

DCU BULLETIN
Division of Credit Unions
Washington State Department of Financial Institutions

August 17, 1995

No. 95-2

MESSENGER SERVICE AND AGENCY RULES

The Department of Financial Institutions (DFI) recently began the rule-making process for rules which recognize the authority of credit unions (and other financial institutions) to:

Offer mobile messenger services to their customers. For example, "messenger service" includes an armored car or courier which stops at a customer's home or business to receive deposits to the customer's account and deliver them to a branch of the credit union.

Act as agent for credit unions (and other financial institutions). For example, a credit union could contract with another financial institution to take deposits on its behalf.

The purpose of the rules is to clarify the authority of financial institutions to engage in these activities. Attached is a copy of the form CR-101 filed by the DFI to begin the rule-making process. The form includes a copy of a working draft of the rules.

The idea for these rules arose out of recent federal banking regulations and legislation. However, we felt that it was important for these issues to be clarified for all state-chartered financial institutions. Consequently, Sections II and III of the draft of the rules authorize credit unions to engage in messenger service and agency activities. The portion of the rules affecting credit unions will be placed in the credit union title of the Washington Administrative Code (WAC), currently Title 419 WAC.

For your information, the rule-making process essentially involves three stages:

The publication of the form CR-101, the Statement of Inquiry.

The publication of the form CR-102, the Notice of Proposed Rule-making, which provides notice of the proposed rule and the scheduling of the public hearing to receive written and oral comments on the proposed rule.

The adoption of the final rule and publication of the form CR-103, the Rule-making Order.

As noted above, a copy of the CR-101 is attached. We anticipate that the CR-102, which will formally propose the rules, will be published in the fourth quarter of this year. A copy will be forwarded to each credit union after it has been filed.

You may provide comments on the CR-101, in writing or orally, to:

Parker Cann, Acting Assistant Director
Department of Financial Institutions
Division of Credit Unions
PO Box 41204
Olympia, WA 98504-1204

Note: For a copy of CR-101, please contact the Department of Financial Institutions, Division of Credit Unions.

PRELIMINARY DRAFT OF MESSENGER SERVICE AND AGENCY RULES

I. Commerical banks, trust companies, savings banks, and savings and loan associations

[a new chapter to be added to Title 50 WAC]

Section 1. Definitions. For purposes of this chapter:

"Branch" means a fixed branch of the financial institution.

"Financial institution" means any institution chartered under Title 30, 32 or 33 RCW.

"Messenger service" means any mobile service, such as a courier service or an armored car service, that travels to customer locations to pick up items from or deliver items to customers of a financial institution to facilitate consumer or commercial deposit transactions between the financial institution and its customers.

"Third party" means a party other than the financial institution, and includes without limit an affiliate and subsidiary of an institution, that has a contractual arrangement with the financial institution to provide messenger service to the institution's customers.

Section 2. Generally. A financial institution may contract with its customers for the institution to provide messenger service, or contract with a third party to provide messenger service, in accordance with this rule.

Section 3. Messenger service which does not constitute a branch.

If a financial institution complies with the requirements of this section, it may contract with its customers for the institution to provide messenger service or contract with a third party to provide messenger service, without prior approval for the service as a branch of the institution.

The third party or financial institution operating the messenger service must:

Maintain adequate insurance covering robberies, employee fidelity, and other in-transit losses; and

Enter into a written contract with each of the institution's customers that utilize the service. The contract must in part provide:

That the operator acts as the agent of the customer when the items are in transit to one of the institution's branches;

The operator agrees to indemnify the customer for any loss which occurs during transit, except for a loss caused primarily by the customer's negligence;

An item is not considered to be deposited until it is delivered to one of the institution's branches; and

In the case of any item representing a withdrawal, the item is considered to be paid when the item is given to the third party.

A financial institution may pay for costs incurred by a customer in using a third party messenger service.

A financial institution may not operate a messenger service or contract with a third party to provide messenger service for the transportation of cash to the institution, unless the transportation is provided by armored car, except with the prior written approval of the director.

In so contracting with a customer or third party, a financial institution may set other terms, conditions, and limitations that it deems appropriate to assure compliance with safe and sound banking practices.

Section 4. Messenger service which constitutes a branch. Any messenger service provided by a financial institution or third party to a financial institution's customers which does not comply with the applicable requirements set forth in Section 3 above constitutes a branch of the institution and is subject to the prior approval of the director in accordance with applicable provisions of state law. The director may set conditions on the operation of such a branch as the director may in his or her discretion deem appropriate.

Section 5. Services at stationary offices not affected. This chapter does not impose limits or conditions on the authority of a financial institution at its stationary offices, as agent for another financial institution as principal, or as agent for customers as principals, to prepare, sign and deliver account documentation, to collect and transmit funds obtained from those accounts, to maintain records with respect to such accounts, or to perform other functions allowed by law, and does not impose limits or conditions on the authority of a financial institution to allow another financial institution to act as such an agent.

II. Agency between financial institutions [a new chapter to be added to Title 50 WAC]

Section 1. Agency between financial institutions.

A state-chartered financial institution may contract with another financial institution:

For the state-chartered financial institution to act as agent for the other for the purpose of providing banking services to the other institution's customers; and

For the other to act as agent for the state-chartered financial institution for the purpose of providing banking services for the other institution's customers.

The agent institution must use reasonable efforts to maintain the distinction between the two institutions in the eye of the public. The principal and agent institutions should set contractual terms, conditions, and

limitations that they deem appropriate to assure compliance with safe and sound banking practices.

The agency shall not constitute a branch or other office of the principal institution, provided, however, that the principal institution shall by contract require its agent to provide notice to the Director of the location of any office at which such agent provides such services on behalf of such principal institution.

The director has determined that the agency permitted under subsection 1) of this section is an incidental power:

Which is necessary or convenient to effect the purposes of a bank, in accordance with RCW 30.08.140(13),

Which is necessary or requisite to enable a credit union to carry on effectively its business, in accordance with RCW 31.12.125(14),

Which is necessary to carry on the business of a savings bank, in accordance with RCW 32.08.140(1), and

Which is necessary to carry on the business of a savings and loan association, in accordance with RCW 33.12.010(25).

This section does not affect the authority of a credit union to contract with another to establish a limited service facility at a branch of the other credit union, in accordance with RCW 31.12.215 and 31.12.005(2). The limited service facility does not constitute a branch and does not require prior approval of the director.

This section does not impose limits or conditions on the authority of a financial institution at its authorized branches, as agent for customers as principals, to prepare, sign and deliver account documentation, to collect and transmit funds obtained from such accounts, or to maintain records with respect to such accounts, and does not impose limits or conditions on the authority of a financial institution to allow another financial institution at such other financial institution's authorized branches, as agent for customers as principals, to perform such functions, including but not limited to facilitating the placement of deposits in new or existing accounts.

As used in this section:

"State-chartered financial institution" means any institution chartered under Title 30, 32 or 33 RCW, or Chapter 31.12 RCW.

"Financial institution" means any state-chartered financial institution and any financial institution chartered under federal law.

III. Credit unions

[a new chapter to be added to Title 419 WAC]

Section 1. Definitions. For purposes of this chapter:

"Branch" means a fixed branch of the credit union.

"Credit union" means any credit union chartered under Chapter 31.12 RCW.

"Deposit" means any deposit or share account.

"Messenger service" means any mobile service, such as a courier service or an armored car service, that travels to customer locations to pick up items from or deliver items to customers of a credit union to facilitate consumer or commercial deposit transactions between the credit union and its customers.

"Third party" means a party other than the credit union, and includes without limit an affiliate and subsidiary of a credit union, that has a contractual arrangement with the credit union to provide messenger service to the credit union's customers.

Section 2. Generally. A credit union may contract with its customers for the credit union to provide messenger service, or contract with a third party to provide messenger service, in accordance with this rule.

Section 3. Messenger service which does not constitute a branch.

If a credit union complies with the requirements of this section, it may contract with its customers for the credit union to provide messenger service or contract with a third party to provide messenger service, without prior approval for the service as a branch of the credit union.

The third party or credit union operating the messenger service must:

Maintain adequate insurance covering robberies, employee fidelity, and other in-transit losses; and

Enter into a written contract with each of the credit union's customers that utilize the service. The contract must in part provide:

That the operator acts as the agent of the customer when the items are in transit to one of the credit union's branches;

The operator agrees to indemnify the customer for any loss which occurs during transit, except for a loss caused primarily by the customer's negligence;

An item is not considered to be deposited until it is delivered to one of the credit union's branches; and

In the case of any item representing a withdrawal, the item is considered to be paid when the item is given to the third party.

A credit union may pay for costs incurred by a customer in using a third party messenger service.

A credit union may not operate a messenger service or contract with a third party to provide messenger service for the transportation of cash to the credit union, unless the transportation is provided by armored car, except with the prior written approval of the director.

In so contracting with a customer or third party, a credit union may set other terms, conditions, and limitations that it deems appropriate to assure compliance with safe and sound banking practices.

Section 4. Messenger service which constitutes a branch. Any messenger service provided by a credit union or third party to a credit union's customers which does not comply with the applicable requirements set forth in Section 3 above constitutes a branch of the credit union and is subject to the prior approval of the director in accordance with applicable provisions of state law. The director may set conditions on the operation of such a branch as the director may in his or her discretion deem appropriate.

Section 5. Services at stationary offices not affected. This chapter does not impose limits or conditions on the authority of a credit union at its stationary offices, as agent for another financial institution as principal, or as agent for customers as principals, to prepare, sign and deliver account documentation, to collect and transmit funds obtained from those accounts, to maintain records with respect to such accounts, or to perform other functions allowed by law, and does not impose limits or conditions on the authority of a credit union to allow another credit union to act as such an agent.