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**Sent:** Thursday, October 14, 2010 10:15 AM  
**To:** Jekel, Linda (DFI)  
**Subject:** WCUL Comments on FFIEC Standards for CR-101



**Subject:** CR-101: Creating rules for assessing credit union civil money fines under chapter 31.12 RCW

On behalf of the Washington credit unions, the Washington Credit Union League would like to thank the Division of Credit Unions for the opportunity to comment on the DCU's advance notice of proposed rulemaking on assessing civil money fines and interpreting the 2010 changes to the Washington State Credit Union Act.

The DCU has asked for input on whether the Federal Financial Institutions Examination Council (FFIEC) policy on assessment of civil money penalties would also be appropriate guidance here in Washington.

In its rule, the FFIEC outlines five factors to be considered in setting the amount of fines assessed against financial institutions (amount factors):

1. Size of financial resources;
2. Good faith;
3. Gravity of the violation;
4. History of previous violations; and
5. Other factors that justice may require.

The League notes that these are very consistent with the mitigating factors used by the NCUA under the Federal Credit Union Act, 12 USC 1786(k)(2)(G) in determining the amount of penalties to be imposed on a credit union.

The FFIEC rule outlines the factors to be considered in determining whether a fine should be levied (threshold factors):

1. Evidence that the violation or breach of fiduciary duty was intentional or reckless;
2. Duration or frequency of the violation or breach of fiduciary duty;
3. Continuation of the practice or breach of fiduciary duty;
4. Failure to cooperate in early resolution of the issue;
5. Evidence of concealment of the violation;
6. Threat of loss or harm to public confidence;
7. Evidence of receipt of financial gain;
8. Evidence of restitution;
9. History of prior violations;
10. Previous criticism;
11. Presence or absence of a compliance program and its effectiveness;
12. Tendency to engage in violations of law or unsound banking practices; and
13. Existence of agreements, orders or conditions intended to prevent the violation.

While most of these FFIEC threshold factors are reasonable considerations for the DCU to use in

determining whether a fine should be levied or not, it's worth noting that many of the factors refer to breaches of fiduciary duty. The Washington rule should not apply to breaches of fiduciary duty because of the specific statutory protection given to credit union volunteers under RCW 31.12.269, and because the underlying statute did not provide the Division with the authority to assess civil money fines for breaches of fiduciary duty.

We would also urge the Division to consider removing factors #6 and #12 from the list, as these are very vague, nebulous factors that we believe would be difficult for the Division to determine in its decision making process on whether or not a fine should be levied.

Thank you once again for giving us the opportunity to provide input to the Division during this early stage in the rulemaking process. Promulgating a rule that develops materiality standards and mitigating factors the DCU will look at in determining whether civil money fines should be levied, and the amount of these potential fines, will add consistency to this process and assuage concerns within the Washington credit union system concerning this section of the DCU's 2010 legislation.

We look forward to continuing to work with you on the development of this rule.

Yours truly,

**Stacy S. Augustine**

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