



## ***DCU BULLETIN***

***Division of Credit Unions***

***Washington State Department of Financial Institutions***

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August 2, 2000

No. B-00-12

### **Division Schedules Hearing on Rules On Commercial Arrangements with Third Parties; Comments Invited on Proposed Rules**

Enclosed is a copy of the form filed by the Division to schedule the hearing and publish the proposed rules amending Chapter 208-440 WAC, entitled "Participation in Commercial Business Activities." The purpose is to make the rules more flexible for credit unions to enter into commercial business arrangements on a safe and sound basis.

Persons wishing to comment on the proposed rules may present their comments at the hearing or submit their comments in writing prior to the close of business on August 28, 2000 to:

Parker Cann, Assistant Director  
Division of Credit Unions  
PO Box 41200  
Olympia, WA 98504-1200

Phone: (360) 902-8778  
Fax: (360) 704-6978  
E-mail: [pcann@dfi.wa.gov](mailto:pcann@dfi.wa.gov)

We are particularly interested in how the rule could be made less burdensome for small credit unions. We are also interested in comments in response to the seven questions posed in Executive Order 97-02. The questions are listed in the attached CR-102 form.

The hearing will be held via interactive television on August 29, 2000, from 10:00 am to 11:00 am, at the Department of Information Services (DIS) sites listed below. Credit unions may attend the hearing at any one of the following sites:

**Lacey**

DIS Interactive Technologies  
710 Sleater-Kinney Rd. SE, Ste. Q  
Lacey, WA 98503  
(360) 407-9487

**Seattle (Renton)**

DIS Interactive Technologies  
1107 SW Grady Way, Ste. 112  
Renton, WA 98055  
(425) 277-7290

**Spokane**

DIS Interactive Technologies  
N. 1101 Argonne, Ste. 109  
Spokane, WA 99201  
(509) 921-2371

**Vancouver**

Educational Service District 112  
2500 NE 65th Ave.  
Vancouver, WA 98661  
(360) 750-7500

**Yakima**

DIS Interactive Technologies  
c/o Dept. of Ecology  
Yesterday's Village  
15 W. Yakima Ave., Ste. 220  
Yakima, WA 98902  
(509) 454-7878

Please call Tina Philippsen by August 15, 2000, at (360) 902-8718 or fax at (360) 704-6918, if you are planning to attend, to advise us of the site location.

**WSR 00-13-041**

**PROPOSED RULES**

**DEPARTMENT OF**

**FINANCIAL INSTITUTIONS**

[ Filed June 14, 2000, 11:45 a.m. ]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-04-074.

Title of Rule: Credit union participation in commercial arrangements with third persons.

Purpose: The purpose of [chapter 208-440 WAC](#) is to regulate credit unions' entering into commercial arrangements with third parties to offer products and services to members, to ensure that it is done in a safe and sound manner.

The purpose of this rule making is to:

1. Amend [chapter 208-440 WAC](#); and

2. Review the proposed revisions to the chapter under the criteria described in Executive Order 97-02:

A. Need. Is the rule necessary to comply with the statutes that authorize it? Is the rule obsolete, duplicative, or ambiguous to a degree that warrants repeal or revision? Have laws or other circumstances changed so that the rule should be amended or repealed? Is the rule necessary to protect or safeguard the health, welfare, or safety of Washington's citizens?

B. Effectiveness and Efficiency. Is the rule providing the results that it was originally designed to achieve in a reasonable manner? Are there regulatory alternatives or new technologies that could more effectively or efficiently achieve the same objectives?

C. Clarity. Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?

D. Intent and Statutory Authority. Is the rule consistent with the legislative intent of the statutes that authorize it? Is the rule based upon sufficient statutory authority? Is there a need to develop a more specific legislative authorization in order to protect the health, safety, and welfare of Washington's citizens?

E. Coordination. Could additional consultation and coordination with other governmental jurisdictions and state agencies with similar regulatory authority eliminate or reduce duplication and inconsistency?

F. Cost. Have qualitative and quantitative benefits of the rule been considered in relation to its cost?

G. Fairness. Does the rule result in equitable treatment of those required to comply with it? Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? Should it be strengthened to provide additional protection?

The agency is interested in your comments on the proposed revisions to [chapter 208-440 WAC](#) in light of these criteria.

Statutory Authority for Adoption: [RCW 31.12.516](#)(2), 43.320.040.

Statute Being Implemented: [Chapter 31.12 RCW](#).

Summary: The proposed rules amend [chapter 208-440 WAC](#) and extensively revise the regulatory approach to commercial arrangements. The rules recognize that credit unions may enter into prudent commercial arrangements with third parties in order for the third party to directly or indirectly offer goods and services to the credit union's members. The rules also place the burden on credit union boards and management to evaluate and manage the risk involved, through policies, and through devices such as insurance and indemnification.

Reasons Supporting Proposal: The current rules are outdated and overly restrictive. They impede credit unions' ability to serve members by unnecessarily restricting credit unions' authority to enter into prudent commercial arrangements with third parties to provide products and services to members.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Parker Cann, Director of Credit Unions, 210 11th Street S.W., Room 300, P.O. Box 41200, Olympia, WA 98504-1200, fax (360) 704-6978.

Name of Proponent: [Department of Financial Institutions], governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: **Explanation:** Before entering into any commercial arrangements, a credit union's board must adopt a written policy regarding such arrangements, including without limitation, provision for evaluation of potential risk of liability. The policy may require management to seek board approval of each arrangement, or may delegate the decision to management and provide guidelines for making the decision.

Before entering into or renewing each commercial arrangement, a credit union must:

1. Ensure that the arrangement is a prudent one and that it does not present safety and soundness risks to the credit union;
2. Evaluate the potential risk of liability and ensure that the credit union takes appropriate precautions to reduce or offset such risk, including without limitation the use of such devices as disclaimers/disclosures to members and bond or insurance coverage; and
3. Ensure that the contract evidencing the arrangement includes provision for indemnification of the credit union by the third party.

The term "third party" includes credit union service organizations (CUSOs).

**Purpose and Anticipated Effects:** The purpose of this rule making is to amend [chapter 208-440 WAC](#) to allow credit unions more flexibility to enter into prudent commercial arrangements with third parties to offer products and services to members. The anticipated effect is that more credit unions may enter into such arrangements.

Proposal Changes the Following Existing Rules: [WAC 208-440-010](#), this section would be extensively revised. The effect of the revisions is described above. [WAC 208-440-020](#), 208-440-040, and 208-440-050, these sections would be repealed.

A small business economic impact statement has been prepared under [chapter 19.85 RCW](#).

#### Small Business Economic Impact Statement

**Subject:** Rules proposed by the Division of Credit Unions ("division") of the Washington State Department of Financial Institutions (DFI) to amend [chapter 208-440 WAC](#). [Chapter 208-440 WAC](#) is entitled: Rules On Credit Union Participation In Commercial Business Activities.

**By:** Parker Cann, Director of Credit Unions.

**Date:** June 13, 2000.

The division has prepared this small business economic impact statement (SBEIS) in compliance with [chapter 19.85 RCW](#), the Regulatory Fairness Act (RFA). The preproposal statement of inquiry (form CR-101) in connection with the proposed rules was filed at WSR 00-04-074.

**BACKGROUND FOR PROPOSED RULES:** In 1979, the division adopted the predecessor to [chapter 208-440 WAC](#). These rules placed extensive restrictions on credit unions' ability to enter into commercial arrangements with third parties to provide products and services to members.

In developing their business plans, credit unions must determine what products and services their members want and what products and services they will offer to members. The division believes that it is important for credit unions to be able to offer third parties' products and services to members in a safe and sound manner, in order to stay viable and competitive. Part of our statutory charge is to "ensure that credit unions remain viable and competitive in this state." [RCW 31.12.015](#).

**DESCRIPTION OF PROPOSED RULES: Generally.** The proposed rules amend [chapter 208-440 WAC](#) and extensively revise the regulatory approach to commercial arrangements. The rules recognize that credit unions may enter into prudent commercial arrangements with third parties in order for the third party to directly or indirectly offer goods and services to the credit union's members. The rules also place the burden on credit union boards and management to evaluate and manage the risk involved, through policies, and through devices such as insurance and indemnification.

**Specifically.** Before entering into any commercial arrangements, a credit union's board must adopt a written policy regarding such arrangements, including without limitation, provision for evaluation of potential risk of liability. The policy may require management to seek board approval of each arrangement, or may delegate the decision to management and provide guidelines for making the decision.

Before entering into or renewing each commercial arrangement, a credit union must:

1. Ensure that the arrangement is a prudent one and that it does not present safety and soundness risks to the credit union; 2. Evaluate the potential risk of liability and ensure that the credit union takes appropriate precautions to reduce or offset such risk, including without limitation the use of such devices as disclaimers/disclosures to members and bond or insurance coverage; and

3. Ensure that the contract evidencing the arrangement includes provision for indemnification of the credit union by the third party.

The term "third party" includes credit union service organizations (CUSOs).

**REQUIRED ELEMENTS OF SBEIS:** The elements of the SBEIS required by the RFA are set forth below.

**ELEMENT 1. A brief description of the reporting, record-keeping, and other compliance requirements of the proposed rules and the kinds of professional services that a small business is likely to need in order to comply with the requirements.**

**RESPONSE:** See "Description of Proposed Rules" above for compliance requirements.

In terms of professional services, it would be prudent for a credit union to engage counsel to assist it in developing a policy on commercial arrangements, in evaluating the potential risk of liability, and in negotiating the contract with the third party. Of course, it would have been prudent for a credit union to engage counsel before entering into a commercial arrangement under the existing rules. Under the existing rules, it is also likely that counsel would have been needed to advise the credit union as to the application of the rules and/or to discuss interpretation of the rules with the division.

**ELEMENT 2. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, labor and increased administrative costs.**

**RESPONSE:** It is difficult to assess the costs of compliance for several reasons:

A. Many credit unions may not wish to enter into commercial arrangements with third parties. They would therefore not incur costs for compliance with the proposed rules.

B. For those credit unions that do enter into such arrangements, the cost of compliance will vary extensively depending on the adequacy of existence of a policy, the complexity of the arrangement, the amount of time and effort necessary to negotiate a satisfactory contract, etc.

Because of this uncertainty, we have assumed that the cost of compliance would be more than minor.

**ELEMENT 3. Whether compliance with the proposed rules will cause business to lose sales or revenue.**

**RESPONSE:** Relative to the existing rules on commercial arrangements, the proposed rules will enable credit unions to more freely enter into prudent commercial arrangements, perhaps enhancing their revenues through fee arrangements with the third parties. It is unlikely they would lose sales or revenue because of the proposed rules.

**ELEMENT 4. A comparison of the compliance costs for the small business segment and large business segment of the affected industry(ies), and whether the impact on the small business segment is disproportionate.**

**RESPONSE:** Because the cost of compliance, as uncertain as it may be, would probably be the same in regard to a specific commercial arrangement, whether the credit union is large or small, we have assumed that the cost of compliance for the small business segment of credit unions would be higher per unit, whether the unit is an employee, hour of labor to comply, or one hundred dollars of sales. Consequently, the cost to small credit unions may be considered disproportionate.

One inherent advantage in compliance for small credit unions is that they tend to be less sophisticated and may naturally enter into fewer or less complicated commercial arrangements.

**ELEMENT 5. Steps taken by the agency under [RCW 19.85.030](#) (3) to reduce the costs of the proposed rules on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.**

**RESPONSE:** We have reviewed the six steps under [RCW 19.85.030](#) (3) (a) through (f). Our analysis is as follows:

**(a) Reducing, modifying, or eliminating substantive regulatory requirements.** We believe that the proposed rules are necessary for the safety and soundness of credit unions, regardless of size, and that the compliance requirements should not be reduced for small credit unions.

**(b) Simplifying, reducing, or eliminating record-keeping and reporting requirements.** We believe that the proposed rules are necessary for the safety and soundness of credit unions, regardless of size, and that the compliance requirements should not be diminished for small credit unions.

**(c) Reducing the frequency of inspections.** This step is not applicable, because the proposed rules do not provide for inspections.

**(d) Delaying compliance timetables.** Considering that the proposed rules actually relax existing restrictions, we do not feel it is appropriate to delay compliance.

**(e) Reducing or modifying fine schedules for noncompliance.** This step is not applicable, because the division does not have fining authority.

**(f) Any other mitigation techniques.** We are not aware of other mitigation techniques. However, we have encouraged comments from small credit unions on how to make the proposed rules less onerous for them and we will consider comments received. To date we have not received any comments.

Consequently, as discussed above, we do not believe that it is legal or feasible to reduce the costs of the proposed rules on small businesses.

**ELEMENT 6. A description of how the agency will involve small business in the development of the proposed rules.**

**RESPONSE:** All credit unions, including smaller credit unions, will be provided with a copy of the proposed rules and an opportunity to provide comment on them. Credit unions are encouraged to contact the division to comment on the rules. Small credit unions in particular are encouraged to provide comments on how the rules could be made less onerous for them.

**ELEMENT 7. A list of the industry(ies) affected by the proposed rule.**

**RESPONSE:** The industry affected by the proposed rule is state credit unions, Standard Industrial Classification 6062.

A copy of the statement may be obtained by writing to Parker Cann, Director of Credit Unions, P.O. Box 41200, Olympia, WA 98504-1200, phone (360) 902-8778, fax (360) 704-6978.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Section 201 does not include the Department of Financial Institutions as a covered agency.

Hearing Location: Lacey, Washington, DIS, 710 Sleater-Kinney Road S.E., Suite Q; Renton, Washington, DIS, 1107 S.W. Grady Way, Suite 112; Spokane, Washington, DIS, North 1101 Argonne, Suite 109; Vancouver, Washington, ESD 112, 2500 N.E. 65th Avenue; and Yakima, Washington, Department of Ecology, 15 West Yakima Avenue, Suite 220; on August 29, 2000, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Tina Philippsen by July 15, 2000, TDD (360) 664-8126, or phone (360) 902-8718.

Submit Written Comments to: Parker Cann, Director of Credit Unions, 210 11th Street S.W., Room 300, P.O. Box 41200, Olympia, WA 98504-1200, fax (360) 704-6978, by August 28, 2000. We are particularly interested in suggestions on how the rules could be made less onerous for small credit unions.

Date of Intended Adoption: August 30, 2000.

June 14, 2000

John L. Bley

Director

**OTS-3699.2**

**Chapter 208-440 WAC**

**(~~(RULES ON)~~) CREDIT UNION PARTICIPATION IN COMMERCIAL (~~(BUSINESS ACTIVITIES)~~) ARRANGEMENTS WITH THIRD PARTIES**

AMENDATORY SECTION(Amending WSR 96-17-071, filed 8/20/96, effective 9/20/96)

WAC 208-440-010

~~((Credit union financial interest in commercial enterprise.))~~

Commercial arrangements with third parties.

~~(No credit union shall have any direct financial interest in a commercial enterprise by way of stock or other ownership interest in a commercial corporation, by way of partnership interest or participation in a joint venture in a general business enterprise or by way of exchanging money or services for a share of the proceeds of any commercial business enterprise except as provided below:~~

~~(1) Any credit union may make loans to commercial enterprises and investments in commercial enterprises to the extent permitted by statute;~~

~~(2) Any credit union may engage in the business of renting, leasing or subleasing portions of the land and building(s), in which the credit union carries on its business, to the extent that such land and buildings are not needed for credit union operations;~~

~~(3) The director may upon written application grant permission to a credit union to participate in a business enterprise not otherwise authorized by law or by this section, where the director is satisfied that the business enterprise is appropriate and adjunct to ordinary credit union operations and would not be contrary to law.)~~ (1) Credit unions may enter into arrangements with third parties in order for the third party to directly or indirectly offer goods and services to the credit union's members. These arrangements are referred to in this rule as commercial arrangements.

In connection with commercial arrangements, credit unions may:

(a) Allow third parties to offer goods and services to members through the credit union.

(b) Receive payment from third parties for participation in group purchasing enterprises.

(c) Endorse, directly or indirectly, goods and services of a third party.

This list is not intended to be exhaustive.

As used in this rule, the term "third party" includes, without limitation, credit union service organizations.

(2) Before entering into any commercial arrangements, a credit union's board must adopt a written policy regarding such arrangements, including, without limitation, provision for evaluation of potential risk of liability. The policy may require management to seek board approval of each arrangement, or may delegate the decision to management and provide guidelines for making the decision.

(3) Before entering into or renewing each commercial arrangement, a credit union must:

(a) Ensure that the arrangement is a prudent one and that it does not present safety and soundness risks to the credit union;

(b) Evaluate the potential risk of liability and ensure that the credit union takes appropriate precautions to reduce or offset such risk, including, without limitation, the use of such devices as disclaimers/disclosures to members and bond or insurance coverage; and

(c) Ensure that the contract evidencing the arrangement includes provision for indemnification of the credit union by the third party.

(4) Credit unions must comply with applicable laws in entering into and carrying out commercial arrangements, including any applicable law on privacy of member information.

[Statutory Authority: [RCW 42.320.040](#) [[43.320.040](#)] and [31.12.535](#). 96-17-071, § 208-440-010, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-440-010, filed 2/23/96, effective 6/1/96. Statutory Authority: [RCW 31.12.360](#). 79-08-047 (Order 79-2), § 419-40-010, filed 7/19/79.]

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-440-020 Endorsements of commercial products or services.

WAC 208-440-040 Use of credit union space to advertise commercial products and services.

WAC 208-440-050 Commercial programs offered to credit union members.