



DCU BULLETIN

Division of Credit Unions

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Upcoming CUSO Licensing Deadline Due to the Dodd-Frank Act

This Bulletin pertains to Credit Union Service Organizations (CUSOs). As of the Dodd-Frank Act effective date, July 21, 2011, the Department of Financial Institutions (Department) will once again strictly apply the Washington Consumer Loan Act (Chapter 31.04 RCW) to state and federally chartered (CUSOs). Similarly, this strict application applies to the subsidiaries or affiliates of state-incorporated, depository financial institutions. This strict application occurs pursuant to the language of RCW 31.04.025(2) (chapter 311, Laws of 2009) which states:

(2) This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions, nor to any pawn broking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan.

Because the subsidiaries or affiliates of nationally chartered financial institutions enjoyed federal preemption from state consumer financial protection laws, the Department interpreted RCW 31.04.025(2) more broadly in the past.

Now that the Dodd-Frank Act specifically denies such preemption for subsidiaries of national banks, the Department will license, regulate, examine, and investigate state-incorporated, non-depository subsidiaries of national banks and federal thrifts that originate consumer loans and/or engage in consumer loan servicing. See the Dodd-Frank Act [Pub.L. 111-203] §§ 1042(a)(1), 1042(b)(1)(a), 1044(b)(2), 1045, 1046, and Subsection 1047(b).

Additionally, the Dodd-Frank Act prohibits states from implementing consumer financial laws that would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by a state. See Subsection 1044(a) of the Dodd-Frank Act. If the Department were to continue to more liberally apply the exemption in RCW 31.04.025(2), exempting (CUSOs) and state-chartered bank affiliates or subsidiaries while licensing national bank affiliates or subsidiaries, that may be viewed as discriminatory.

As has been the case since 2009 when the NCUA made the determination, ***mortgage loan originators employed by (CUSOs)*** of state and federally chartered credit unions must continue to license under the Consumer Loan Act or Mortgage Broker Practices Act as determined by the specific activities the (CUSO) performs.

The exemption for (CUSOs) that engage in activities that fall under the jurisdiction of the Mortgage Broker Practices Act remains in place at RCW 19.146.020(1)(a):

“(1) The following are exempt from all provisions of this chapter:

(a) ***Any person doing business under the laws of the state of Washington*** or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, ***credit unions***, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 ***and the affiliates, subsidiaries, and service corporations thereof; . . .***” [Emphasis added.]

The Department will analyze the business activities of each (CUSO) to determine which Act the (CUSO) must operate under.

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