



DCU BULLETIN

Division of Credit Unions

Washington State Department of Financial Institutions

Phone: (360) 902-8701

FAX: (360) 704-6901

March 26, 2001

No. B-01-07

Division Schedules Hearing on Proposed Rule On Increasing Assessments and Fees; Comments Invited on Proposed Rule

The Division recently filed a CR-102 form to publish the Division's proposed rule on increasing assessments and fees and to schedule a hearing on the proposed rule. Enclosed is a copy of the CR-102, the text of the proposed rule, and the small business economic impact statement in regard to the rule.

Hearing time and location

The hearing on the proposed rule will be held on May 1, 2001, beginning at 10:00 a.m., in the First Floor Auditorium of the General Administration Building, located at 210 11th St. SW, Olympia, WA 98504. Please contact Diane Moye at the Division, at (360) 902-8791, if you would like a map to the hearing site.

Summary of Proposed Rule

In general, the proposed rule:

1. Increases by 2.87% the rate of assessments and fees charged by the Division of Credit Unions, effective in June 2001. The fiscal growth factor for the current fiscal year (July 1, 2000 to June 30, 2001) is 2.87%.
2. Provides for an automatic annual rate increase in assessments and fees charged by the Division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor.
3. Allows for the waiver of assessments and fees, if certain conditions are met.
4. Clarifies assessments and fees charged to out-of-state and foreign credit unions.

The proposed rule amends Chapter 208-418 WAC.

Comments on the proposed rule

Persons wishing to comment on the proposed rule may present their comments at the hearing or submit their comments in writing prior to the close of business on April 30, 2001.

We are particularly interested in your comments if you believe that the proposed rule should 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, listed on the following page.

Please submit your comments to:

Parker Cann
Director of Credit Unions
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

Questions under Executive Order 97-02

1. 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?
2. 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?
3. 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?
4. 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?
5. Coordination. Could additional consultation and coordination with other governmental jurisdictions and state agencies with similar regulatory authority eliminate or reduce duplication and inconsistency?
6. Cost. Have qualitative and quantitative benefits of the rule been considered in relation to its cost?
7. 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?



PROPOSED RULE MAKING (RCW 34.05.320)

CR-102 (7/10/97) Do NOT use for expedited adoption

Agency: Department of Financial Institutions
Preproposal Statement of Inquiry was filed as WSR 01-03-146; or
Expedited Adoption -- Proposed Rule Making notice was filed as WSR ____; or
Proposal is exempt under RCW 34.05.310(4).
(a) Title of rule: (Describe Subject) Increasing assessments and fees paid by credit unions and affiliated parties examined by the Division of Credit Unions.
Purpose: To provide additional revenue to the Division
Other identifying information:
(b) Statutory authority for adoption: RCW 31.12.516; 43.320.040
Statute being implemented: RCW 31.12.516; 31.12.555
(c) Summary:
The proposed rule -
1. Increases by 2.87% the rate of assessments and fees charged by the Division of Credit Unions, effective in June 2001.
2. Provides for an automatic annual rate increase in assessments and fees charged by the Division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor.
3. Allows for the waiver of fees and assessments, if certain conditions are met.
4. Clarifies assessments and fees charged to out-of-state and foreign credit unions.
Reasons supporting proposal: The Division needs significant additional revenues to pay for the operation of the Division and to maintain a reserve.
(d) Name of Agency Personnel Responsible for: Office Location Telephone
1. Drafting..... Parker Cann 210 11th St. S.W. Room 300 Olympia, WA 98504 360-902-
2. Implementation.... Parker Cann 210 11th St. S.W. Room 300 Olympia, WA 98504 360-902-
3. Enforcement..... Parker Cann 210 11th St. S.W. Room 300 Olympia, WA 98504 360-902-
(e) Name of proponent (person or organization): Division of Credit Unions
(f) Agency comments or recommendations, if any, as to statutory language, implementation, enforcement and fiscal matters: None
(g) Is rule necessary because of:
Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No
If yes, ATTACH COPY OF TEXT Citation:
(h) HEARING LOCATION:
General Administration Building
Auditorium - 1st Floor
210 11th St. SW
Olympia, WA 98504
Date: May 1, 2001 Time: 10:00 a.m.
Submit written comments to:
Parker Cann, Assistant Director
Division of Credit Unions
210 11th St. S.W. Room 300
Olympia, WA 98504
FAX (360) 704-6947 By (date) Close of business April 30, 2001
DATE OF INTENDED ADOPTION: June 4, 2001
CODE REVISER USE ONLY
NAME (TYPE OR PRINT)
John L. Bley
SIGNATURE
TITLE
Director
DATE

(j) Short explanation of rule, its purpose, and anticipated effects:

Explanation: The proposed rule –

5. Increases by 2.87% the rate of assessments and fees charged by the Division of Credit Unions, effective in June 2001.
6. Provides for an automatic annual rate increase in assessments and fees charged by the Division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor.
7. Allows for the waiver of assessments and fees, if certain conditions are met.
8. Clarifies assessments and fees charged to out-of-state and foreign credit unions.

Purpose: To increase revenue to cover the operation of the Division and to maintain a reserve for the Division.

Anticipated effects: To provide additional revenues to the Division and to increase assessments and fees paid by credit unions.

Does proposal change existing rules? YES NO If yes, describe changes:

The proposed rule:

1. Amends WAC 208-418-040 and adds a new section to increase by 2.87% the rate of assessments and fees charged by the Division of Credit Unions, effective in June 2001.
2. Adds a new WAC section to provide for an automatic annual rate increase in assessments and fees charged by the Division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor.
3. Adds a new WAC section to provide definitions.
4. Add a new WAC section to allow for the waiver of assessments and fees, if certain conditions are met.
5. Amends WAC 208-418-040 and –070 to clarify assessments and fees charged to out-of-state and foreign credit unions.
6. Amends WAC 208-418-050 to clarify that the Division can pass through the costs of special counsel.
7. Repeals WAC 208-418-060 (“One-time special assessment for fiscal 1997”).
8. Amends WAC 208-418-020 to make clarifying and conforming changes.

(k) Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by writing to:

Tina Philippsen
Division of Credit Unions
210 11th St. S.W. Room 300
Olympia, WA 98504

telephoning: (360) 902-8718

faxing: (360) 704-6918

No. Explain why no statement was prepared

(l) Does section 201, chapter 403, Laws of 1995, apply to this rule adoption? Yes No

Please explain: *DFI is not a listed agency in section 201.*

NEW SECTION

WAC 208-418-010 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Credit union" includes a Washington credit union, an out-of-state credit union and a foreign credit union.

(2) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction, that is operating a branch in Washington in accordance with RCW 31.12.471.

(3) "Hourly fee" means a fee of \$57.42 per hour per examiner or other staff person of the division.

(4) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or U.S. territory or possession, that is operating a branch in Washington in accordance with RCW 31.12.471.

(5)(a) "Total assets" of a Washington credit union includes all assets of the credit union as reported on the credit union's most recent form 5300 or similar financial report.

(b) "Total assets" of an out-of-state or foreign credit union is derived from the following fraction:

Total assets x in-state branch shares and deposits

Total shares and deposits

"Total assets" and "shares and deposits" include respectively all assets and shares and deposits as reported on the credit union's most recent form 5300 or similar financial report.

(6) "Washington credit union" means a credit union organized and operating under chapter 31.12 RCW.

[
AMENDATORY SECTION (Amending WSR 96-12-058, filed 5/31/96, effective 7/1/96)

WAC 208-418-020 Collection of fees. Chapter ~~((274, Laws of 1996,))~~ 31.12 RCW authorizes the director to charge fees to credit unions and certain ~~((related))~~ affiliated parties in order to cover the costs of the operation of the division of credit unions and to establish a reasonable reserve for the division. As set forth in more detail in this chapter, the fees for this purpose shall consist of:

(1) Quarterly asset assessments charged to credit unions;

(2) Charges to a credit union for costs incurred by the division for certain types of attorney general assistance in regard to the credit union; and

(3) Certain other fees charged by the director.

~~((Fees must be paid no later than thirty days after their due date.))~~
The director may waive all or any portion of any fee payable by a credit union or other party ~~((based on the ability of the credit union or party to pay the fee))~~.

[Statutory Authority: 1996 c 274. 96-12-058, § 208-418-020, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-020, filed 2/23/96,

effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-020, filed 2/28/95, effective 3/31/95. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-020, filed 9/26/83; 82-13-016 (Order 82-5), § 419-18-020, filed 6/7/82.]

AMENDATORY SECTION (Amending WSR 96-12-058, filed 5/31/96, effective 7/1/96)

WAC 208-418-040 Quarterly asset assessments. (1) The director will charge each credit union a quarterly asset assessment at the rate set forth in subsection (2) of this section. Asset assessments will be due on January 1, April 1, July 1, and October 1. Asset assessments must be paid no later than thirty days after their due date. The assessments will be computed on total assets as of the prior June 30 for the October 1 and January 1 assessments, and as of the prior December 31 for the April 1 and July 1 assessments. ~~((Quarterly asset assessments are charged for the calendar quarter that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state-chartered during the quarter.))~~

(2)	Credit Union's Total Assets	Quarterly Asset Assessment
	over \$500M	\$(18,357)) <u>18,883</u> + ((-000015)) <u>0.00001543</u> x total assets over \$500M
	over \$100M up to \$500M	\$(5,104)) <u>5,250</u> + ((-000033134)) <u>0.00003408</u> x total assets over \$100M
	over \$(20)) <u>25M</u> up to \$100M	((-000051035)) <u>0.00005250</u> x total assets
	over \$10M up to \$(20)) <u>25M</u>	\$(1,125)) <u>1,157</u>
	over \$2M up to \$10M	\$(750)) <u>771</u>
	over \$(200)) <u>500K</u> up to \$2M	\$(500)) <u>514</u>
	up to \$(200)) <u>500K</u>	\$0
	((Corporate Centrals	.0000252 x total assets))

M = Million K = Thousand

(3) Quarterly asset assessments are charged for the calendar quarter that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state-chartered during the quarter. A credit union converting to state charter will pay a prorated quarterly asset assessment for the quarter during which the conversion is completed.

(4) ~~((For the purpose of this chapter, "total assets" includes all assets held by a Washington chartered credit union whether held within this state or a branch in another state, and assets of foreign credit unions held through branches within the state of Washington, as reported on the credit union's form 5300 or similar financial report. However, the director may waive any assessment on assets held by Washington chartered credit unions~~

~~through branches in other states based upon reciprocal agreements with the other state's regulatory authority. As used in this chapter, "foreign credit union" means a credit union chartered under the laws of another state or a foreign country.-)~~ From time to time, the director may determine that asset assessments on an out-of-state credit union or foreign credit union are inappropriate relative to the level of examination and supervision of that credit union by the division. In that event, the director may charge the credit union hourly fees for examination and supervision of the credit union, including, but not limited to, off-site monitoring, in lieu of asset assessments. Such fees are due upon receipt of billing from the division.

[Statutory Authority: 1996 c 274. 96-12-058, § 208-418-040, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-040, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-040, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-040, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.545(1). 85-07-008 (Order 85-2), § 419-18-040, filed 3/8/85. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-040, filed 9/26/83; 82-13-016 (Order 82-5), § 419-18-040, filed 6/7/82.]

AMENDATORY SECTION (Amending WSR 96-12-058, filed 5/31/96, effective 7/1/96)

WAC 208-418-050 Pass through of attorney general costs. (1) The director will charge each credit union the actual cost incurred by the division of credit unions for certain legal assistance rendered by an assistant attorney general or special counsel in regard to the credit union. Legal assistance includes legal assistance rendered in connection with: Supervisory committee meetings and board meetings; receiverships, conservatorships, liquidations and declarations of insolvency; enforcement agreements or actions; collection actions; administrative hearings; and (~~written~~) opinions requested by a credit union or the division of credit unions. Charges are due upon receipt of billing from the division.

(2) The division will notify a credit union before the division incurs expense for legal assistance which may be charged to the credit union under this section.

[Statutory Authority: 1996 c 274. 96-12-058, § 208-418-050, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-050, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-050, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-050, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-050, filed 9/26/83.]

AMENDATORY SECTION (Amending WSR 96-12-058, filed 5/31/96, effective 7/1/96)

WAC 208-418-070 Other fees. (1) The director will charge hourly fees as follows:

(a) An hourly fee will be charged to a party other than a credit union or a subsidiary of one or more credit unions for each electronic data processing examination of the party by the division of credit unions.

(b) An hourly fee will be charged to a credit union for the processing of the credit union's application to add a community group to its field of membership.

(c) An hourly fee will be charged to a credit union for a fraud investigation of the credit union and/or its related parties by the division.

(d) An hourly fee will be charged to (~~(a)~~) an out-of-state or foreign credit union for (~~an on-site~~) examination and supervision by the division under WAC 208-418-040(4).

(e) An hourly fee will be charged to ~~((a))~~ an out-of-state or foreign credit union for the processing of the credit union's application to ~~((de business))~~ operate a branch in this state.

(f) An hourly fee will be charged to other divisions or agencies for examinations, investigations, or similar undertakings performed on their behalf by the division.

~~(2) ((As used in this section, "hourly fee" means a fee of \$55.82 per hour per examiner or other staff person of the division.~~

~~(3))~~ In addition, the director will charge a credit union for the actual cost incurred by the division for an examination or investigation of the credit union and/or its related parties performed under personal services contract by third parties.

~~((4))~~ (3) Charges under this section are due upon receipt of billing from the division.

[Statutory Authority: 1996 c 274. 96-12-058, § 208-418-070, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-070, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-070, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-070, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.545(1). 85-07-008 (Order 85-2), § 419-18-070, filed 3/8/85. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-070, filed 9/26/83.]

NEW SECTION

WAC 208-418-090 Rate increase. (1) On July 1, 2001, and each July 1 after that date, the fee and assessment rates under WAC 208-418-040 and 208-418-070, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[]

NEW SECTION

WAC 208-418-100 Waiver of fees. The director may waive any or all of the fees and assessments imposed under WAC 208-418-040 and 208-418-070, in whole or in part, when he or she determines that both of the following factors are present:

(1) The credit union examination fund established in RCW 43.320.120 (or its successor) exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-418-060

One-time special assessment for
fiscal 1997.

Division of Credit Unions'
SMALL BUSINESS ECONOMIC IMPACT STATEMENT ("SBEIS")
Concerning Rule to Increase Assessments and Fees

Subject: Rule proposed by the Division of Credit Unions ("Division") of the Washington State Department of Financial Institutions (DFI) to revise Chapter 208-418 of the Washington Administrative Code (WAC) to increase assessments and fees.

By: Parker Cann, Director of Credit Unions

Date: March 21, 2001

Introduction

The Division has prepared this SBEIS in compliance with Chapter 19.85 of the Revised Code of Washington (RCW), the Regulatory Fairness Act (RFA). The Preproposal Statement of Inquiry (form CR-101) in connection with the proposed rule was filed at WSR 01-03-146.

Background For Proposed Rule

State credit unions pay assessments and fees to the Division of Credit Unions to pay for the operation of the Division and to establish a reserve for the Division. RCW 31.12.516. For the most part, the Division is funded by quarterly assessments based on asset size. WAC 208-418-040. The Division also charges miscellaneous fees for, among other things, the processing of community field of membership applications. WAC 208-418-070.

The Division needs significant additional revenues to pay the cost of its operation and to maintain its reserve. Under state law, the Division cannot increase its assessment and fee rates in any one fiscal year by more than the "fiscal growth factor" for the year. The fiscal growth factor for the current fiscal year is 2.87%. In order to generate significant additional revenues, the proposed rule provides for an immediate increase of 2.87% in the rate of assessments and fees, and provides for an annual increase every July 1 up to the amount of the fiscal growth factor for that fiscal year. The rule also provides that assessments and fees may be waived if certain conditions are met.

Other technical changes are made by the rule concerning assessments and fees paid by out-of-state and foreign credit unions operating a branch in Washington.

Description Of Proposed Rule

The proposed rule:

- Increases assessment and fee rates by 2.87%, effective in June 2001.
- Provides for the increase of assessment and fees rates on July 1, 2001, and every July 1 thereafter, up to the amount of the then current fiscal growth factor.
- Provides for a waiver of assessments and fees, if certain conditions are met.
- Clarifies assessment of out-of-state and foreign credit unions.

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 rule and the kinds of professional services that a small business is likely to need in order to comply with the requirements.

RESPONSE:

The only substantive change in the proposed rule is the increase in fee and assessment rates paid by credit unions. See “Description of Proposed Rule” above for a brief description of the requirements of the proposed rule. The proposed rule does not change the reporting, recordkeeping or compliance requirements of the current rule, or the kinds of professional services that a small business is likely to need to comply with the proposed rule.

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

RESPONSE:

The proposed rule increases assessment and fees rates and provides for an automatic annual increase in such rates. The proposed rule should not increase any of the compliance costs associated with the payment of such assessments or fees, including costs for equipment, supplies, labor, or other administrative costs.

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

RESPONSE:

The annual increases will be fairly small. The reason is that the annual rate increases are limited to the amount of the fiscal growth factor (FGF), and the FGF is currently running less than 3%. Consequently, it is very doubtful that the increase in cost will prevent or delay credit unions from bringing new products or services to market or cause them to lose market share.

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:

Under the proposed rule, all assessment and fee rates are increased by the fiscal growth factor, so all credit unions, regardless of size, will face the same percentage increase in their assessments or fees. Any existing disproportionality in assessment or fee rates will be maintained, but no additional disproportionality will be introduced.

ELEMENT 5. Steps taken by the agency under RCW 19.85.030(3) to reduce the costs of the proposed rule 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 rule is necessary to ensure that the Division has sufficient funds to operate and is, in the final analysis, necessary to ensure the safety and soundness of credit unions, regardless of size. Consequently, we believe that the rule’s requirements should not be reduced for small credit unions.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements

The proposed rule does not increase recordkeeping or reporting requirements.

(c) Reducing the frequency of inspections

The proposed rule does not provide for inspections.

(d) Delaying compliance timetables

The proposed rule does not change the timing of payment of assessments and fees.

(e) Reducing or modifying fine schedules for noncompliance

The proposed rule does not impose new fine schedules.

(f) Any other mitigation techniques.

We are not aware of other mitigation techniques. However, we welcome comments from small credit unions on how to make the proposed rule less onerous for them.

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

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

RESPONSE:

All credit unions, including smaller credit unions, will be provided with a copy of the proposed rule and an opportunity to provide comment on the proposal. Credit unions are encouraged to contact the Division to comment on the rule. Small credit unions in particular are welcome to provide comments on how the rule 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.