



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CREDIT UNIONS

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February 24, 2010

TO: Washington State-Chartered Credit Unions

FROM: Linda K. Jekel, Director of Credit Unions

SUBJECT: Contemporaneous Use of Official Credit Union Name *and* Assumed Trade Name

DCU Interpretive Letter I-10-01

Background

XYZ Credit Union, a state-chartered credit union, wants to dedicate a new branch to a specific associational group, “ABC Association,” in which the credit union would operate the new branch in ABC Association’s headquarters and market the branch to ABC Association’s members, employees, officers, and directors. Some of ABC Association members are small business owners. The new branch of XYZ Credit Union would take deposits, provide consumer financial service products, and may offer member business lending in the future.

Issues

As a matter of law, may XYZ Credit Union use “ABC Association Credit Union” as an assumed business (“doing business as”) name for the branch? If the answer is “yes,” what are the regulatory requirements (if any)? What documents (if any) does the XYZ Credit Union need to file with Division of Credit Unions (“Division”), the Secretary of State, and/or the Department of Licensing? What limitations will the Director of Credit Unions impose upon the credit union to eliminate legal and operational risk associated with the practice?

Short Answer

Subject to all other requirements for establishing and maintaining a new branch, XYZ Credit Union may operate a branch at ABC Association’s headquarters under the assumed business name of “ABC Association Credit Union,” provided that XYZ Credit Union, at a *minimum*, complies with the standards for contemporaneous use of its official name and assumed business name set forth in this Interpretive Letter.

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Legal Discussion

There is nothing in the Washington Credit Union Act, chapter 31.12 RCW (“Act”) that precludes the use of a fictitious business name (“DBA”) *per se*.¹ However, the Director of Credit Unions (“Director”) has the power and broad administrative discretion to administer and interpret the provisions of the Act in the interest of facilitating the delivery of financial services to the members of a credit union, including, without limitation, requiring each credit union to conduct business in compliance with other state and federal laws that apply to credit unions² and protecting the financial interests of credit union members.³ In this regard, the National Credit Union Administration (“NCUA”) Rules prohibit federally insured credit unions from using any advertising, displays, signs, stationery, or other promotional material that is “inaccurate or deceptive in any particular.”⁴ Moreover, the NCUA has at least twice published guidance on the subject of the use of multiple names by a single credit union. The most recent of these, NCUA General Counsel Opinion 08-0543, dated June 3, 2008 [See *Attachment 1*], advises Mattel Federal Credit Union to rely upon the Guidance for Credit Unions that Use More than One Name, NCUA Credit Union Letter, 99-CU-17, dated October 1999 [See *Attachment 2*] (“NCUA Guidance”). The NCUA Guidance is applicable to all federally insured credit unions and is permissible for state-chartered credit unions, including XYZ Credit Union, in the exercise of parity with the powers of a federal credit union.⁵ The NCUA Guidance is generally consistent with other inter-agency guidance applicable to banks published one year earlier in 1998.⁶

¹ RCW 31.12.025 is the only provision of the Act which specifically addresses what must be contained in the name of a credit union. RCW 31.12.025 simply requires that the words “credit union” be used in the name of a credit union regulated by the Act, and that only the persons identified in RCW 31.12.025 may use the term “credit union” in their name or otherwise hold themselves out as being a credit union. As a branch of XYZ Credit Union, holding itself out as “ABC Association Credit Union,” XYZ Credit Union satisfies the requirements of RCW 31.12.025.

² See RCW 31.12.516.

³ See RCW 31.12.015.

⁴ See NCUA Rules, at 12 C.F.R. §740.2.

⁵ The use of an assumed business name by a federal credit union consistent with the NCUA Guidance is permissible. A state-chartered credit union is permitted to invoke the powers of a federal credit union pursuant to the Act, at RCW 31.12.404, for powers of a federal credit union in existence as of July 22, 2001. Therefore, a state-chartered credit union is permitted to use an assumed business name consistent with the NCUA Guidance.

⁶ See *Attachment 3, Interagency Statement on Branch Names*, May 1, 1998.

Minimum Standards

As a condition of permitting the use of the assumed trade name, “ABC Association Credit Union,” in connection with a branch located at the facility of ABC Association, XYZ Credit Union must comply with the following minimum standards:

- XYZ Credit Union must clearly and conspicuously disclose, in signs, advertising, mailings, and similar materials, that different branches or facilities are a branch, unit, or division of the same insured credit union. Language, such as “affiliated with,” that does not clearly indicate a single credit union, should be avoided. In this regard, the credit union must not use any advertising, displays, signs, stationery, or other promotional material that is inaccurate or deceptive in any part.⁷
- In addition to the NCUA Guidance, the Director of Credit Unions will require that the standards for banks set forth in the *Interagency Statement on Branch Names (Attachment 3)*, be followed with respect to maintenance of an Internet presence in which XYZ Credit Union and “ABC Association Credit Union” are used contemporaneously.⁸
- XYZ Credit Union shall obtain from the Department of Licensing a Trade Name Registration for “ABC Association Credit Union,” using the Master Business Application to do so.⁹ The Trade Name Registration shall be maintained for the duration that XYZ Credit Union operates a branch under the trade name, “ABC Association Credit Union.”
- The credit union must use its legal name for all legal documents, certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other similar documents.
- Credit union staff must be educated regarding the possibility of member confusion with respect to share insurance. The credit union, as a federally insured institution, should instruct staff to inquire of members, prior to opening new accounts, whether they have accounts with the credit union at any branch or facility operated under the name “ABC Association Credit Union,” or any other assumed trade name.
- In addition, in the event of a future merger involving the credit union, during the time period soon after the merger, staff should call members’ attention to disclosures that identify a particular branch or facility as part of the surviving credit union.

⁷ See the Division’s Model Disclosure Standards [Attachment 4].

⁸ See the Division’s Model Disclosure Standards [Attachment 4].

⁹ This is not only a standard set forth in the NCUA Guidance. As set forth in RCW 19.80.010, this is a *legal requirement* for all corporations in Washington State that use a trade name. XYZ Credit Union, in using the trade name of “ABC Association Credit Union,” must comply with all of the requirements of Chapter 19.80 RCW, and must avoid the consequences of failure to file a Trade Name Registration under RCW 19.80.040, which declares:

“No person or persons carrying on, conducting, or transacting business under any trade name shall be entitled to maintain any suit in any of the courts of this state until such person or persons have properly completed the registration as provided for in RCW 19.80.010. Failure to complete this registration shall not impair the validity of any contract or act of such person or persons and shall not prevent such person or persons from defending any suit in any court of this state.”

- The credit union must obtain from members opening new accounts a signed statement acknowledging that they are aware that the differently named branches or facilities are, in fact, part of the same credit union and that shares held at each office are *not* separately insured.

General Applicability

This Interpretive Letter is generally applicable to all Washington State-chartered credit unions, similarly situated. Any Washington State-chartered credit union seeking to contemporaneously use its official credit union name and an assumed trade name shall notify the Director of Credit Unions prior to doing so. Upon such notification and based upon individual circumstances, the Director of Credit Unions may impose requirements in addition to the minimum standards set forth in this Interpretive Letter that are consistent with protecting credit union members and avoiding legal and operational risk for a credit union.

Attachment 1

June 3, 2008

Jay Lee, Operations Officer
Mattel Federal Credit Union
333 Continental Boulevard, M1-0104
El Segundo, California 90245

Re: Multiple Names for Credit Unions.

Dear Mr. Lee:

You have asked whether a federal credit union (FCU) can use the names of its sponsor's subsidiaries to name its branch offices. Yes, FCUs can operate branch offices under a different name than the name of the insured credit union if the FCU takes reasonable steps to ensure members are fully apprised of the use of different names.

In NCUA Letter to Credit Unions No. 99-CU-17 (Letter No. 99-CU-17), issued in October 1999, NCUA provided guidance to credit unions about the use of multiple names. Further, NCUA's regulations prohibit federally-insured credit unions from using any advertising, displays, signs, stationery, or other promotional material that is "inaccurate or deceptive in any particular." 12 C.F.R. §740.2. To ensure an FCU's advertising is not inaccurate or deceptive, it should review the several steps Letter No. 99-CU-17 lists that FCUs should undertake. In particular, FCUs should ensure signage used at a branch office under a different name clearly reflects the branch office is a division or branch of the same insured credit union. We advise you to review Letter No. 99-CU-17 to ensure your members are accurately apprised of the use of multiple names.

Finally, an FCU should obtain written permission from its sponsor before using the names or trademarks of the sponsor's subsidiaries. If you have any further questions, please contact Staff Attorney Justin Anderson at 703/518-6540.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/JMA:bhs

08-0543

Attachment 2

NCUA LETTER TO CREDIT UNIONS

NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314

DATE: October 1999 Letter No.: 99-CU-17

TO: Federally Insured Credit Unions

SUBJ: Guidance for Credit Unions that Use More than One Name

A limited number of federal credit unions and federally-insured state-chartered credit unions operate under more than one name. This practice may result from a merger, or it may be based on a credit union's marketing strategy. Regardless of the reasons for the practice, NCUA is aware that some credit unions find it beneficial in serving their members and that it is specifically authorized by state law for some state-chartered credit unions. We are concerned, however, that the practice may cause confusion for members and others in their dealings with credit unions.

For example, if two branches of the same credit union are operated under different names, members might believe they are dealing with two different institutions with separate share insurance coverage. In such a case, members might deposit excess amounts in different branches of the same institution and exceed insurance limits. Also, because NCUA and the state supervisors track credit unions by charter name, confusion may result in the event of an inquiry that identifies a credit union by a different name.

After consultation with state credit union supervisors, we offer this guidance. A federally-insured credit union that uses more than one name should take reasonable steps to ensure that members and others are not confused or misled in their dealings with the credit union. Such steps may include, but are not limited to:

1. Disclosing, clearly and conspicuously, in signs, advertising, mailings, and similar materials that different branches or facilities are a branch, unit, or division of the same insured credit union. Language, such as "affiliated with," that does not clearly indicate a single credit union, should be avoided. NCUA regulations require that federally-insured credit unions not use any advertising, displays, signs, stationery, or other promotional material that is "inaccurate or deceptive in any particular." 12 C.F.R. §740.2.
2. Using the legal name of the credit union for legal documents, certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other similar documents.
3. Educating staff of the credit union regarding the possibility of member confusion with respect to share insurance. A federally-insured credit union should instruct staff to inquire of members, prior to opening new accounts, whether they have accounts with the credit union at its other branches or facilities operated under a different name. In addition, in the event of a merger, during the time period soon after the merger, staff should call members' attention to disclosures that identify a particular branch or facility as part of the continuing credit union.
4. Obtaining from members opening new accounts a signed statement acknowledging that they are aware that the differently named branches or facilities are, in fact, part of the same credit union and that shares held at each office are not separately insured.

If your credit union operates under more than one name, we thank you for your attention to these concerns. If you have any questions or comments, please contact either your NCUA Regional Director or your state supervisory authority.

Sincerely,

/s/ _____

Carolyn D. Jordan
Executive Director

Nation Credit Union Administration

Attachment 3

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
FEDERAL DEPOSIT INSURANCE CORPORATION
OFFICE OF THE COMPTROLLER OF THE CURRENCY
OFFICE OF THRIFT SUPERVISION**

INTERAGENCY STATEMENT

BRANCH NAMES

May 1, 1998

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (the "Agencies") are issuing this Interagency Statement regarding the practice of insured depository institutions operating branches under different trade names in response to requests for guidance to some of the Agencies. While there are no federal laws or regulations that specifically require that all branches of an insured depository institution operate under a single name,¹ the Agencies are concerned that if customers believe they are dealing with two different institutions, they may inadvertently exceed FDIC insurance limits by depositing excess amounts in different branches of the same institution. The Agencies believe it is important that customers understand the scope of FDIC insurance in these circumstances.² Accordingly, an insured depository institution that intends to use a different name for a branch or other facility should take reasonable steps to ensure that customers will not become confused and believe that its facilities are separate institutions or that deposits in the different facilities are separately insured.³ Such measures may include, but are not limited to:

¹There may be state laws that need to be considered with respect to operating under a trade name. In addition, regulations applicable to insured institutions that may be promulgated by the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision (as applicable) under the Federal Trade Commission Act, 15 U.S.C. § 57a(f) et. seq., regarding the prevention of unfair or deceptive acts or practices, could apply to the use of branch names.

²Generally, each depositor at an insured depository institution is insured up to \$100,000. See 12 U.S.C. §§ 1813(m), 1817(i), and 1821(a). Insured deposit limits are determined in accordance with regulations prescribed by the FDIC at 12 C.F.R. Part 330.

³The practice of insured depository institutions using different trade names over a computer network such as the Internet raises the same concern discussed herein. Accordingly, institutions intending to use different trade names over a computer network should take reasonable steps to ensure that customers will not be confused about either the identity of the insured depository institution or the extent of FDIC insurance coverage.

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1. Disclosing, clearly and conspicuously, in signs, advertising, and similar materials that the facility is a branch, division, or other unit of the insured institution. The institution should exercise care that the signs and advertising do not create a deceptive and/or misleading impression.
 2. Using the legal name of the insured institution for legal documents, certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other similar documents.

3. Educating the staff of the insured depository institution regarding the possibility of customer confusion with respect to deposit insurance. The Agencies recommend that the insured depository institution instruct staff at the branch and any other facilities operating under trade names to inquire of customers, prior to opening new accounts, whether they have deposits at the depository institution's other facilities or branches. In addition, during the time period soon after one institution acquires or combines with another, staff should be reminded to call customers' attention to disclosures that identify a particular branch or facility as part of an institution.
4. Obtaining from depositors opening new accounts at the branch a signed statement acknowledging that they are aware that the branch and other facilities are in fact parts of the same insured institution and that deposits held at each facility are not separately insured.

EFFECTIVE DATE: July 1, 1998

⁴The legal name of an insured institution is its full name as reflected in its charter, except that an insured institution may abbreviate terms that are indicators of corporate status (e.g., N.A., F.S.B., Inc., Corp.).

Richard Spillenkothen
Director, Division of Banking
Supervision and Regulation
Board of Governors of the Federal Reserve System

Nicholas J. Ketcha, Jr.
Director, Division of Supervision
Federal Deposit Insurance Corporation

Leann G. Britton
Senior Deputy Comptroller
Bank Supervision Operations
Office of the Comptroller of the Currency

John C. Price, Jr.
Director, Supervision Policy
Office of Thrift Supervision

Attachment 4

**Model Disclosure Standards for Contemporaneous Use of
Official Credit Union Name and Assumed Trade Name**

Signage or Advertising. The signage or advertising for an Assumed Trade Name *must always* include the Official Charter Name. It must indicate that the Credit Union uses an assumed trade name and (2) must display Official Charter Name and the relationship between Assumed Trade Name and Official Charter Name. The following examples, or those which are substantially similar or equivalent, are acceptable for purposes of *signage and advertising*, and should have approximately the same *proportionality* as to relative font size:

ASSUMED TRADE NAME

*Assumed Trade Name is a branch of Official Charter Name.
Assumed Trade Name is an assumed business name of Official Charter Name.*

ASSUMED TRADE NAME

*Assumed Trade Name is an assumed business name of
Official Charter Name, a federally insured state credit union.*

Radio Advertising. In radio advertising, if the Official Charter Name is the brand being identified, there should be an audio disclosure at the end of the radio announcement disclosing the existence of branches and/or other facilities doing business as the Assumed Trade Name. If, on the other hand, the Assumed Trade Name is the brand being primarily identified, there should be an audio disclosure at the end of the radio announcement disclosing (1) the identity of the Official Charter Name and (2) the use of Assumed Trade Name as an assumed business or trade name.

Television Advertising. Since television advertising contains both visual and audio elements, a television advertisement may use audio or visual elements, or both, to identify and disclose the relationship between Official Charter Name and Assumed Trade Name. Unless visual disclosures

alone are so prominent as to be reasonably visible, both as to size, proportionality and duration of screen presence, audio disclosures should be employed as the primary means of providing the necessary disclosures.

Internet Presence. Separate registered domains may be maintained for the Official Charter Name and the Assumed Trade Name. The same principles as set forth above for other advertising should apply when designing Web sites for either domain. Credit Union should strongly consider a single Web site for the Credit Union, with the Web address for the Assumed Trade Name being an alias address that re-directs prospective or current members to the single Web site of the Credit Union.