



DCU BULLETIN

Division of Credit Unions

Washington State Department of Financial Institutions

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October 26, 2000

No. B-00-16

Division Adopts Final Rule on Commercial Arrangements

On October 25, 2000, the Division adopted a final rule on commercial arrangements, amending Chapter 208-440 WAC. Enclosed is a copy of the Form CR-103 filed with the Code Reviser for this purpose, which includes the final version of the rule. The rule takes effect on November 25, 2000.

The rule allows credit unions more flexibility to enter into prudent commercial arrangements with third parties to offer products and services to members. The rule places 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.

Contact person at the Division on the rule:

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RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Department of Financial Institutions	<input checked="" type="checkbox"/> Permanent Rule
(1) Date of adoption: 10-26-00	<input type="checkbox"/> Emergency Rule
	<input type="checkbox"/> Expedited Adoption
	<input type="checkbox"/> Expedited Repeal

(2) Purpose: The current rules are outdated and overly restrictive.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.

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 products 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.

(3) Citation of existing rules affected by this order:
 Repealed: WAC 208-440-020, -040, -050
 Amended: WAC 208-440-010
 Suspended:

(4) Statutory authority for adoption: RCW 31.12.516(2), 43.320.040
 Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)
 Adopted under notice filed as WSR 00-13-041 on June 14, 2000.
 Describe any changes other than editing from proposed to adopted version: Wording was added to subsection (1) to clarify that credit unions may lease out unused space and engage in group purchasing activities in order to provide third parties' products and services to members.

A new subsection (5) was added to clarify that the rule does not apply to situations where a credit union offers its own products and services to members.

The changes were not intended to change the substantive effect of the section. The changes were in response to comments and are intended to provide more detail for clarification.

EMERGENCY RULE ONLY
 Under RCW 34.05.350 the agency for good cause finds:
 (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
 Reasons for this finding:

EXPEDITED REPEAL ONLY
 Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date)

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:
 Yes No If Yes, explain:

(6) Effective date of rule: Permanent Rules Emergency Rules or Expedited Repeal <input checked="" type="checkbox"/> 31 days after filing <input type="checkbox"/> Immediately <input type="checkbox"/> Other (specify) _____* <input type="checkbox"/> Later (specify) _____ <small>*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)</small>	CODE REVISER USE ONLY
Title Director	Date

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>3</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>3</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

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 or credit union to offer the third party's products 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 products and services to members through the credit union;

(b) Endorse, directly or indirectly, products and services of a third party;

(c) Enter into group purchasing arrangements with third parties;

(d) Receive payment from third parties for participation in commercial arrangements; and

(e) Rent, lease or sublease portions of their land and buildings to third parties to offer products and services to members.

This list is not intended to be exhaustive.

As used in this rule, the term "third party" includes, but is not limited to, credit union service organizations.

(2) Before entering into any commercial arrangements, a credit union's board must adopt a written policy regarding such arrangements. At a minimum, the policy should provide for the:

(a) Evaluation of potential risk of liability; and

(b) Approval of each arrangement, whether by the board or management pursuant to established guidelines.

(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, but not limited to, 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, but not limited to, any applicable federal or state law on privacy of member information.

(5) This section does not apply to situations where a credit union provides its own products or services to members.

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.