



Announcing DFI's New Strategic Plan

Message from Charlie Clark, DFI Director

The world of financial services is changing almost daily. As the state's financial regulator, it's important for us to not just keep pace, but to make certain we are looking consistently to the future.

Last year I asked employees at DFI to assess our strategic plan and make sure we are "stretching" as we work to align with the Governor's priorities, navigate a changing regulatory landscape, and prepare to regulate emerging financial services industries.

We decided we wanted a new more visionary strategic plan that would carry us into the future. We wanted it to have meaning and speak to every employee regardless of their job at DFI. The strategic plan had to be a living document that always moves DFI to work at its highest capacity, and positions us to become the best leaders in protecting consumers and regulating the financial services industry.

I am proud of all the DFI staff work involved in creating our new strategic plan and am pleased to share the results of all our work with you. Below is our one page summary of our plan. You can also find a [summary of our strategic plan](#) on our website.



Leading the way in consumer protection and financial services regulation

OUR MISSION
We protect consumers and advance the financial health of Washington State by providing fair regulation of financial services and educating consumers to make informed financial decisions.

OUR VALUES

- Protecting consumers
- Being an employer of choice
- Promoting a healthy and prosperous economy
- Advancing an efficient, effective, and accountable agency

dfi Strategic Plan 2020

The Washington State Department of Financial Institutions

Cindy Fazio Named New Director of Division of Consumer Services

Lucinda (Cindy) Fazio has been appointed as the new Director of Consumer Services. Cindy has extensive experience in the regulation of non-depository financial institutions gained in her fifteen years with the Division.

For the past five years, Cindy was Chief of Regulatory Affairs, directing all rule writing, legislative review, and interpretive matters for all statutes implemented by the Division.

As part of the Division's management team, she created and implemented the Division's strategic plan, advanced legislation and rules implementing legislation, and has been a primary contact and resource for compliance professionals. During the financial crisis, Cindy acted as the department's liaison for consumers facing foreclosure and became a resource for industry and consumers alike on foreclosure issues.

Cindy has a depth of expertise in regulating money services businesses and mortgage lending. She worked extensively with Director Clark and the Conference of State Bank Supervisors on the Multistate Money Service Business Licensing Agreement Program.

Before Cindy joined the Department, she served as a nonpartisan staff attorney with Washington State Senate Committee Services. She also worked as a criminal trial attorney and as a business lawyer before working for the State. She is the current Chair of the State Regulatory Registry Lawyers Committee and is a participant with several multi-state regulatory committees.

Cindy holds a juris doctorate from Seattle University Law School and is a graduate of Boise State University.



*DFI Director of Consumer Services,
Cindy Fazio*

DFI Supports Washington Veterans and Military Families

Veterans, military service members, military spouses, and military families are essential and vibrant members of Washington's culture, economy, and workforce. Washington has more than 79,000 active duty members from the military, National Guard, and the reserve forces. Here are some ways DFI is assisting veterans and military families:

YesVets Hiring Campaign

DFI is a proud supporter of the YesVets hiring campaign, having hired veterans every year since program inception in 2016. DFI actively partners with WorkSource, statewide college/universities and local veteran organizations to support recruiting fairs and employment events. DFI seeks qualified service members and spouses to fill positions at DFI and helps them successfully transition into civilian employment with the State of Washington.

Expedited Licensing for Veteran and Military Spouse Owned Businesses

When applicable, DFI offers expedited application processing for military members, veterans, spouses, and dependents. The expedited application processing supports [Governor Inslee's Executive Order 19-01](#) supporting veteran and military family transitions. More information is available online at www.dfi.wa.gov/military.

Financial Resource Guide for Military Service Members

DFI has compiled a list of financial resources and assistance programs available to military service members and their families. Topics covered include home loans, education and training, debt, and more. To view the resource guide, visit www.dfi.wa.gov/military/resources



DFI qualified for YesVets recognition for 2019 and has qualified every year since program inception. Pictured above are DFI Deputy Director Catherine Mele-Hetter, DFI Director Charles Clark, Program Manager for ESD/WorkSource Steven Severson, DFI Lead Recruiter Tom Grant, and DFI HR Director Gerri Davis.

Highlights from the 2019 Women in Banking Conference



On Nov. 1, 2019, the Washington Bankers Association hosted the 14th annual Women in Banking Conference at the Renaissance Seattle Hotel.

This was an exciting conference as more than 200 women working in every level of the Washington and Oregon banking industry gathered together to gain insight into the industry and share experiences.

DFI Division of Banks Director **Roberta Hollinshead** attended the conference along with the other women from the Division management team.

President and Chief Executive Officer of Sound Community Bank and the current Chairman of the American Bankers Association, Laurie Stewart, gave us great insight and spoke about her successful journey.

She also led a panel of women representing a huge variety of financial and banking positions including an economist, banking consultant, American Bankers Association policy maker, Federal Reserve Bank executive, and even a Chief Vegetable Officer (Executive at Tom Douglas Restaurants).

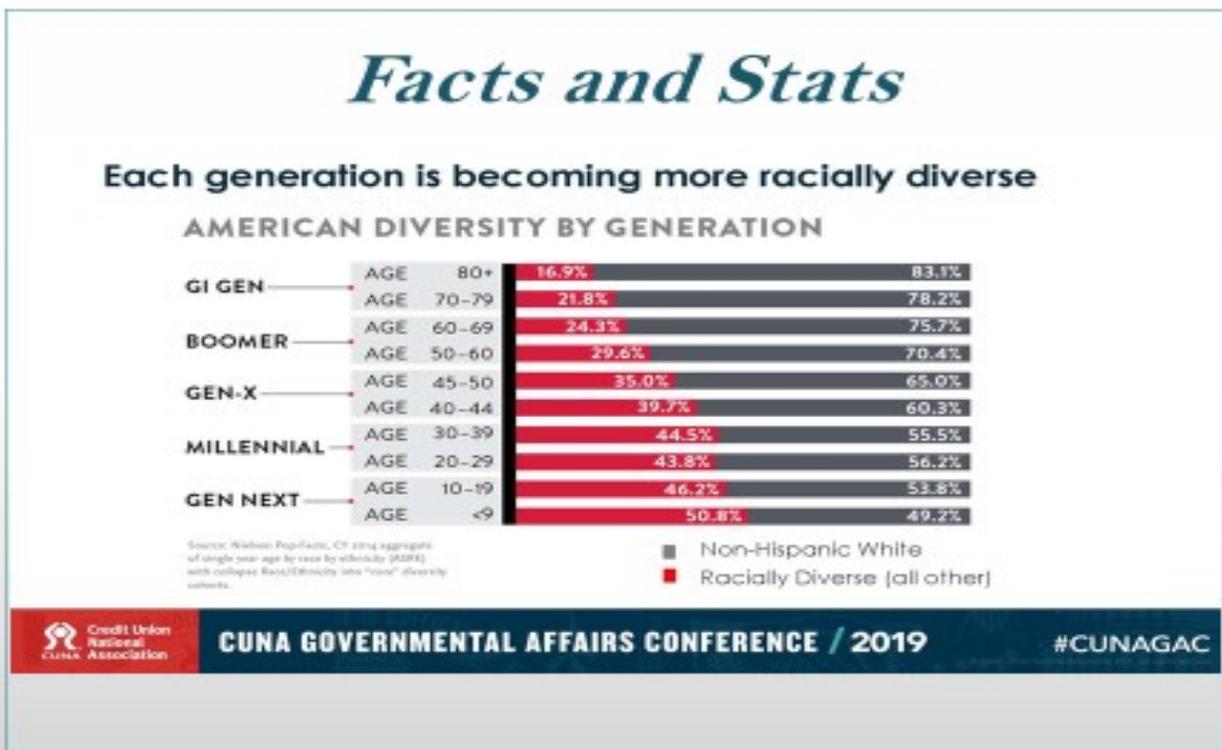
The Conference stressed that trends to improve the representation of women in senior executive roles and serving on boards of directors are moving in a positive direction, though additional improvements are necessary to bring more balance to leadership teams.

The Conference was designed to offer participants an understanding that success can be achieved at any level given the right tools and knowledge.

Diversity Is a Focus for Washington's State-Chartered Credit Unions

“As the credit union changes, the board members need to change.” That was the message shared by Don Clark, CEO of Sound Credit Union, at the annual National Association of State Credit Union Supervisors (NASCUS) Executive Forum in July. Sound Credit Union CEO Clark was joined by Richard Romero, CEO of Seattle Credit Union, to discuss the importance of having diverse boards.

The topic of board diversity was chosen by Amy B. Hunter, DFI's Director of Credit Unions, after attending a breakout session at the Credit Union National Association (CUNA) Governmental Affairs Conference about diversity and after seeing the chart below about how each generation is becoming more diverse.



“Diversity in the workplace is a priority at DFI and in the Division of Credit Unions. I was grateful that Richard and Don were so willing to share their experiences with their fellow CEO’s about the importance of diversity of board members,” DFI Director of Credit Unions Amy Hunter said.

Our state’s credit unions invest time and resources to look at skill sets, demographics, and personality profiles of board members. The credit union industry is focusing on board governance, specifically diversification among board members.

The National Credit Union Administration (NCUA), our federal partner, is also focusing on diversity. The NCUA held its first Diversity, Equity and Inclusion Summit in November. Attendees shared best practices, addressed challenges in advancing diversity, and support for the industry in its efforts.

“Diversity, equity, and inclusion should be sources of enrichment, strength, and unity, not division”, NCUA Chairman Rodney Hood told summit attendees.

Chairman Hood also told summit attendees he is proud to be the first African-American head of a federal financial regulatory agency.

NCUA offers a [self-assessment tool](#) for building diversity and inclusion. This data is used to monitor progress and trends in credit union diversity-related activities and provides areas where additional guidance and resources might be helpful.

The Credit Union National Association (CUNA) Mutual Group agrees that diversity, equity and inclusion are important topics and are working to add these topics to the [seven core principles](#) that have guided cooperatives for 175 years.



From Left to Right: Doug Lacy-Roberts, Myriam Powers, Chairman Rodney Hood, Amy Hunter, and Tammie Nuber at the NASCUS Diversity, Equity and Inclusion Summit event in August.



DFI to Seek Repeal of Debenture Company Laws to Facilitate Capital Formation

DFI plans to seek legislation that would repeal the [debenture company](#) laws from the Securities Act of Washington, chapter 21.20 RCW, in order to facilitate capital formation.

The Securities Act of Washington was enacted in 1959 and is largely based on the original Uniform Securities Act promulgated by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) in 1956. In the 1970s and 1980s, however, the Legislature amended the Securities Act of Washington to add a number of provisions applicable to “debenture companies” in response to issues that arose with Washington-based companies that sold debt securities to investors to fund various investment-related activities. The debenture company provisions contained in the Act impose a restrictive safety and soundness regulatory regime on these companies and are unique to Washington.

A lot has changed since the Legislature enacted the debenture company provisions. The last company to register an offering with the Securities Division that was subject to these provisions terminated its offering in 2005. Since that time, changes in federal securities laws have significantly decreased the likelihood that a company planning a traditional debenture offering would seek registration under the Securities Act of Washington.

At the same time, these restrictive debenture company provisions have imposed a barrier to registration for the sale of low-interest rate notes by non-profit organizations that use the funds for social impact investing and loans to religious organizations. These organizations typically cannot satisfy all of the debenture company provisions that have been codified in the Securities Act of Washington. Due to these restrictions, these issuers restrict the sale of their debentures in our state to comply with one or more exemptions from registration or simply do not offer their securities to Washington residents.

In consideration of the changes in federal law and in light of other regulatory tools applicable in registered offerings, the Securities Division believes the debenture company provisions are no longer necessary to protect investors in our state. With the repeal of these provisions, non-profit organizations could pursue registration in Washington. In the context of registration, the staff of the Securities Division would apply a number of regulatory tools to ensure an appropriate level of investor protection for investors in these offerings.

These tools include a requirement to show the issuer has sufficient earnings to make the required payments on the debt to be issued. With this requirement and other protections in place, the Securities Division believes it is appropriate in the interest of capital formation and the protection of investors to remove the impediments to registration that the debenture company provisions present.

Student Education Loan Bill of Rights: What Consumers Need to Know

Enacted in 2018, the Student Education Loan Bill of Rights (Bill of Rights) gives certain rights to Washington State consumers with student education loans.

Under the Bill of Rights, consumers can expect their servicer to take certain actions promptly and not engage in conduct that can harm consumers.

Among other things, consumers can expect their servicers to:

- Promptly and accurately apply payments, assess fees, and correct errors;
- Provide the borrower information about their loans, available repayment and loan forgiveness options, and resources available to the borrower;
- Accurately provide information about the borrower's loan to the credit bureaus; and
- Respond promptly and completely to borrower requests for information about their loans.

The above is a high-level summary of a borrower's rights under the Bill of Rights. For more detail, review the statutory language here:

- [RCW 31.04.027\(2\) - prohibitions](#)
- [RCW 31.04.405 - requirements](#)

Getting Help

If a borrower believes their student education loan servicer (servicer) may have violated their rights under the Student Loan Bill of Rights, the Department of Financial Institutions (DFI), the Student Loan Advocate with the Washington Student Achievement Council (Student Loan Advocate), and the Office of the Attorney General may be able to help.

Contact the Student Loan Advocate with Questions – email loanadvocate@wsac.wa.gov or call 1-833-881-0397. The Student Loan Advocate can help consumers understand their rights and options with student education loans.

File a Complaint with DFI if a Servicer May Have Violated the Law – file online at <https://dfi.wa.gov/consumers/loan-complaints> or call 1-877-RING DFI (1-877-746-4334). DFI investigates complaints against licensed student loan servicers.

File a Complaint with the Office of the Attorney General for Problems with Schools or Student Loan Modification – file online at <https://www.atg.wa.gov/file-complaint>. The Office of the Attorney General investigates complaints against educational institutions, and companies that fraudulently offer to modify student education loans for a fee. The Office of the Attorney General can also help investigate possible violations of the law by student education loan servicers.

Call DFI or the Student Loan Advocate to Determine where to File a Complaint – DFI and the Student Loan Advocate can answer questions about whether to file a complaint or where to ask for help. DFI, the Student Loan Advocate, and the Office of the Attorney General work together to protect consumers with student education loans. Consumers can contact any of these offices for help.





In A Win for Investors: Washington State Supreme Court Holds That Reliance Is Not a Required Element in Securities Anti-Fraud Lawsuits

In a 6-3 decision, the Washington State Supreme Court in [*Fed. Home Loan Bank of Seattle v. Credit Suisse Sec. \(USA\) LLC*, 449 P.3d 1019, 1020 \(Wash. 2019\)](#) ruled that a plaintiff does not need to prove they relied on misleading statements or omissions to establish a claim under RCW 21.20.010(2).

The plaintiff in this consolidated case purchased approximately \$900 million in residential mortgaged-backed securities from Credit Suisse Securities (USA) LLC and Barclays Capital Inc. The plaintiff claimed the investment banks made several misrepresentations in their prospectuses and sued for violations of RCW 21.20.010(2), which prohibits the use of untrue statements of material fact in connection with the offer, sale, or purchase of a security.

At trial, both defendants moved for summary judgment in their respective cases, arguing that the plaintiff failed to establish that it reasonably relied on the alleged misrepresentations. Agreeing with the defendants, the trial courts granted the motions for summary judgment. On appeal, the plaintiff argued that it did not need to prove reasonable reliance on a misrepresentation in order to prevail in a lawsuit alleging violations of RCW 21.20.010(2). The appellate courts, however, disagreed and affirmed the trial court rulings. This prompted the plaintiff to appeal to the Washington State Supreme Court.

The certified question before the Washington State Supreme Court was “whether the Securities Act of Washington requires a plaintiff suing for a violation of RCW 21.20.010(2) to prove reliance.”

DFI filed an [amicus brief](#) arguing that Washington law does not require a plaintiff to prove reliance. Of the many arguments asserted in the amicus brief, DFI argued that not only does a plain language reading of the Securities Act indicate reliance is not a required element, but that the Act was modeled after the Uniform Securities Act of 1956, not federal Rule 10b-5, and the commentary to the '56 Act explicitly states that it was “not intended as a requirement that the buyer prove reliance on [an] untrue statement or the omission.”

Writing for the Majority, Justice Wiggins echoed several of the arguments asserted by DFI in its amicus brief. The Court reasoned that a plain reading of the Securities Act of Washington demonstrates that a plaintiff does not need to prove reliance, and that the commentary to the Uniform Securities Act of 1956, after which the Securities Act of Washington was modeled, unequivocally supports this plain language reading. The Court also reasoned that its holding furthers the purpose of the Securities Act of Washington – to protect investors.

Troy Van Sickle Sentenced to 30 Months in Prison for Defrauding Washington Investors

On September 30, 2019, the U.S. District Court in Seattle sentenced Troy Van Sickle to 30 months in prison for defrauding investors.

At sentencing, U.S. District Judge James L. Robart found that Van Sickle had been living a life of crime since he was 21 and had shown no respect for the law.

Beginning in 2011, Van Sickle fraudulently operated an asset recovery business that targeted Washington State investors who had previously lost a significant amount of money with a Bellevue investment company.

Van Sickle lured his victims by pretending to be an experienced professional in asset recovery. In reality, Van Sickle had no experience with asset recovery.

Van Sickle used various tactics to earn the trust of his victims, including entering into a romantic affair with one of them. At the time Van Sickle was committing this fraud, he was on probation for committing fraud and theft in Arizona.

In 2012, Van Sickle told the investors that if they loaned him \$75,000, he would (1) use the money to recover their lost investment, and (2) repay the \$75,000 in 30 days.

In fact, Van Sickle had no intention to use the money to recover lost investments or to repay investors. Instead, he used the money for his own personal expenses, including paying his rent through the end of the year.

In addition to the prison time, Van Sickle was ordered to repay the investors a total of \$250,000, which included the \$75,000 they had loaned him and an additional \$175,000 in other funds that he received from them.

Advance fee frauds, such as this one, asks an investor to pay a fee up front – in advance of receiving any proceeds - in order for a deal to go through.

It is not uncommon for fraudsters to target investors who have recently lost money in investments and exploit the investors' desperation in recovering their lost funds.

Washington State investors should be cautious any time they are asked to pay an advanced fee in order to recover a failed investment.

Brian Guerard and **Michelle Mack of the Securities Division** worked with the FBI and the U.S. Attorney's Office to investigate and prosecute this case.



Change in Federal Law Allows DFI to Further Streamline Mortgage Loan Originator Licensing

As of Nov. 24, 2019, some Mortgage Loan Originators (MLOs) can continue to do business while moving between states or from a bank to a nonbank employer under a new provision of the SAFE Act of 2008 known as Temporary Authority to Operate.

To be eligible for Temporary Authority, an individual must be federally registered in the Nationwide Multi-State Licensing System (NMLS) as an MLO during the 365 days preceding application submission or licensed as an MLO in another state during the 30-days preceding application submission.

A mortgage company licensed by DFI must also employ and sponsor the individual. Additionally, individuals are not eligible for Temporary Authority if they have:

- Been denied an MLO license or had an MLO license revoked or suspended;
- Been subject to, or served with, a cease and desist order; or
- Been convicted of a misdemeanor or felony that would preclude licensure under the law of the application state.

The evaluation of Temporary Authority eligibility begins when the MLO submits the application. An individual must have a relationship with a licensed company before the individual is eligible for Temporary Authority.

After filing a license application, if the individual is eligible for Temporary Authority, they must obtain both sponsorship and results of their criminal background check before Temporary Authority begins.

The company employing an MLO with Temporary Authority is subject to both the federal SAFE Act and Washington State Law to the same extent as if the MLO was licensed.

Visit the [NMLS Consumer Access](#) website to verify an MLO's license or Temporary Authority status.

For more information, visit [Temporary Authority to Operate](#) on the NMLS Resource Center.



DFI's Division of Securities Continues Outreach on Amended Investment Adviser Rules

DFI's Division of Securities has begun hosting a number of outreach events to publicize and answer questions concerning recently adopted amendments to the investment adviser rules at Chapter 460-24A WAC. The amendments update various provisions of the investment adviser rules, including the rules regarding examination requirements, advertisements, custody of client assets, advisory contracts, performance compensation, and books and records. In addition, the amendments add a requirement for advisers to maintain cybersecurity policies and procedures and a code of ethics.

The Rule-Making Order, text of the Adopted Rules, a lengthier summary of the amendments, and other rulemaking documents are available on our [rulemaking webpage](#).

During Fall 2019, staff conducted three well-attended outreach events in Spokane Valley, Des Moines, and Vancouver. The feedback so far has been overwhelmingly positive. Participants have expressed that the formal presentation is very informative, and appreciate the opportunity to ask questions and have one-on-one conversations with staff afterward.

The Securities Division plans to schedule an additional event in Seattle. If you would like to attend any of these events, please contact Jamie Barnwell at 360-902-8815 or james.barnwell@dfi.wa.gov.



*DFI Securities Division Staff
Kristen Standifer and Mark Kissler*

Upcoming schedule:

Date:	Time:	Location:
Feb. 25, 2020	10 a.m. – 12 p.m.	South Bellevue Community Center Bellevue, Washington
March 10, 2020	10 a.m. – 12 p.m.	Whatcom Community College Bellingham, Washington
April 21, 2020	10 a.m. – 12 p.m.	Central Washington University Ellensburg, Washington
May 19, 2020	10 a.m. – 12 p.m.	Columbia Basin College Pasco, Washington
June 2, 2020	10 a.m. – 12 p.m.	Capital Events Center Tumwater, Washington

Tips for the Upcoming Franchise Renewal Season

DFI's Securities Division offers the following tips in the preparation of a franchise renewal application:



- **Submit your application online.** Applications for franchise registration, renewals, and amendments, as well as applications for franchise broker registration and franchise exemption notice filings, must be made electronically through our [online franchise filing system](#). We no longer accept physical submissions for these types of filings.
- **Follow NASAA's new guidelines for the FDD State Cover Page and Effective Date Page.** These requirements are effective Jan. 1, 2020. For more information, see [NASAA Cover Sheet instructions](#).
- **Disclose assurances of discontinuance.** If an assurance of discontinuance is material, it must be disclosed to prospective franchisees. For more information, please see our notice at <https://dfi.wa.gov/sites/default/files/notice-regarding-disclosures-aod.pdf>.
- **Ensure compliance with Washington's new law restricting non-compete agreements.** On May 8, 2019, Washington's Governor Jay Inslee signed [ESHB 1450](#) into law, which restricts the use of non-compete agreements in Washington. Notable changes include: (1) an employee non-compete covenant is unenforceable unless the employee's annual earnings exceed \$100,000; (2) a presumption is created that any non-compete covenant with a duration longer than 18 months is unreasonable and unenforceable; and (3) a franchisor may not restrict, restrain, or prohibit a franchisee from soliciting or hiring any employee of the franchisor or a franchisee of the same franchisor.
- **Ensure financial performance representations follow the FTC Rule and the NASAA Commentary.** The Division will continue to carefully review financial performance representations to monitor compliance with the FTC Rule and the [NASAA Commentary on Financial Performance Representations](#). Franchisors and their counsel can expect to receive comments regarding financial performance representations that include misleading subsets of franchise outlets, disclaimers, and blank worksheets.
- **Remember Washington's franchise broker registration requirement.** Please remember to submit the [Franchise Broker Appointment Page](#) for each broker acting on behalf of the franchisor in Washington. If the franchisor does not plan to use franchise brokers in Washington, it is helpful to include a statement in the application cover letter confirming that the franchisor will not use franchise brokers in Washington or that the franchisor will provide a Franchise Broker Appointment Page before later using a broker in Washington.

If you have any questions about these requirements or other issues, please contact Trang Pham at 360-902-8738 or trang.pham@dfi.wa.gov.