



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CREDIT UNIONS

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January 22, 2014

Concise Explanatory Statement
Pursuant to RCW 34.05.325(6)

Promulgation of New Rule regarding reasonable compensation for credit union directors and supervisory committee members for their services.

Agency reasons for adopting the rule.

(RCW 34.05.325(6) (a) (i))

In 2013 Washington State Legislature passed SB 5302, Chapter 34, Laws of 2013, permitting Washington State chartered credit unions to pay to its directors and supervisory committee member's reasonable compensation for their services. The Department of Financial Institutions (DFI), Division of Credit Unions is responsible for regulating to protect the integrity of credit unions as cooperative institutions. The rule will provide guidance and oversight for credit unions paying reasonable compensation to directors and supervisory committee members.

Describe differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences.

(RCW 34.05.325(a) (ii))

None

Summary of comments received by DFI during the rulemaking process, and DFI's responses to the comments.

(RCW 34.05.325(6) (a) (iii))

1. Written comments received: Prior to publishing the CR-102 and text of the proposed rule on November 20, 2013, DFI met with stakeholders at four teleconferenced meetings from June until October 2013 (This includes the 6/20/13 pre-rulemaking

meeting). All materials relevant to these meetings were published on the Division of Credit Union's rulemaking website. During this time period, the following comments were received and posted. (See attached documents)

Pre Rulemaking Comments

- a. Christina Lethlean provided survey data on bank directors' compensation.
- b. Dan Strandy recommended guidance and best practices be issued, then after a period of implementing the new legislation, assess if rules are necessary. He does not want rules that are unduly constrict effective implementation of the legislation. We considered issuing guidance but decided a rule would provide clear authority for the director to prohibit compensation when a credit union was in financial trouble. The proposed rule allows flexibility for credit unions to determine if they want to compensate directors and supervisory committee members, a credit union may self-determine the amount of compensation, and controls are minimal to ensure compensation is reasonable.
- c. Sharon Whitehead recommended a conservative and structured approach. Conservative is defined as "holding to traditional attitudes and values and cautious about change or innovation". The proposed rule allows credit unions to continue the tradition of unpaid volunteers for directors and supervisory committee members. Structure is defined as "the arrangement of and relations between the parts or elements of something complex." The proposed rule requires a credit union to disclose to its members as to the amount of compensation of directors and supervisory committee members.
- d. Wayne Langei recommends that comprehensive rules be written for "reasonable compensation." The proposed rule defines "reasonable compensation" by requiring compensation be proportional to the services provided, reasonable considering the credit union's financial condition, and comparable to similar organizations.

Rulemaking Comments

- e. Lynn Ciani provided comments relating to the definition of compensation, particularly as to compensation to cover expenses for a spouse or significant other to attend a conference with a director or supervisory committee member. We agreed with the recommendation and amended the definition to exclude such payments.
- f. Hal Scoggins suggested verbiage changes in sections 2 and 4 for clarity. Mr. Scoggins suggested deleting the phrase "including document requirements" in Section 2 (b). We agreed and the phrase was removed. Both Mr. Scoggins and Mr. Parker Cann suggested clarifying Section 2 as to liability insurance. We clarified Section 2 as to liability insurance. Mr. Scoggins recommended amending Section 4 to state "compensation paid by organizations". We agreed and amended the proposed rule. Mr. Scoggins also commented on using "market conditions" rather than "geographic location" in Section 4. We agreed

that “geographic location” may be limiting and amended the proposed rule to use the term “location” to allow more flexibility. Mr. Scoggins also inquired about whether a “director emeritus” would be covered under the rule. We considered whether to add language for director emeritus but we decided we will issue an interpretive letter upon request on this issue.

- g. Parker Cann made submitted several suggestions in Track Changes to the draft rule to clarify the exclusions in Section 2, to allow a schedule of payments in Sections 3 and 6, to clarify disclosure is to the members in Section 5, and limit adverse effects to financial in Section 7. We agreed with all the suggestions, except for Section 7. We agreed with many of the suggested changes. The proposed rule clarifies the exclusions of Section 2 and disclosure to members of Section 5 similar to Mr. Parker’s suggestions. We added the schedule of payments in Sections 3 and 6. We considered the limiting the adverse effects to financial in Section 7 but kept the language broad to enable the director to restrict compensation for other than financial reasons.
 - h. Brian Knight asked several questions regarding different sections of the rule. He noted the proposed rule did not prohibit burying the disclosure to members on the credit union’s website. We considered additional requirements for website location but decided we would work with a credit union if the disclosure was unduly hard to locate. Mr. Knight asked whether honorary directors could be compensated or if compensation for the anticipated year could be disclosed per board meeting or total. We will issue an interpretive letter upon request on these issues. Mr. Knight asked if director compensation may trigger additional requests for information about senior management compensation. We believe the Form 990 is sufficient for member information. Mr. Knight asked whether Section 7 is only for financial adverse effect. The proposed rule provides broad authority for the director to restrict or prohibit compensation beyond financial.
2. Oral Comments received during the public hearing held January 7, 2014:
 - a. Sharon Whitehead commented on behalf of WSECU their support of the rule and appreciation to participate in the process.
 3. No Written Comments were received during the public hearing or before the January 10, 2014 deadline.
 - a. The final language of the proposed rule remained the same as published in the CR 102.
 4. The proposed rule was moved from WAC 208-444 to a new chapter in WAC 208 –400.

CONCLUSION

The proposed rules provide regulatory guidance, clarity, and consistency. DFI made the proposed rules available to all interested parties for a prolonged review period, and the proposed rules were discussed at four stakeholder meetings in additions to the formal CR-102

hearing on the rule. All information on the rulemaking process; the draft rules, the written comments, and the hearings were timely posted to the DFI website. The final proposed rule is the product of an open, deliberative process.