



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

**IN THE MATTER OF:**

**THE UNION CREDIT UNION  
SPOKANE, WA**

**CU – 2010-04-23 CO  
CONSENT ORDER**

**CONSENT ORDER**

The Assistant Director (Assistant Director) of the Division of Credit Unions (Division) of the Washington State Department of Financial Institutions (DFI), and The Union Credit Union of Spokane, Washington (Credit Union), after full and frank discussion of the facts and circumstances, and their respective positions, agree to enter into this Consent Order. The Credit Union has been advised of its right to a formal written notice of charges and intent to issue a cease and desist order under RCW 31.12.585, and its right to challenge such an order under RCW 31.12.625 and RCW 31.12.595. Having been so informed, the Credit Union freely and knowingly waives those rights and enters into this Consent Order with the Assistant Director. This Consent Order is issued pursuant to Chapter 31.12 of the Revised Code of Washington (“RCW”), and RCW 34.05.060 of the Administrative Procedure Act, and is based on the following:

**I. UNDISPUTED FACTS**

- A. The Credit Union is a Washington-State chartered credit union that was organized on May 28, 1968 and operates under Chapter 31.12 RCW, the Washington State Credit Union Act. The Credit Union’s low-income designation permits it to accept secondary capital accounts in compliance with 12 C.F.R 741.204 and § 701.34(b)(1). The Credit Union is subject to examination, supervision, and enforcement actions by the Director of DFI and the Director’s delegate, the Assistant Director, pursuant to Chapter 31.12 RCW.
- B. The directors and senior managers of a credit union have fiduciary duties to the credit union. RCW 31.12.267; see also Division Opinion Number 98-4.
- C. The Division conducts examinations of the Credit Union in accordance with RCW 31.12.545. Examination reports are confidential and privileged under RCW 31.12.565. Division representatives have provided the Examination Report to and discussed its contents with the CEO and directors and certain employees of the Credit Union. The Division and the Credit Union agree the Examination Report provides an equivalent substitute for a formal

written notice of charges and intent to issue a cease and desist order under RCW 31.12.585 and RCW 31.12.595(2).

- D. The Credit Union's shares and deposits are insured by the National Credit Union Share Insurance Fund (NCUSIF) administered by the National Credit Union Administration (NCUA), under Title II of the Federal Credit Union Act, 12 U.S.C. 1781 et seq. The Credit Union is subject to examination and supervision by the NCUA, and is subject to NCUA rules and regulations at 12 C.F.R. Part 741.
- E. As required in 12 C.F.R. 741.3 and Part 702, the Credit Union was required to submit a Net Worth Restoration Plan in 2009 to the National Credit Union Administration (NCUA). Its Net Worth Restoration Plan (NWRP) was approved by the NCUA.

## II. ORDER

### A. CAPITAL

- 1. By May 10, 2010, the Board is directed to take one or more of the following actions to recapitalize.
  - a. The Credit Union will accept a proposal to merge its operations into a financially healthy credit union, acceptable to the Assistant Director;
  - b. The Credit Union will comply with the NWRP as approved by NCUA; and/or
  - c. The Credit Union may accept secondary capital accounts from a financially healthy credit union and/or other source, in compliance with 12 C.F.R 741.204 and § 701.34(b)(1) and after receiving approval from the Assistant Director and NCUA on a 2010 revised NWRP that includes secondary capital.
- 2. The Credit Union must comply with the Net Worth Restoration Plan (NWRP) as approved by NCUA in 2009. At a minimum, management must complete the following:

The Credit Union must increase the dollar amount of its net worth by at least .1% (one-tenth of a percent) of total assets each quarter until further notice from the Assistant Director.

- a. Dividends will not be paid at the end of each quarter unless one of the following actions occur:
  - (i) The Credit Union's net income is at least .1 percent (10 basis points) of total assets for the quarter after adequately funding the allowance for loan loss reserves according to generally accepted accounting principles (GAAP); or
  - (ii) **At least 14 days prior to the end of the quarter**, Credit Union's management has received approval from the NCUA Regional Director to pay dividends.

- b. If the Credit Union is not able to meet the quarterly goals from the approved NWRP for more than two consecutive quarters in 2010, management must provide a revised NWRP to NCUA and the Assistant Director for their consideration.
3. **If the Credit Union proposes to incorporate secondary capital into a revised NWRP (Capital Plan)**, the Credit Union will be forward the Capital Plan **within 30 days from the effective date of this Order** to the Assistant Director. The Assistant Director will consult with the NCUA. If the Assistant Director and NCUA approve the Capital Plan, the Board will immediately adopt and the Credit Union (subject to Board review and ongoing monitoring) will implement and thereafter ensure adherence to the Capital Plan.

The Capital Plan will include:

- a. specific plans for the maintenance of capital that must not fall below seven percent of total assets;
- b. projections of the sources and timing of secondary capital, and identification of the secondary capital sources, these constitute as follows:
  - (i) In no case will "Tier I net worth" go below 2% of total assets. "Tier I net worth" is defined as undivided earnings and regular reserves, but **does not** include secondary capital accounts or allowance for loan and lease losses.
  - (ii) If another credit union provides any portion of the secondary capital, they:
    - (a.) may also provide a Board member for the Credit Union. If there is no vacancy on the Credit Union's Board of Directors at the time the secondary capital account is acquired, the Credit Union Board is ordered to expand the size of its Board to add a member from the other credit union. The Assistant Director will work with the Credit Union and NCUA regarding any requirements on management official interlocks in 12 C.F.R. 741.209 and Part 711.
    - (b.) may have first right of refusal on a merger, subject to approval by the Assistant Director and NCUA.
  - (iii) The Credit Union must submit the plan as required by 12 C.F.R. 701.34(b)(1) to both the Assistant Director and the NCUA Regional Director for approval.
- c. a financial forecast for at least a three year period, to include projections for balance sheet and income statement accounts, targeted financial ratios, and growth projections over the period covered by the Capital Plan; and
- d. certify that any pre-conditions for acquiring secondary capital have been satisfied such as membership to a secondary capital granting organization, application deadlines, and matching secondary capital funds.

- e. a description of the assumptions used to determine financial projections and growth targets; and
- f. contingency plans that identify alternative sources and timing of acquiring additional capital should the primary source(s) under (b) above not be available.

**B. ALLOWANCE FOR LOAN AND LEASE LOSSES**

As of the effective date of this Order, the Credit Union will maintain an allowance for loan and lease loss (ALLL) in conformance with generally accepted accounting principles.

The Credit Union must use Financial Accounting Standards Board Statements Numbers 5 and 114 for determining the Credit Union's ALLL adequacy. Provisions for loan losses must be based on the inherent risk in the Credit Union's loan portfolio. The Credit Union will comply with NCUA Interpretive Ruling and Policy Statement (IRPS) 02-3 and NCUA Letter to Credit Unions Number 03-CU-01, dated January 2003, regarding prompt loan charge-offs.

The Credit Union's Board will review the adequacy of the Credit Union's ALLL and document its review in the Board minutes. The Board's policy for determining the adequacy of the Credit Union's ALLL and its implementation will be in conformance to GAAP and will be satisfactory to the Assistant Director as determined at subsequent examinations and/or visitations.

**C. UNINSURED SHARES AND DEPOSITS**

The Credit Union will not accept uninsured shares or deposits in 2010. The amount of uninsured shares and deposits must be zero by December 31, 2011.

**D. ASSETS**

The Credit Union will obtain the Division's written approval prior to selling any of its assets, including its branch.

**III. ANCILLARY MATTERS**

- A. Jurisdiction. Pursuant to chapter 31.12 RCW, the Credit Union and its Board of Directors agree that the Division has jurisdiction over the subject matter of the activities of the Credit Union discussed herein.
- B. Waiver of Review. The Credit Union and its Board of Directors agree to be bound by the terms and conditions of this Consent Order and enter into this Consent Order knowingly and

voluntarily. The Credit Union and its Board of Directors have read this Consent Order in its entirety and fully understand and agree to all of the same. The Credit Union and its Board of Directors represent and warrant to each other that they have the full power and right to execute this Consent Order. The Credit Union and its Board of Directors waive any and all administrative and judicial review regarding the issuance of this Consent Order.

- C. Noncompliance Penalties. The Credit Union and its Board of Directors understand that failure to abide by the terms and conditions of this Consent Order may result in further legal action by the Assistant Director, including but not limited to, enforcement of this Consent Order under RCW 34.05.578 or any other applicable statutes or rules. In the event of such legal action, the Credit Union may be responsible to reimburse the Director for the costs incurred in pursuing such action, including but not limited to, attorney fees.
- D. Non-Preclusion. This Consent Order neither precludes nor estops future legal action by the Division, or its ability to base such action on past, present, or future material violations of law, unsafe or unsound practices by, or unsafe or unsound conditions at the Credit Union. It may include, but is not limited to, the issuance of a temporary cease and desist order pursuant to RCW 31.12.595, the issuance of a notice of charges pursuant to RCW 31.12.585, the issuance of a notice of intent to remove a person from office or conduct of the affairs of the Credit Union pursuant to RCW 31.12.575, or the appointment of a conservator, liquidating agent, and/or receiver pursuant to RCW 31.12.637.
- E. Written Agreement with Director. This Consent Order constitutes a “written agreement entered into with the director” under RCW 31.12.005(13).
- F. Incorporation by Reference. Appendix A, attached hereto, is incorporated into this Consent Order by reference. References in this Consent Order to sections or parts of statutes or rules include successors to such sections or parts.

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

\_\_\_\_\_/s/\_\_\_\_\_  
Linda Jekel  
Assistant Director

**THE UNION Credit Union:**

\_\_\_\_\_/s/\_\_\_\_\_  
Randy Bell, Board Chair

\_\_\_\_\_/s/\_\_\_\_\_  
Demaris Olson, President/CEO

\_\_\_\_\_/s/\_\_\_\_\_  
Don Edwards, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Gary Johnson, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Floyd Burchett, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Dave Frangione, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Milhe Breshears, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Kevin Spillner, Director

## Appendix A to Consent Order - Definitions

As used in this CO, the following terms have the meanings set forth below.

1. **"Financial statements"** includes all of the following:
  - a. Statement of Financial Condition for the quarter end
  - b. Statement of Income and Expense for the quarter and year-to-date
  - c. Dollar amount of delinquent loans for the quarter-end
  - d. Dollar amount of charge-offs and recoveries for the year-to-date
  - e. Analysis of adequacy of ALLL funding for the quarter end
2. **"Net Worth"** means retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings normally include undivided earnings and regular reserves. It does not include the ALLL or the Accumulated Unrealized Gains (Losses) on Available for Sale Securities.
3. **Terms as defined in NCUA Letter 161.** The definitions of the terms set forth below are similar to the definition of these same terms set forth in NCUA Letter 161. It should also be noted that for the most part the definitions of these terms use line items from the 5300s call reports. In the event the NCUA revises the definition of any of these terms in Letter 161, or revises the related line items in the 5300s, the Division may substitute a reasonably similar definition of the terms upon written notice to the Credit Union.

**a. Delinquent Loans/Total Loans means**

Total of Loans Delinquent More Than 2 Months  
**divided by**  
Total Loans

**b. Net Charge-offs/Average Loans means**

[Total of Loans Charged Off (prior 12-month period) - Total Recoveries (same period)]  
**divided by**  
Average Loans

**c. Operating Expenses/Average Assets {Annualized} means**

[Total Operating Expenses - Provision for Loan Losses - Provision for Investment Losses]  
**divided by**  
((Current Period Assets + Priority Year-end Assets)/2)

**d. Return on Average Assets means**

(([Net Income (Loss) After All Operating Expenses and All Cost of Funds] divided by # months in Year to Date) times 12) **divided by**  
[(Current Period Assets + Prior Year-end Assets) divided by 2]