



DCU BULLETIN

Division of Credit Unions

Washington State Department of Financial Institutions

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November 8, 2013

No. B-13-17

Proposed Rule on Reasonable Compensation

The Director of Credit Unions is preparing to publish the proposed rule for reasonable compensation paid to directors and supervisory committee members. She is seeking your informal comments before close of business on November 15, 2013 regarding the attached draft language for reasonable compensation.

November and December Meetings Are Cancelled

Because we are ready to start the process for the CR-102 Proposed Rulemaking Order, the following informal stakeholder meetings have been cancelled for November and December:

- November 19, 2013 - cancelled
- December 17, 2013 - cancelled

Timetable to Complete the Rulemaking

Below is the timetable for the CR-102 Proposed Rulemaking Order and the CR-103 Permanent Rulemaking Order, in compliance with requirements in the Administrative Procedure Act requirements Chapter 34.05 RCW.

Date	Description
November 15, 2013	Deadline to receive informal comments on the draft language of the proposed rule
November 20, 2013	Filing date of the CR-102 Proposed Rulemaking Order with the State Code Reviser

Date	Description
January 7, 2014	Public Hearing on the CR-102 Proposed Rulemaking Order
January 22, 2014	CR-103 Permanent Rulemaking Order filing for adoption
February 24, 2014	CR-103 Permanent Rulemaking Order is effective

Public Hearing for the CR-102 Proposed Rulemaking Order

The public hearing on January 7, 2014 is an opportunity for members of the public to state their concerns or support for the proposed rule. Written and verbal comments are accepted at the public hearing on the proposed rule. If you don't feel comfortable speaking at the meeting or are unable to attend, you can submit your comments in writing (letter, email, fax), in person, or by phone. Key personnel from Department of Financial Institutions will be present at the hearing and will stay behind to talk to citizens after the hearing to answer questions or to speak about public concerns. All input from citizens is included in the rulemaking file as part of the final proposal.

For the public hearing on the CR-102 Proposed Rulemaking Order, you may attend in person or by teleconference as follows:

Date: Tuesday, January 7, 2014

Time: 1:30 pm to 3:30 pm

Location: Department of Financial Institutions
150 Israel Road SW
Tumwater, WA 98501

If you attend in person please allow time to check in with reception.

If you attend by teleconference, dial 1-877-298-8255 and use conference ID 7009517#.

By mid-December 2013, reference material for the January 7, 2014 hearing will available at <http://www.dfi.wa.gov/cu/rulemaking.htm>.

Formal Comments

The Director of Credit Unions continues to encourage input from the public during the rulemaking process. The CR-102 form will state the deadline for the formal comment period. After the close of the formal comment period on reasonable compensation, a Concise Explanatory Statement will be completed that will respond to all comments that the Director of Credit Unions received during the formal comment period.

Rule Effective Date

As a reminder, RCW 31.12.365 was amended regarding reasonable compensation, effective July 28, 2013. A Washington state chartered credit union may now pay reasonable compensation, but the credit union will be required to comply with the final rule on reasonable compensation when it becomes effective in 2014.

Contact Us

If you have any questions regarding the rulemaking on reasonable compensation, please contact Linda Jekel by phone at 360-902-8778, by fax at (360) 704-6978. or linda.jekel@dfi.wa.gov .

Attachment: Draft #3, dated November 5, 2013, on reasonable compensation.

Memo

Date: November 5, 2013
To: Stakeholders
From: Linda Jekel, Director of Credit Unions
Subject: Draft #3 on reasonable compensation

Supplementary Information to the Rule.

Background. Effective July 28, 2013, RCW 31.12.365 was amended to authorize credit unions to pay reasonable compensation to their directors and supervisory committee members. This rule interprets the new authority.

In addition, a State Credit Union may use the term “audit committee” synonymously and in place of “supervisory committee” in its bylaws. However, if a State Credit Union uses the term “audit committee” in its bylaws, it must still comply with the same requirements for a supervisory committee contained in the Act and all applicable rules for the supervisory committee of a federally insured credit union.

The proposed rule provides:

- **Self-determination.** A credit union may determine how much to compensate its members of the board of directors and supervisory committee (aka audit committee), in compliance with applicable Internal Revenue Service (IRS) requirements for nonprofit organizations.
- **Flexibility.** The rule would allow flexibility in determining the level of compensation as it does not set a ceiling for compensation.
- **Transparency.** A credit union member will be provided an easy to read disclosure containing a list of the directors and supervisory committee members and the individual amount of their compensation as defined in this rule, prior to the annual membership meeting.
- **Accountability.** The rule will have controls for ensuring compensation is reasonable and will not have a material adverse effect to the credit union.

- **Exception.** The rule is not intended to address or affect payments (advancement, reimbursement or direct payment) to or on behalf of directors and supervisory committee members for reasonable expenses associated with credit union business-related travel, insurance coverage, or gifts of minimal value, which are permitted under separate authority. These items are expressly excluded from the definition of compensation under the rule, even though they may be taxable income to the recipient under federal law. Credit unions should consult with tax professionals for advice to ensure their practices comply with Internal Revenue Service requirements, including reporting on the IRS Form 990.

WAC 208-___ - ___ Reasonable Compensation.

(1) **Authority to Compensate Directors and Supervisory Committee Members.** Subject to the provisions of this section, a credit union may pay compensation to its directors and supervisory committee members for their service as directors and supervisory committee members that is reasonable in accordance with subsection (4).

(2) **“Compensation” Defined.**

(a) As used in this section, “compensation” means anything of value that is both:

- (i) given to a director or supervisory committee member in exchange for services performed as a director or supervisory committee member, and
- (ii) required to be reported to the Internal Revenue Service as income.

(b) For purposes of this section, the term “compensation” excludes:

- (i) Any advancement to or reimbursement to a director or supervisory committee member, or direct disbursement to a third party of reasonable expenses associated with credit union business related travel of a director or supervisory committee member;
- (ii) Payment of reasonable expenses associated with credit union business related travel for one guest per director or supervisory committee member;
- (iii) Payment for insurance coverage of a director or supervisory committee member, available to employees generally;
- (iv) Payment of indemnification to a director or supervisory committee member and liability insurance coverage for directors and supervisory committee members; and
- (v) Gifts to a director or supervisory committee member of minimal value.

(3) **Controls; Review.** A credit union shall implement and maintain appropriate controls to ensure that compensation is reasonable and that such compensation does not lead to material financial loss to the credit union. Such controls shall include, without limitation, the following:

- (a) Prior to its initial determination to pay compensation to directors or supervisory committee members, or to increase any such payments, a credit union's board of directors shall in good faith review all policies related to compensation, and shall review the amount of compensation provided to the directors and supervisory committee members.
- (b) The review set forth in subsection (3)(a) must: (i) Contain a written determination that compensation paid to the directors and supervisory committee members is reasonable, including a discussion of the factors considered in making such determination; and (ii) Be included as part of the minutes of the meeting at which matters relating to compensation were deliberated and voted upon by the credit union's board of directors.

(4) **When Compensation Is Reasonable.** Compensation is reasonable if it meets all of the following criteria:

- (a) It is proportional to the services provided by the director or supervisory committee member;
- (b) It is reasonable considering the financial condition of the credit union; and
- (c) It is comparable to compensation paid by comparable organizations of a similar size, location, and operational complexity.

(5) **Disclosure to Credit Union Membership.**

- (a) A credit union shall annually disclose to credit union members, prior to its annual membership meeting, the compensation provided to directors and supervisory committee members in the prior calendar year and as scheduled for the current calendar year.
- (b) The disclosure to a credit union's members:
 - (i) Shall be in writing and conspicuously set apart from other information provided to members;
 - (ii) Shall include the names of all the directors and supervisory committee members receiving compensation and the amount of compensation paid to each in the prior calendar year;

(iii) Shall include the schedule for compensation to be paid to directors and supervisory committee members in the current calendar year; and

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(iv) Shall be included in the notice of the annual meeting of the members, a separate mailing to members, a periodic statement of account to members, a periodic publication of the credit union to members, posted electronically on a credit union's website, or through some other email publication to members.

(6) Notice to Director.

- (a) A credit union shall provide written notice to the Director of Credit Unions of its intent to adopt a policy to compensate directors or supervisory committee members at least sixty (60) days before adopting such policy.
- (b) In providing notice to the Director of Credit Unions, a credit union shall provide any additional information as required by the Director of Credit Unions.

(7) Enforcement Authority of Director; Prohibition.

- (a) The Director may prohibit or otherwise limit or restrict the payment of compensation to directors or supervisory committee members if, in the opinion of the director, the payment of compensation has or is likely to have a materially adverse effect on the credit union.
- (b) The Director may also prohibit or limit compensation if a credit union fails to comply with this rule.