



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>

April 26, 2018

Division of Credit Unions Interpretive Letter I-18-01

To: Brian Witt
Farleigh Wada Witt
121 SW Morrison Street, Suite 600
Portland, OR 97204

From: Linda Jekel, Director of Credit Unions

Subject: Agreements to Transfer Deposits from One Credit Union to Another

Dear Mr. Witt:

You have asked if a Washington state-chartered credit union may transfer (sell) some of its deposits to another Washington state-chartered credit union and if so, what the requirements are. The transaction you describe would be as follows:

Credit Union A is a Washington state-chartered credit union and wants to close a branch, transfer the branch deposits to a local credit union so the members will continue to have local services, and retain the branch loans. Credit Union B is a Washington state-chartered credit union in the same local community as the branch. Both credit unions have a field of membership that includes persons in the local community.

For purposes of this interpretation, funds held in checking, savings, shares and certificate of deposits will be referred to as "deposits."

Analysis:

What laws are relevant to the proposed transaction?

- Eligibility for membership as set forth in RCW 31.12.382 and any relevant membership requirement in a credit union's bylaws.

- Federal deposit insurance requirements and coverage as set forth in 2 C.F.R. Part 745.
- Transferring interests in personal property by Credit Union A as permissible under RCW 31.12.402(6).
- Assuming assignment of shares and deposits by Credit Union B in as permissible under 12 C.F.R. §741.8.
- Bank Secrecy Act (31 U.S.C. §5311 et seq.) for customer due diligence.

In accordance with RCW 31.12.402(6), Credit Union A may “dispose of its interests in personal property,” which we fairly interpret to include a sale or transfer of its interest in those deposits. Deposits represent money and are, therefore, personal property. We are of the view that a deposit is property of a credit union, subject to the *right to payment on demand or at a fixed time* by a credit-union member pursuant to the terms of his or her demand deposit account and/or certificate of deposit. At the very least, a deposit confers upon the credit union a right to use those funds, which is a property right of the credit union. Therefore, in general, Credit Union A has the power and authority under RCW 31.12.402(6) to dispose of its interests in deposits by means of sale or transfer.

Unless the credit union has a low-income designation, a credit union may only accept deposits from its members. If the credit union has a low-income designation, the credit union may accept non-member deposits, subject to restrictions in 12 C.F.R. §741.204 and 12 C.F.R. §701.32. Since both Credit Union A and Credit Union B have fields of membership that include persons in the community of the branch members, Credit Union B will need to complete or properly waive any membership application requirements simultaneously at the time of accepting the transferred deposits in order to accept only *member* deposits from Credit Union A.

In addition, the Bank Secrecy Act (“BSA”) requires a financial institution to perform customer due diligence. Note that the Division of Credit Unions, by way of examination, will be checking for whether Credit Union B complied with BSA requirements in relation to persons who will become new members based on a bulk transfer of deposits from Credit Union A to Credit Union B.

The National Credit Union Administration (“NCUA”) insures member deposits in a federally insured credit union up to \$250,000. Theoretically, it is possible that a member may have deposits in both Credit Union A and Credit Union B. When deposits are transferred from Credit Union A to Credit Union B, the result could be that a member then has deposits in excess of federal deposit insurance limits. While there is no legal requirement to allow these new members to opt-out, Credit Union B should permit a person with transferred deposits to be withdrawn without penalty for a short period of time before or after Credit Union B accepts the transferred deposits.

Credit Union B is also subject to federal deposit insurance requirements in 12 CFR §741.8, which would require both Division of Credit Unions’ and NCUA’s approval if Credit Union A were not insured by the National Credit Union Share Insurance Fund (“NCUSIF”). In accordance with 12 CFR §741.8(b)(3), approval is not required for assumption of deposits when both credit unions in the transaction are insured by the NCUSIF.

Conclusion:

Credit Union A, a Washington federally insured credit union, may, for consideration, assign and transfer all right, title, and interest it may have in certain deposits it has, pursuant to RCW 31.12.402(6). Credit Union B, also a Washington federally insured credit union, may assume the liability to credit union members for its assumption of such deposits, pursuant to 12 CFR §741.8(b)(3). Unless Credit Union B has low-income designation, it may only accept *member* deposits, so Credit Union B will need to verify that the transferred deposits are from persons who qualify as a member of Credit Union B and determine their application requirements. Credit Union B is required to conduct its own customer due diligence in compliance with the Bank Secrecy Act. As a best practice, Credit Union B should identify any members from the transferred deposits that would, as a result, exceed federal deposit insurance limits and allow such members to withdraw transferred funds without penalty for a short period of time before or after Credit Union B accepts the transferred deposits.

This interpretation applies to all Washington state-chartered credit unions, similarly situated. However, to the extent credit unions other than Credit Union A or Credit Union B present factual circumstances that are different than as above-described, the Division of Credit Unions' interpretation may be different.

If you have questions about this interpretive letter, please contact Linda Jekel, Director of Credit Unions at Linda.Jekel@dfi.wa.gov or 360-902-8778.