

CR 91-62

STATE OF WISCONSIN )  
 ) SS  
OFFICE OF THE COMMISSIONER OF CREDIT UNIONS )

I, RICHARD OTTOW, Commissioner of the Office of the Commissioner of Credit Unions and custodian of the official records of said commission do hereby certify that the annexed rule relating to financing of leased property by Wisconsin-chartered credit unions was duly approved and adopted by this commission on October 22, 1991.

I further certify that said copy has been compared by me with the original on file in this agency and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Commissioner of Credit Unions in the City of Middleton, this 3rd Day of December, 1991.

Richard Ottow  
Richard Ottow, Commissioner

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ORDER OF THE  
OFFICE OF THE COMMISSIONER OF CREDIT UNIONS  
ADOPTING, AMENDING OR REPEALING RULES

The Wisconsin office of the commissioner of credit unions proposes an order to create CU 71 relating to financing of leased property by Wisconsin-chartered credit unions for their members.

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Analysis by Office of the Commissioner of Credit Unions

Statutory authority: s. 186.23, Stats.

Statutes interpreted: s. 186.012(4) and s. 186.115, Stats.

The purpose of this chapter is to permit Wisconsin-chartered credit unions to engage in the financing of leased property for members. This chapter is substantially similar to BKG 3.05, Leasing of Personal Property. Lease financing for members is the functional equivalent of secured lending.

This chapter has no fiscal effect on government revenue or expenditures at any level.

This chapter will have no effect on small business as defined in s. 227.114, Wis. Stats.

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Pursuant to the authority vested in the office of the commissioner of credit unions by s. 186.012(4), Stats., the office of the commissioner of credit unions hereby creates Chapter CU 71 leasing of personal property.

SECTION 1. Chapter CU 71 is created to read:

CHAPTER CU 71

LEASING OF PERSONAL PROPERTY

CU 71.01 PURPOSE AND SCOPE. The purpose of this chapter is to permit Wisconsin-chartered credit unions to engage in the financing of leased personal property for members.

CU 71.02 DEFINITIONS. In this chapter:

(1) "Full-payout lease" means a lease from which the lessor can reasonably expect to realize a return of its full investment in the leased property plus the estimated cost of financing the property over the term of the lease from:

(a) Rentals;

(b) Estimated tax benefits if applicable; and

(c) The estimated residual value of the property at the expiration of the initial term of the lease, provided any unguaranteed portion of the estimated residual value relied upon by the credit union to yield a full return under this subsection does not exceed 25% of the original cost of the property to the lessor.

(2) "Net lease" means a lease under which the credit union will not, directly or indirectly, provide or be obligated to provide for any of the following:

(a) The servicing, repair or maintenance of the leased property during the lease term;

(b) The purchasing of parts and accessories for the leased property. However, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this chapter;

(c) The loan of replacement or substitute property while the leased property is being serviced;

(d) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or

(e) The renewal of any license or registration for the property unless the renewal by the credit union is clearly necessary to protect its interest as an owner or financier of the property.

CU 71.03 AUTHORITY TO LEASE PERSONAL PROPERTY. Subject to the limitations in this chapter and provided the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, a credit union may:

(1) (a) Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property at the request of the lessee who wishes to lease it from the credit union; or

(b) Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(2) Incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

CU 71.04 RECOVERY IN THE EVENT OF DEFAULT. If, in good faith, a credit union determines that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the credit union may:

(1) As the owner and lessor under a net, full-payout, lease, take reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease, or

(2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

CU 71.05 APPLICATION OF OTHER LAWS. Nothing in this chapter shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 U.S.C. 1667 et. seq. or the Wisconsin Consumer Act, ch. 421 to 427, Stats.

CU 71.06 LIMITATION ON LEASING CONCENTRATIONS. Leases permissible under this chapter are subject to the limitation on obligations under s. 186.098 (5), Wis. Stats. and Part 701.21 (h), CFR.

NOTE: In operating under this chapter it is anticipated that credit unions will estimate the total cost of financing the property over the term of the lease to reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of each lessor and lessee involved in the transaction and prevailing rates in the money and capital markets. Where the calculation of the cost of financing according to this formula is not reasonably determinable, a lease may be considered to have met the test for recovering the cost financing if the credit union's yield from the lease is equivalent to what the yield would be on a similar loan. In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

The chapter contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

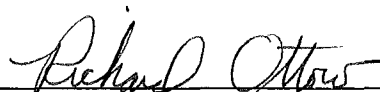
Dated: 10-22-91

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Richard Ottow  
Commissioner of Credit Unions