



State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CREDIT UNIONS**

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Interpretive Letter

Division of Credit Unions Interpretive Letter I-14-02

DATE: May 14, 2014

TO: Washington State Credit Unions

FROM: Linda Jekel, Director
Division of Credit Unions

RE: When is a Board Member Disqualified Due to Unexcused Absences

Background

A Washington State-chartered credit union (“Credit Union”) under the Washington Credit Union Act, Chapter 31.12 RCW (“State Act”), changed its bylaws regarding the frequency of board meetings to require at least six regular board meetings each year, with at least one of these meetings held in each calendar quarter, in accordance with RCW 31.12.225(5). This same credit union recently inquired of the Director of Credit Unions on how many meetings a board member may miss before becoming ineligible to serve as a director for the period remaining in his/her term.

Analysis

There is Washington State law on this subject, as well as earlier interpretations by the Division of Credit Unions (DCU), and an approach by the National Credit Union Administration (NCUA). This letter will explain the law, and indicate the flexibility that a credit union has regarding board meeting attendance.

A previous Interpretive Letter I-08-04r¹ answered the question about board absences based on the credit union requiring twelve regular monthly meetings each year in accordance with the State Act at that time. Effective July 28, 2013, the Washington Credit Union Act was amended to permit a board of directors to meet at least six times each year, with at least one of these

¹ DCU Interpretive Letter I-08-04r is available at <http://www.dfi.wa.gov/cu/I-08-04.pdf>

regular board meetings held in each calendar quarter. See “frequency of board meetings” in Bulletin B-13-10.

RCW 31.12.235(2)(a) states that if a director is absent from more than one-fourth of the regular board meetings in any twelve-month period in a term without being reasonably excused by the board, the director shall no longer serve as a director for the period remaining in his or her term.

In 2014, the Director of Credit Unions received a question about board absences if the regular board meetings are required to be six meetings each year with at least one of these meetings held in each calendar quarter. With this board meeting requirement change, a director can miss no more than one unexcused board meeting in a twelve month period in order to be in compliance of RCW 31.12.225(5) and RCW 31.12.235(2)(a). However, providing the director satisfies RCW 31.12.255 and .235(b), he/she may participate in the board meeting via a conference call, as long as reasonable safeguarding standards, such as receipt of meeting materials, ability to hear and participate, and continuous presence on the conference call is in place. [See Interpretive Letter 96-19²]

Examiners will expect a credit union to have a board approved policy on director excused absences, either in the bylaws or other written policy. Directors should know the criteria for an excused absence, as well as whom to notify. The board meeting minutes should note if a board member’s absence is excused or not excused. In order to be fair, the policy should be followed consistently.

RCW 31.12.235(2)(b) states that the board secretary must promptly notify the director when he or she must no longer serve as a director. However, failure to provide notice does not affect the termination of the director's service. The provisions of RCW 31.12.235(2) are automatic and take no further action by the board or this office to take effect. In accordance with RCW 31.12.225(4), vacancies on the board may be filled by an interim director appointment by the board unless the interim director would serve a term of fewer than ninety days.

Conclusion

This interpretation pertains to a Washington state credit union that has changed its bylaws to require six regular board meetings each year, with one of these meetings held in each calendar quarter. A board member who has more than one unexcused absences per rolling twelve months will no longer be eligible to serve as a director for the remainder of his/her term. The board secretary is required to promptly notify the board member of his/her ineligibility to continue to serve. Vacancies on the board may be filled by an interim director appointment by the board, unless the interim director would serve a term of fewer than ninety days. See RCW 31.12.225(4) and (5) and RCW 31.12.235(2)(a) and (b).

² DCU Interpretive Letter 96-19 is available at <http://www.dfi.wa.gov/cu/opinions1996.htm#19>

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This letter is intended to provide general guidance only, and is not a substitute for legal advice by counsel. If you have questions, please contact Linda Jekel at linda.jekel@dfi.wa.gov or 360-902-8778.