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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

FILED

11/23/2022 3:17 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Assessments and Fee Schedule for Oregon chartered credit unions

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/22/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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350 Winter St. NE
Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/15/2022

TIME: 3:00 PM - 3:30 PM

OFFICER: Lauren Winters

ADDRESS: Labor & Industries Building

350 Winter St. NE

Basement, Conf Rm E

Salem, OR 97301

SPECIAL INSTRUCTIONS:

This is a hybrid meeting conducted in-person and virtually via Microsoft Teams:

Join on your computer, mobile app or room device

Meeting ID: 263 265 634 772

Passcode: anZjPg

Or call in (audio only)

+1 503-446-4951,,275809738# United States, Portland

Phone Conference ID: 275 809 738#

NEED FOR THE RULE(S)

Background and History:

The division is revising its regulations to make credit union fees more equitable and to ensure that Oregon chartered credit unions pay fees that reasonably reflect the costs of supervision. The revised rule implements ORS 725.185, which requires the DCBS Director to adopt fee schedules for Oregon chartered credit unions. In adopting a fee schedule, ORS 725.185 requires the director to consider:

- (1) the amount of all other funds available to the director;
 - (2) the costs which the director will incur in performing the duties of the director during the year the fee is collected;
- and
- (3) the amount needed by the director to establish and maintain a reasonable emergency fund.

The revised fees are not being used to pay for an expansion of the credit union program or to cover the cost of any special pay increases to credit union employees; rather, the adjustment in fees will reflect the current financial condition of Oregon chartered credit unions and the Credit Union program. Pursuant to existing OAR 441-710-0500(9), the director by order has reduced the fees assessed to Oregon credit union by 20 percent in 2018; 25 percent in 2020; and 30 percent in 2021. The regulatory authority to reduce fees will not be eliminated; however, the rule and its formula have not been studied or revised since March 2011.

Since March 2011, the average assets have continued to increase due to normal growth and the conversion of three credit unions in 2014 and 2015 from federal credit union charters to an Oregon state charters. Two of the three credit union have approximately \$1 billion in assets. The annual average assets of 18 credit unions totaled \$11.1 billion as of December 31, 2013, in contrast to 20 credit unions totaling \$24.6 billion as of December 31, 2020. Additionally, contributing to the recent average asset growth is the government stimulus money because of the Pandemic, including loan proceeds of the Small Business Administration's Payment Protection Program. These changes prompted the need to revise the assessment fee schedule.

Additionally, the division would like to amend OAR 441-710-0505 to eliminate the fees for amending an Oregon chartered credit union's amendment to its articles of incorporation and by-laws but retain the charges for late fees. The amendment fees are for administrative purposes that no longer exist.

What the Assessment Rulemaking Does:

This rulemaking codifies the recent assessments contained in the February 2022 Assessment Order. The Division of Financial Regulation (DFR) on behalf of the Department of Consumer and Business Services (DCBS) is revising OAR 441-710-0500 to: ensure it has sufficient revenue to adequately carry out its supervisory mandates under the Oregon Credit Union Act, which requires DCBS to determine whether Oregon chartered credit unions are operating in a safe and sound manner and avoid the need to enter an order reducing the amount credit unions must pay when the fees are assessed.

Under the division's forecast and these assessment rates, the Credit Union Program exceeds the fund balance limit set by DCBS Policy FIN-01 of four quarters of expenditures. At the end of FY 2021, the Credit Union Program had 8.47 quarters of expenditures. The revised rule will set the assessments at a level necessary for the division to carry out its statutory obligations under the Oregon Credit Union Act while meeting the fund balance requirements contained in DCBS Policy FIN-01. A copy of the proposed changes to the rules is attached for your convenience.

Based on the information available to DCBS, the proposed rules would not have any additional fiscal or economic impact on state agencies, local governments, the public, nor small businesses beyond the underlying statutory requirements.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:
<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

What are the racial equity impacts of this particular rule(s), policy, or decision? The division sought input from the rulemaking advisory committee about potential racial equity impacts that are implicated directly by the proposed changes to the rules. None were identified.

Are there strategies to mitigate the unintended consequences? In drafting the proposed changes to fee and assessment rules, the division carefully considered whether there would be any unintended racial impact consequences from adopting the proposed changes and concluded there were none.

The division examines and reviews the credit risk-management and mitigation efforts of Oregon chartered credit unions. An Oregon chartered credit union may be engaged in an inherently high-risk activity, but the credit union may mitigate the risk by holding extra capital and liquidity and adopting leading practices in managing the underlying risk. Conversely, another Oregon chartered credit union may not have adopted sufficient mitigations to offset the risk, leading to undue risk to the National Credit Union Share Insurance Fund (NCUSIF) (i.e., the fund that protects members' deposits up to \$250,000). The CAMEL Rating System is used to evaluate Oregon chartered credit unions on safety and soundness of operations, compliance with regulations, financial condition, degree of risk to the NCUSIF, and amount of supervisory attention needed. As such, by ensuring that the division has sufficient funds to examine and review Oregon chartered credit unions, the proposed changes meet the statutory mandate that Oregon chartered credit unions operate in a safe and sound manner.

FISCAL AND ECONOMIC IMPACT:

Based on information currently available to the department, the proposed rule would not have a fiscal or economic impact on state agencies, local government units, nor the public. The proposed changes to the rules do not add any new requirements on public entities. Other state agencies and local governments are not involved in enforcing the Oregon Credit Union Act and are not expected to incur any fiscal impact from the adoption of the proposed rules. The proposed changes will have a fiscal impact on the department as the proposed changes to the amounts credit unions have to pay set the assessments and fees at a level necessary for the department to carry out its statutory obligations under the Oregon Credit Union Act while meeting the fund balance requirements contained in DCBS Policy FIN-01.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Based on information currently available to the department, the proposed rule would not have a fiscal or economic impact on state agencies, local government units, nor the public. The proposed changes to the rules do not add any new requirements on public entities. Other state agencies and local governments are not involved in enforcing the Oregon Credit Union Act and are not expected to incur any fiscal impact from the adoption of the proposed rules. The proposed changes will have a fiscal impact on the department as the proposed changes to the amounts credit unions have to pay set the assessments and fees at a level necessary for the department to carry out its statutory obligations under the Oregon Credit Union Act while meeting the fund balance requirements contained in DCBS Policy FIN-01.

(2)(a) None of the Oregon chartered credit unions affected by this rule meet the definition of small business under ORS 183.310. The department estimates that seven of the 20 Oregon chartered credit unions employ 50 or fewer employees. Based on feedback from the Rulemaking Advisory Committee (RAC), none of these regulated entities will be adversely affected by the proposed rules.

(2)(b) Based on the available information and feedback from the RAC, it is unlikely that the proposed rule will require Oregon chartered credit unions to file additional reports, increase recordkeeping activities, or perform other administrative activities in order to comply with the proposed rule.

(2)(c) Based on available information and feedback from the RAC, the proposed rule will not require Oregon chartered credit unions with fewer than 50 employees to acquire additional equipment or supplies or incur increased labor costs or administration in order to comply with the proposed rule.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The GoWest Credit Union Association, whose membership includes Oregon chartered credit unions with fewer than 50 employees, was consulted as part of the proposed changes to the rules. Additionally, the division sought input from credit union representatives whose credit unions have less than 50 employees.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

441-710-0500, 441-710-0505

AMEND: 441-710-0500

RULE SUMMARY: OAR 441-710-0500 outlines the fee structure for the annual assessments of Oregon chartered credit unions to ensure that assessments meet the fund balance limit set by DCBS Policy FIN-01 of four quarters of expenditures.

CHANGES TO RULE:

441-710-0500

Fees and Charges Credit Unions Pay the Director ¶¶

(1) Effective ~~March 8~~ February 1, 2014~~23~~, the annual regulatory fee under ORS 723.114(1), which is due and payable on April 1 of each calendar year, by each credit union, with assets of:¶¶

(a) Less than \$10 million, is ~~\$25,170~~ plus .0001630815 of all assets;¶¶

(b) \$10 million or more but less than \$20 million, is ~~\$11,110~~ plus .0001970000985 of all assets;¶¶

(c) \$20 million or more but less than \$50 million, is ~~\$11,790~~ plus .0001880940 of all assets;¶¶

(d) \$50 million or more but less than \$100 million, is ~~\$13,340~~ plus .0001780890 of all assets;¶¶

(e) \$100 million or more but less than \$200 million, is ~~\$7,102,990~~ plus .00010625 of all assets;¶¶

(f) \$200 million or more but less than \$500 million, is ~~\$790,349~~ plus .000120600 of all assets;¶¶

(g) \$500 million or more but less than \$1 billion, is ~~\$9400~~ plus .000110000696 of all assets;¶¶

(h) \$1 billion or more but less than \$2 billion, is ~~\$10,460~~ plus .0001150690 of all assets;¶¶

(i) \$2 billion or more ~~is \$12,400~~ but less than \$5 billion, is .0000735 of all assets;¶¶

(j) \$5 billion or more, is \$36,372 plus .00011306565 of all assets;:¶¶

(~~j~~k) If the credit union is a corporate credit union, the fee schedule is \$16,800 plus .0000345 of all assets.¶¶

(2) The rate of charge payable by a credit union is \$75 an hour for each examiner used in an examination for extra services provided a credit union under ORS 723.114(2).¶¶

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:¶¶

(a) If an examiner from the division or the ~~S~~supervisor is required to travel out of state for an examination or to provide extra service, the rate of charge payable by the credit union is \$75 an hour per person, plus actual expenses for travel and subsistence;¶¶

(b) If the examination or the extra service is performed by a consultant hired by contract for the particular work, the charge payable by the credit union is the actual cost to the division of the contract consultant.¶¶

(4) In addition to the charges fixed by sections (2) and (3) of this rule, the ~~D~~director will collect from a credit union any additional costs directly attributable to extra services given the credit union under ORS 723.114(2).¶¶

(5) As used in this rule:¶¶

(a) "Assets" means the average value of total assets reported by the credit union for the four calendar quarters for the year immediately preceding the due date of the fee. ~~H~~; however, if a credit union was not in existence or doing business in this state during all of the prior calendar year "assets" means the average assets reported on the quarterly reports for the quarters for which reports were required to be filed during the calendar year immediately preceding the due date of the fee.¶¶

(b) "Extra service" means any special examination or examination in connection with a conversion.¶¶

(6) The annual regulatory fee of a credit union that is party to a merger or conversion, or is liquidated or dissolved:¶¶

(a) Is not subject to refund in whole or in part if the merger, conversion, liquidation or dissolution occurs prior to the end of the calendar years for which a fee has been paid;¶¶

(b) Is ~~not~~ subject to pro ration if ~~the credit union operated during any part of the calendar year during which the merger, conversion, liquidation or dissolution occurred.~~¶¶

~~(7) An application for a credit union charter under ORS 723.012 must be accompanied by a fee of \$350.¶¶~~

~~(8) An application to establish an additional place of business under ORS 723.032 must be accompanied by a fee of \$300.¶¶~~

~~(9) The D~~payment for the quarters that the credit union is in operation as an Oregon-state chartered credit union.¶¶

~~(7) An application for a credit union charter under ORS 723.012 must be accompanied by a fee of \$350.¶¶~~

~~(8) The director may by order reduce the fees assessed for any specific year.~~

Statutory/Other Authority: ~~ORS 705.620, 723.012, 723.032, 723.102, 723.10285, 723.532, 630~~

Statutes/Other Implemented: ~~ORS 723.114 & 723.532, Ch. 343, 2007 OL~~

AMEND: 441-710-0505

RULE SUMMARY: Eliminates administrative fees for amendments to articles of incorporation and by-laws.

CHANGES TO RULE:

441-710-0505

~~Amendment and~~ Late Charge Fees ¶¶

~~(1) The fees for amendments authorized by ORS 723.022 are as follows for each submission:¶¶~~

~~(a) Amendment of articles of incorporation, \$25;¶¶~~

~~(b) Amendment of bylaws, \$25.¶¶~~

~~(2) The following charges apply to late reports filed by the credit union with the director. The fine is for each day the report is late:¶¶~~

~~(a1) Quarterly call reports; \$100;¶¶~~

~~(b2) Supervisory Committee Report, \$10;¶¶~~

~~(c3) Examination report reply, \$10;¶¶~~

~~(d4) Monthly reports when required by the director, \$10. The reports may include, but are not limited to:¶¶~~

~~(Aa) Financial statement, including income and expenses;¶¶~~

~~(Bb) Board of Director minutes.~~

Statutory/Other Authority: ORS 723.1022, 723.185, 723.106630

Statutes/Other Implemented: ORS 723.022, 723.106114