M E M O R A N D U M

TO: Director of Credit Unions

FROM: Joe Vincent, DFI General Counsel

RE: Board Compensation Rulemaking – Exemption from SBEIS Requirement

DATE: November 20, 2013

An agency shall file a small business economic impact statement ("SBEIS") in connection with the rulemaking process if the proposed rule will impose more than "minor costs" on businesses in an industry. *RCW 19.85.030(1)*. Minor costs are defined as a cost that is less than three-tenths of one percent of annual revenue or income. *RCW 19.85.020(2)*. This means one must compare the impact to 30% of 1% of revenue or income that each business in a prospectively affected industry generates. If the impact exceeds that amount, it is not a minor cost, and one must complete a SBEIS.

In the case of the Division of Credit Unions' proposed Board Compensation Rule, the "impact" in question is not the legislatively authorized ability to compensate Board Members, for two reasons:

a. The Legislature, and not this agency, has authorized a credit union to reasonably compensate Board members. Therefore, it is not the rulemaking that is the "action" having a true economic impact.

b. The compensation of Board members is entirely permissive (i.e., within the control of the stakeholder and not the agency per se).

Rather, the issue is whether the conditions for establishing and maintaining Board compensation (including creating and maintaining internal policies) pose more than a minor cost for any credit union regulated by the Division of Credit Unions. There is no way to quantify this to a 100% certainty as with some other types of rulemaking (e.g., the imposition of fees or assessments). However, the Division of Credit Unions can say with certainty that this would definitely be a "minor cost." The rule can be implemented by any credit union simply recognizing the rule and agreeing to be bound by it.

In addition, the part of the proposed rule that would permit the Director of Credit Unions to restrict or suspend Board compensation is not an adverse "economic impact" on the credit union. As a matter of law, it would be viewed as a cost savings.

Finally, pursuant to *RCW 34.05.310(3)(e)*, the proposed rule is "explicitly and specifically dictated by statute." The authorizing legislative provision, *2013 c 34 s 6*, which amended *RCW 31.12.365* specifically authorizes reasonable compensation and specifically directs that the Division of Credit Unions may propound rulemaking to implement this statutory amendment.

Therefore, for all of the reasons set forth above, I conclude that no SBEIS is required in the Board Compensation Rulemaking Process.