest by, or is due from the U.S. Government, its agencies, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association;
- (4) A loan to another credit union that has a remaining maturity of five (5) years or less;
- (5) A student loan that has a remaining maturity of five (5) years or less and that is insured under the provisions of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs;
- (6) A loan that has a remaining maturity of five (5) years or less and that is fully insured or guaranteed by the federal or a state government or any agency of either;
- (7) A share or deposit in a corporate credit union that has a remaining maturity of five (5) years or less, other than a Membership Capital Share Deposit account as defined in 12 C.F.R. Part 704;
- (8) A common trust investment, including a mutual fund, which deals exclusively in investments authorized by the Federal Credit Union Act, 12 U.S.C. 1751 et seq., that are either carried at the lower cost or market, or are marked to market value monthly;
- (9) A prepaid expense;
- (10) Accrued interest on a non-risk investment;
- (11) A loan fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;
- (12) A loan purchased from a liquidating credit union and guaranteed by the National Credit Union Administration;
- (13) A National Credit Union Share Insurance Fund Guaranty Account established with the authorization of the National Credit Union Administration under the authority of Section 203(a)(1) of the Federal Credit Union Act;
- (14) An investment in shares of the National Credit Union Administration Central Liquidity Facility;
- (15) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section with a maturity greater than five (5) years, is not a risk asset if the asset is being carried on the credit union's records at the lower of cost or market, or is being marked to market value monthly;
- (16) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section, with a remaining maturity of greater than five (5) years, is not a risk asset, whether or not the asset is being carried on the credit union's records at the lower of cost or market or is being marked to market value monthly, provided the asset meets the criteria established in paragraphs (a) through (c) of this subsection.
 - (a) The interest rate shall be reset at least annually.
 - (b) The interest rate of the instrument shall be less than the maximum allowable interest rate for the instrument on the date of the required reserve transfer.

- (c) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index;
- (17) A fixed asset that includes an office, branch office, suboffice, service center, parking lot, or real estate in which the credit union transacts or will transact business; and office furnishing, office machine, computer hardware and software, automated terminal, and heating and cooling equipment; and
- (18) A deposit in the National Credit Union Share Insurance Fund representing a federally insured credit union's capitalization account balance of one (1) percent of insured shares.

Section 7. Charitable Contribution. Only the board of directors shall have the power to authorize a contribution to a civic, charitable, or service organization.

Section 8. Conversion. A state-chartered credit union may convert to another charter.

- (1) The board of directors shall first put the question of conversion to a vote of the members. Written notice of the proposed conversion shall be given to all members, which shall include a statement including the reasons for the proposed conversion. The notice shall be mailed to the last known address or hand delivered to the members. The notice shall state the date and place for the meeting called to vote on the proposed conversion, which shall be at least fifteen (15) days after the date of the notice.
- (2) Approval of the proposed conversion shall be by a vote of the majority of the members who vote on the proposed conversion, in person or by absentee ballot if the bylaws of the credit union allow voting by absentee ballot.
- (3) A statement of the results of the vote, verified by the president and secretary, shall be filed with the commissioner.
- (4) The commissioner shall issue an order to the effect that, on the effective date of the conversion, the credit union is no longer incorporated under the laws of Kentucky. A copy of the order shall be forwarded to the Secretary of State.

Section 9. Low-Income Designation.

- (1) A credit union chartered by the Commonwealth of Kentucky that is made up of a simple majority of low-income members, as defined in 12 C.F.R. Part 701.34(a)(2), may obtain low-income designation from the National Credit Union Administration and concurrence in that designation from the Kentucky Department of Financial Institutions. In order to obtain that designation, a credit union shall receive approval from the National Credit Union Administration, either via notification or through the request process prescribed in 12 C.F.R. Part 701.34(3). Following this approval by the National Credit Union Administration, a credit union shall submit a written request for concurrence of its low-income designation to the Kentucky Department of Financial Institutions along with documentation of its low-income designation approval from the National Credit Union Administration. The Kentucky Department of Financial Institutions shall issue a concurrence within thirty (30) days of a credit union's completed submission, if the credit union has demonstrated it has received approval as a low-income designated credit union from the National Credit Union Administration.
- (2) A credit union that has obtained a low-income designation from the National Credit Union Administration and subsequent concurrence from the Department of Financial Institutions may accept non-member deposits ~~from any source except for "public funds" as defined by KRS 446.010(41).~~
- (3) A low-income designated credit union that accepts non-member deposits shall be subject to the non-member share limitations stated in 12 C.F.R. Part 701.32(b).
- (4) A low-income designated credit union that accepts non-member deposits shall maintain eligibility for its low-income designation through continued fulfillment of the requirements stated in 12 C.F.R. Part 701.34.

(5) A low-income designated credit union that does not maintain eligibility for its low-income designation shall not be permitted to accept non-member deposits during the time it is ineligible for a low-income designation.

(6) A credit union that has obtained low-income designation may:

(a) Offer secondary capital accounts and include these accounts in the credit union's net worth subject to the requirements set forth under 12 C.F.R. , Part 702, Subpart D,

(b) Qualify for the exception from the aggregate member business loan limit outlined in 12 C.F.R. , Part 723.8(d); and

(c) Participate in the Community Development Revolving Loan Fund for Credit Unions subject to the requirements in 12 C.F.R. , Part 705.

MARNI R. GIBSON, Commissioner

RAY PERRY, Secretary

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Kathryn Adams-Cornett

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation creates a process by which Kentucky state-chartered credit unions may obtain approval from the Kentucky Department of Financial Institutions (the “Department”) to accept non-member deposits if these credit unions have obtained Low-income Designation (“LID”) through the National Credit Union Association’s (“NCUA”). Currently, nine (9) state-chartered Kentucky credit unions have obtained LID through the NCUA. However, these credit unions are currently not able to take advantage of the LID benefit of accepting non-member deposits, as this is not specified as an allowable activity under KRS 286.6. This regulation enables the Department to acknowledge the NCUA’s LID designation of a Kentucky state-chartered credit union and affirms the ability of these credit unions to accept non-member deposits.

(b) The necessity of this administrative regulation:

Nine (9) Kentucky state-chartered credit unions have obtained LID through the NCUA. These credit unions are not currently able to take advantage of the LID benefit of accepting non-member deposits as KRS 286.6 does not expressly permit them to do so. This regulation enables the Department to acknowledge the NCUA’s LID designation of a state-chartered credit union and affirms the ability of these credit unions to accept non-member deposits.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 286.6-070 authorizes the Department to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This administrative regulation establishes requirements to ensure the proper conduct of credit unions. KRS 286.6-095 states that, notwithstanding any other provision of law, the Commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it reasonably necessary for the well-being of such credit unions. This regulation enables the Department to acknowledge the NCUA’s LID designation of state-chartered credit unions and allows Kentucky state-chartered credit unions to fully participate in the federal LID program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation assists in the effective administration of the statutes by setting forth rules and regulations for the proper conduct of credit unions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This administrative regulation adds a provision affirming that Kentucky state-chartered credit unions may fully participate in the NCUA’s LID program, thus allowing these credit unions to take advantage of certain benefits available to the credit unions that participate in the LID program. This administrative regulation creates a process by which state-chartered credit unions may receive

acknowledgment by the Department of their NCUA LID designation and may then accept non-member deposits.

(b) The necessity of the amendment to this administrative regulation:

Currently, Kentucky state-chartered credit unions are unable to fully avail themselves of the benefits of LID program participation and are therefore at a competitive disadvantage when compared to federally chartered credit unions and credit unions chartered in other states. This regulation will also encourage state-chartered credit unions to offer financial products and services in economically disadvantaged areas of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 286.6-070 authorizes the Department to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This amendment establishes requirements to ensure the proper conduct of credit unions. KRS 286.6-095 states that, notwithstanding any other provision of law, the commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it reasonably necessary for the well-being of such credit unions. This regulation enables the Department to acknowledge the NCUA's LID designation of a Kentucky state-chartered credit union and affirms the ability of these credit unions to accept non-member deposits.

(d) How the amendment will assist in the effective administration of the statutes:

No answer provided.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This amendment would affirm the ability of eighteen (18) state-chartered credit unions to fully participate in the federal LID program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

This amendment creates an entirely optional process by which state-chartered credit unions may seek Department concurrence of their federal LID designation and affirmation from the Department that they may accept non-member deposits under the LID program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

LID designation is entirely optional. If a credit union wishes to request a LID from the NCUA, the cost to the applicant will be minimal. These entities would possibly incur minimal costs in completing their request to the Department to recognize their LID designation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

State-chartered credit union that obtain a LID from the NCUA, and concurrence from the Department, will be able to avail themselves of benefits of LID designation including the ability to accept non-member deposits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Costs to implement this regulation amendment are minimal, if any.

(b) On a continuing basis:

Costs for subsequent years are minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Current Department resources.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

The Department does not anticipate a need to increase fees or funding to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any direct or indirect fees.

(9) TIERING: Is tiering applied?

Tiering was not applied. The regulation did not require tiering to be applied to implement.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 286.6-070 and KRS 286.6-095 authorize this regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Department of Financial Institutions (the "Department").

(a) Estimate the following for the first year:

Expenditures:see statement below

Revenues:see statement below

Cost Savings:see statement below. The effect on overall revenue for the Department will be minimal; this regulation will not have a substantial impact on the Department's budget.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The effect on overall revenue for the Department will be minimal; this regulation will not have a substantial impact on the Department's budget.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

This regulation will not impact any local entities.

(a) Estimate the following for the first year:

Expenditures:see statement below

Revenues:see statement below

Cost Savings:see statement below

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

This regulation will not impact regulated local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3):

This regulation will not impact any additional regulated entities. (a) Estimate the following for the first year:

(a) Estimate the following for the first year:

Expenditures:see statement below

Revenues:see statement below

Cost Savings:see statement below

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

This regulation will not impact any additional regulated entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

There will be minimal fiscal impact from this regulation on the Department and on regulated entities. It is unclear how much cost savings this administrative regulation will generate for regulated credit unions, however this optional program will allow these credit unions to take advantage of economically advantageous benefits as part of the LID program.

(b) Methodology and resources used to determine the fiscal impact:

Requirements put in place by this regulation were examined and found to create negligible financial burden or revenue in regard to the Department or regulated entities.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The amended regulation will not have a major economic impact on the regulated entities or the Department. Further, LID designation is entirely optional.

(b) The methodology and resources used to reach this conclusion:

Requirements put in place by this regulation were examined and found to create negligible financial burden as to the impacted entities.