



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CREDIT UNIONS

*P.O. Box 41200 • Olympia, Washington 98504-1200*

*Courier mail address: 150 Israel Rd. S.W., Tumwater, WA 98501*

*Telephone (360) 902-8701 • TDD (360) 664-8126 • Toll-free FAX (877-330-6870) •*

<http://www.dfi.wa.gov>

November 14, 2007

“A”

DCU Interpretive Letter I-07-04

Re: Offers to make dividend payments during merger situations

Question presented

Can an incentive dividend payment be offered to members of a merging credit union by the acquiring (continuing) credit union, in order to encourage members of the merging credit union to vote for the merger?

Answer

No. A state-chartered credit union seeking to acquire another state-chartered credit union may not make an incentive offer of a dividend payment to the members of the merger target. Dividends can only be distributed to members, and while a merger is incomplete, the members of the merging credit union are not yet legally members of the acquiring credit union. RCW 31.12.402(3); RCW 31.12.384. Further, dividends can only be paid if approved by the board of directors of the target (merging, not acquiring) credit union. RCW 31.12.255(2)(c). As a result, they cannot be promised unilaterally by the continuing credit union during pre-merger activities.

An offer to pay an individual a dividend upon completion of a merger could be viewed as a per capita dividend payment. According to the NCUA, there is no authority to pay per capita dividends. NCUA OGC Op 970813. A merging credit union would, however, be permitted to declare dividends from its undivided earnings from preceding periods. Or, dividends could be declared from the merging credit union's remaining earnings, after deduction of expenses, interest on deposits, and required reserves. RCW 31.12.418.

Depending upon the circumstances of a dividend offer in a pre-merger situation, there may also be the potential for inaccurate or deceptive misrepresentation, in violation of the federal Truth in Savings Act. 12 C.F.R. 704.2.

The Division of Credit Union's position on this issue is in agreement with the holdings of the NCUA. If you have any questions regarding this interpretive letter, please do not hesitate to contact me. Also, please note that this letter is intended to provide general guidance only. The Department of Financial Institutions does not offer legal advice.

Sincerely,

Linda K. Jekel  
Director of Credit Unions