



DCU BULLETIN

Division of Credit Unions

Washington State Department of Financial Institutions

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No. B-01-23

Division Schedules Hearing on Proposed Revisions to Field of Membership Rules; Comments Invited

The Division recently filed a CR-102 form to publish its proposed revisions to its field of membership rules and to schedule a hearing on the proposal. Enclosed is a copy of the CR-102 and the text of the proposed rule.

Hearing time and location

The hearing on the proposed rule will be held on January 23, 2002, beginning at 1:00 p.m., at the WestCoast Olympia Hotel located at 2300 Evergreen Park Dr. S.W, Olympia, WA. Please contact Diane Moyer at the Division, at (360) 902-8791, if you would like a map to the hearing site.

Comments on the proposed rule

We are interested in your comments on all aspects of the proposed rule. In particular, though, we are interested in your views on the direct/targeted marketing restriction in the proposal (see WAC 208-472-030):

- Will the restriction make a difference to the viability of small credit unions?
- Is the restriction understandable? Do we need a more detailed explanation or definition of the restriction?
- Will the restriction be a significant burden for credit unions that are adding FOM groups? For smaller credit unions that are not adding FOM groups?

- If the restriction is adopted in the final rule, should the restriction be phased out, say, in three to five years?

We are also interested in your comments in response to the seven questions posed in Executive Order 97-02, listed on the following page.

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 January 23, 2002.

Please submit your comments to:

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Questions under Executive Order 97-02

1. Need. Is the proposed 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 Have laws or other circumstances changed so that the rule should be amended or repealed?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 proposed 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 proposed 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 proposed 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 proposed rule been considered in relation to its cost?
7. Fairness. Does the proposed 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?

Chapter 208-472 WAC

CREDIT UNION FIELD OF MEMBERSHIP ((EXPANSION))

AMENDATORY SECTION (Amending WSR 96-06-011, filed 2/23/96, effective 6/1/96)

WAC 208-472-010 ((Purpose-)) Authority. ((This chapter is adopted by the director for the purpose of establishing the application process for a credit union to include in its field of membership a separate group:

(1) ~~With a common bond of occupation or association; or~~
(2) ~~That constitutes a community.))~~ A credit union may admit to membership those persons qualified for membership who are within its field of membership as stated in its bylaws. RCW 31.12.382. A credit union may amend its field of membership bylaws to add one or more occupational groups, associational groups and communities to its field of membership, as approved by the director pursuant to this chapter. The FOM groups may be located inside or outside the state.

Once a person becomes a member of a credit union, the person may continue to be a member even though the person is no longer within the field of membership of the credit union, subject to the credit union's right to terminate the person's membership in accordance with law.

In addition to the field of membership powers or authorities reflected in this chapter, a credit union has the field of membership powers and authorities granted pursuant to RCW 31.12.404.

AMENDATORY SECTION (Amending WSR 96-17-070, filed 8/20/96, effective 9/20/96)

WAC 208-472-015 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Affiliate" of an enterprise or organization means a person that controls, is controlled by, or is under common control with, the enterprise or organization. "Control" means twenty-five percent or greater stock ownership.

(2) ~~(("Common bond of association" means a current, unifying factor among a group of natural persons, that is based on membership in a bona fide organization whose primary purpose is other than providing eligibility for credit union services. Such an organization must be primarily composed of natural persons who are eligible to participate in the organization's activities. Such an organization also must have clearly defined membership eligibility and must hold regular meetings at least once each year.~~

~~Matriculating students of an accredited college or university, who are members of an identified organization, other than general members of the applicant's credit union, are deemed to have a common bond of association. The organization need not satisfy the requirements set forth in the prior paragraph.~~

~~(3) "Common bond of occupation" means a current, unifying factor among a group of natural persons that is based on employment by or a work-related relationship with an enterprise. The group may include only the following categories of persons:~~

- ~~(a) Employees of the enterprise, and their family members;~~
 - ~~(b) Employees of any subsidiaries of the enterprise, and their family members;~~
 - ~~(c) Employees of the affiliates of the enterprise, and their family members;~~
 - ~~(d) Nonemployee officials of the enterprise, and their family members;~~
- and
- ~~(e) Natural persons under contract to work regularly for the enterprise, and their family members.~~

~~Each of these categories may be included if they are separately identified in the credit union's bylaws.~~

~~(4) "Community" means a current unifying factor among a group of natural persons, that is based on residence or employment within a well-defined and relatively limited geographic area, with a relatively limited population, that is recognized by those who live or work there as a neighborhood, community, or rural district.~~

~~For example, the city of Seattle and King County do not constitute a community for this purpose, because they do not have a relatively limited population. On the other hand, the city of Chelan and Chelan school district are within a well-defined and relatively limited geographic area, with a relatively limited population, and may constitute a community if they are recognized by those who live or work there as a neighborhood, community or rural district. (These examples are based on circumstances existing on December 1, 1994.)~~

~~(5)) "Associational group" is a group with a common bond of association related to membership in an organization. The organization must satisfy each of the following criteria:~~

- ~~(a) The organization's primary purpose must be other than providing eligibility for credit union services;~~
- ~~(b) The organization's membership must be primarily composed of natural persons; and~~
- ~~(c) The organization's organizational documents must clearly define membership eligibility.~~

~~In regard to an associational group within a credit union's FOM, the credit union may admit to membership:~~

- ~~(i) Members of the organization;~~
- ~~(ii) Directors, employees, volunteers and retirees of the organization, and its subsidiaries and affiliates;~~
- ~~(iii) Natural persons under contract to work for the organization and its subsidiaries and affiliates;~~
- ~~(iv) Family members (as determined by the credit union) of any of the above-described natural persons;~~
- ~~(v) The spouse of any of the above-described natural persons who qualified for membership at the time of his or her death;~~
- ~~(vi) The organization and its subsidiaries and affiliates;~~
- ~~(vii) Organizations or enterprises more than half of whose owners, members or employees are eligible to be members of the credit union; and~~
- ~~(viii) Other persons approved by the director.~~

~~Students of a school, college or university are deemed to be members of an organization that constitutes an associational group. In regard to such an associational group within a credit union's FOM, the credit union may admit to membership the students of the school, college or university as well as the family members (as determined by the credit union) of the students.~~

~~(3) "CAMEL" means the CAMEL rating system used by the division, or a successor rating system used by the division.~~

(4) "Community" is a well-defined geographic area that is recognized by those who live or work there as a neighborhood, community, or rural district.

In regard to a community within a credit union's FOM, the credit union may admit to membership:

(a) Natural persons who live, work, worship or go to school in the community;

(b) Enterprises or organizations that have offices within the community;

(c) Directors, employees, volunteers and retirees of the above-described enterprises or organizations;

(d) Family members (as determined by the credit union) of any of the above-described natural persons;

(e) The spouse of any of the above-described natural persons who qualified for membership at the time of his or her death;

(f) Enterprises or organizations more than half of whose owners, members or employees are eligible to be members of the credit union; and

(g) Other persons approved by the director.

(5) "Credit union" means a credit union organized (or chartered) and operating under chapter 31.12 RCW, and an out-of-state or foreign credit union operating in this state in accordance with RCW 31.12.471.

(6) "Director" means the director of ((the Washington state department of) financial institutions.

(7) ((~~"Number of potential members" means the sum of:~~

(a) ~~The number of actual members of the applicant credit union; and~~

(b) ~~The number of employees or members (as appropriate) of the group applied for.~~

(8) ~~"Required number" means:~~

(a) ~~If the number of employees or members (as appropriate) of the specified group is two thousand one or more, the required number is at least five percent of the number of these individuals (rounded up to the nearest whole number).~~

(b) ~~If the number of employees or members (as appropriate) of the specified group is from three hundred thirty to two thousand, the required number is at least one hundred of these individuals.~~

(c) ~~If the number of employees or members (as appropriate) of the specified group is three hundred twenty-nine or less, the required number is at least thirty percent of the number of these individuals (rounded up to the nearest whole number).~~)) "Division" means the division of credit unions of the Washington state department of financial institutions.

(8) "FOM" means field of membership.

(9) "FOM groups" includes occupational groups, associational groups and communities.

(10) A group is "included in the FOM bylaws" of a credit union if the underlying enterprise or organization is named expressly in the credit union's FOM bylaws.

(11) "Occupational group" is a group with a common bond of occupation related to employment by, or work for, an enterprise. The group must be primarily composed of natural persons.

In regard to an occupational group within a credit union's FOM, the credit union may admit to membership:

(a) Employees of the enterprise;

(b) Directors, employees, volunteers and retirees of the enterprise, and its subsidiaries and affiliates;

(c) Natural persons under contract to work for the enterprise and its subsidiaries and affiliates;

(d) Family members (as determined by the credit union) of any of the above-described natural persons;

(e) The spouse of any of the above-described natural persons who qualified for membership at the time of his or her death;

(f) The enterprise and its subsidiaries and affiliates;
(g) Enterprises and organizations more than half of whose owners, members or employees are eligible to be members of the credit union; and
(h) Other persons approved by the director.

(12) "Primarily" or "primary" means more than one-half.

(13) "Qualified associational group" means an associational group located wholly or partly within Washington state. However, if the members of the organization exceed 6,299, the group will not be considered qualified unless the group is included in the FOM bylaws of another credit union or federal credit union.

An associational group that does not satisfy this definition is considered to be a nonqualified associational group.

(14) "Qualified community" means a geographic area within Washington state that constitutes a:

(a) School district;

(b) City; or

(c) County with a population of no more than 75 people per square mile.

A community that does not satisfy this definition is considered to be a nonqualified community.

(15) "Qualified occupational group" means an occupational group located wholly or partly within Washington state. However, if the members of the enterprise exceed 6,299, the group will not be considered qualified unless it is included in the FOM bylaws of another credit union or federal credit union.

An occupational group that does not satisfy this definition is considered to be a nonqualified occupational group.

(16) "SOG" means a small occupational group added pursuant to a SOG enabling amendment.

(17) "SOG enabling amendment" means a SOG enabling amendment approved by the director pursuant to former WAC 208-472-041.

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

WAC 208-472-020 ((Inclusion of a group with a common bond of occupation.)) Addition of FOM groups. ~~((Except as permitted by WAC 208-472-041, if a credit union wants to include a separate group with a common bond of occupation in its field of membership, it must make application to the director to amend its bylaws in accordance with RCW 31.12.115. The application must be submitted to the director in duplicate and must include the information as required by WAC 208-472-025.))~~ (1) General. Each credit union will keep its FOM bylaws substantially in the form of the model FOM bylaws prescribed by the division. Credit unions that have not converted to the model FOM bylaws prior to (the effective date of the 2002 revisions to this chapter) will do so by June 30, 2002. Each credit union must maintain accurate, up-to-date FOM bylaws and must restate its entire FOM bylaws after each FOM group is added, and indicate the date of restatement on each set of restated bylaws.

(2) CAMEL 1s and 2s.

A credit union rated a composite CAMEL 1 or 2 by the division:

(a) May add qualified occupational groups, qualified associational groups and qualified communities to its field of membership bylaws upon approval of its board of directors. Before the board approves the amendment, the credit union must mail or otherwise provide notice of the addition to each credit union and federal credit union headquartered in the county in

which the FOM group is primarily located. The credit union must include in its bylaws the name of the specific enterprise, organization or community, and the date that the board approved the amendment. Additions made in accordance with this subsection (2)(a) are deemed approved by the director; and

(b) May not add nonqualified occupational and associational groups and nonqualified communities to its field of membership bylaws without the prior approval of its board of directors and the prior written approval of the director under WAC 208-472-025.

(3) CAMEL 3s, 4s and 5s. A credit union rated a composite CAMEL 3, 4 or 5 by the division may not add the following FOM groups to its field of membership bylaws without the prior approval of its board of directors and the prior written approval of the director under WAC 208-472-025:

(a) Occupational groups, except for SOGs;

(b) Associational groups; and

(c) Communities.

In general, the director will not approve:

(i) The addition of a community to a credit union's bylaws if the credit union is rated a composite CAMEL 3 by the division; or

(ii) The addition of an occupational or associational group or a community to a credit union's bylaws if the credit union is rated a composite CAMEL 4 or 5 by the division.

(4) Other changes. A credit union may, upon approval of its board of directors, amend its FOM bylaws to:

(a) Delete exclusionary clauses;

(b) Delete FOM groups that no longer exist;

(c) Delete its SOG enabling amendment;

(d) Revise its SOG enabling amendment to delete the five SOG requirements other than the limitation on the number of employees, which is now 500;

(e) Aggregate communities into a larger community. For example, if a credit union has added each of the school districts within a county as communities, it may amend its FOM bylaws to designate the county as a community rather than listing each of the school districts as a community; and

(f) Make nonsubstantive changes.

The board may delegate the authority to delete FOM groups that no longer exist.

In amending its FOM bylaws under this subsection (4), other than deletions, the credit union must indicate in its bylaws the date that the board approved the amendment.

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

WAC 208-472-025 (~~Application to include a separate occupational group~~) Addition of FOM groups--Approval of director. (1) (~~The application to include a separate group with a common bond of occupation must include at least the following information:~~

~~(a) The name of the applicant credit union;~~

~~(b) Evidence that the applicant's board of directors has complied with the notice and voting requirements of RCW 31.12.115;~~

~~(c) A description of the enterprise including its name, number of employees, and the geographic location of those employees. The categories of~~

~~persons specified in WAC 208-472-015(2) that are included in the group must be separately identified;~~

~~(d) A statement from an officer of the enterprise:~~

~~(i) That the enterprise desires membership for its employees in the applicant; and~~

~~(ii) Whether its employees are currently eligible for membership, based upon such employment, in another state or federally chartered credit union. If the employees of the enterprise are eligible for membership in another credit union based upon such employment, the applicant must make best efforts to provide a statement of nonobjection from the other credit union.~~

~~(2) In addition, the application must also include the following information if applicable:~~

~~(a) If the number of potential members of the applicant exceeds one hundred twenty percent of the number of its actual members, then the following information must also be submitted:~~

~~(i) A copy of the applicant's most recent monthly financial statement;~~

~~(ii) A copy of the applicant's plan or other document demonstrating its ability and intent to provide service to the new group and specific plans relating anticipated growth to capital levels.~~

~~(b) If the number of employees of the enterprise exceeds five hundred, then the following must also be submitted:~~

~~(i) An analysis whether the group has sufficient size and resources to form a credit union of its own;~~

~~(ii) Documentation concerning compliance with plans on penetration and service submitted with previously approved applications for inclusion of a group in the applicant's field of membership;~~

~~(iii) Documentation that the applicant has given written notice to all other credit unions headquartered in this state, both state and federally chartered, that have a staffed office in any county in which the offices of the enterprise are located. Credit unions entitled to receive the notice will be given twenty days following receipt of the notice to submit to the department any comments on the application.~~

~~(3) If the applicant cannot obtain the letter of nonobjection described in subsection (1)(d) of this section, after having made a best efforts attempt to do so, it must submit documentation that:~~

~~(a) The required number of employees of the enterprise desire membership in the applicant; or~~

~~(b) The other credit union has failed to adequately serve the group after a reasonable period of time, and how the applicant plans to improve this service.~~

~~The applicant must supply a copy of the information required in (a) and (b) of this subsection to the other credit union, which will be given sixty days following receipt of such information to submit to the department any comments on the overlap.~~

~~This subsection (3) does not apply to overlaps arising out of merger-type transactions between enterprises.) In order to request the approval of the director to add an FOM group to its bylaws under WAC 208-472-020 (2)(b) or (3), a credit union must submit a written application in duplicate to the director. The application must include the following items, and other information and materials requested by the director:~~

~~(a) The name of the FOM group that the applicant desires to add to its bylaws;~~

~~(b) A copy of the resolution of its board of directors approving the bylaws amendment, certified by the board chairperson or secretary;~~

~~(c) A detailed description of the FOM group, including location and number of employees, members or residents, as appropriate, with supporting documentation;~~

~~(d) An explanation how the FOM group satisfies the definition of such a group in WAC 208-472-015;~~

(e) If the applicant is applying to add an associational group, an explanation of the qualifications for membership in the organization, and a copy of the organization's organizational documents;

(f) An explanation how the addition of the FOM group will affect the financial condition of the applicant. In addition, if the applicant is applying for a community, three year pro forma income statements and balance sheets and key ratios (including ROAA, net worth, asset growth and share growth);

(g) If the applicant is applying to add a nonqualified occupational or associational group in excess of 6,299 employees or members, as applicable, a reasoned justification why the group does not have sufficient size or resources, including individual and sponsor support, and financial, physical and human resources, to support a viable credit union of its own; and

(h) A statement that the applicant has provided notice of the application by mail or otherwise to each credit union and federal credit union headquartered in the county in which the FOM group is primarily located.

The director may waive any of the items in this subsection as the director deems appropriate, such as in the case of the addition of FOM groups located wholly out-of-state.

(2) An application filed pursuant to subsection (1) of this section is deemed complete when the director has received all of the information required by subsection (1) of this section. If an incomplete application is received, the director will give written notice to the applicant no more than thirty days from the date the original application was received that additional information is necessary. The applicant will be allowed thirty days after receipt of the notice to provide the requested information, or the director will return the application and it will be deemed withdrawn.

(3) The director shall give the applicant written notice of approval or denial within thirty days after the application is deemed complete. The director's determination whether to approve an application will be based on consideration of the safety and soundness of the applicant and the applicant's compliance with this chapter.

(4) To add a separate FOM group located wholly out-of-state to its field of membership bylaws, a credit union should first contact the director to determine how to proceed with the application to the director and whether the credit union is required to file an application or notice with the credit union supervisory authority in the other state.

NEW SECTION

WAC 208-472-030 Direct marketing. A credit union may not conduct direct marketing targeted primarily at the persons in an occupational or associational group unless:

(1) The group was included in the FOM bylaws of the credit union prior to (the effective date of the 2002 revisions to this chapter); or

(2) A management official of the underlying enterprise or organization has provided the credit union with a written statement, signed by the official, that the group desires service by the credit union.

NEW SECTION

WAC 208-472-035 Application. (1) This chapter also applies to the conversion of an out-of-state, foreign or federal credit union to a credit union chartered and operating under chapter 31.12 RCW.

(2) This chapter does not apply to mergers where the continuing credit union is organized (or chartered) and operating under chapter 31.12 RCW. The continuing credit union may amend its FOM bylaws to add the FOM groups of the merging credit union.

(3) This chapter does not restrict FOM groups added to a credit union's bylaws prior to (the effective date of the 2002 revisions to this chapter).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-472-012	General requirement.
WAC 208-472-041	Streamlined procedure for small occupational groups.
WAC 208-472-045	Inclusion of a group with a common bond of association.
WAC 208-472-050	Application to include a separate associational group.
WAC 208-472-060	Inclusion of a community group.
WAC 208-472-065	Application to include a separate community group.
WAC 208-472-070	Application deemed complete.
WAC 208-472-075	Approval of application.
WAC 208-472-080	Special circumstances.