DCU Opinion Number O-00-2

March 31, 2000

TO: Opinion File

FROM: John L. Bley, Director

SUBJECT: State Credit Unions Can Convert or Merge Into State Mutual Savings Banks

ISSUE

Whether Washington state credit unions operating under Chapter 31.12 RCW can convert or merge into state mutual savings banks operating under Title 32 RCW.

CONCLUSION

As discussed in greater detail below, Washington state credit unions can convert or merge into state mutual savings banks.

ANALYSIS

For convenience, we will refer to Chapter 31.12 RCW as the State CU Act and Title 32 RCW as the State MSB Act.

Conversions

Conversions, unlike mergers, involve only one corporation. In this context, the converting credit union is a credit union one moment and a savings bank the next. The two corporations never exist independently of each other - one changes its form and becomes the other. At the instant the conversion takes effect, the credit union becomes a savings bank subject to the State MSB Act (and no longer subject to the State CU Act). Because only one corporation – a state credit union – is involved up to the moment of conversion, we believe that such conversions may be effectively authorized by wording

in the State CU Act alone. It is not necessary for both the State CU and MSB Acts to grant this authority.

The State CU Act does not expressly authorize a state credit union to convert or merge into a state savings bank. However, the State CU Act does grant state credit unions the powers and authorities possessed by federally chartered credit unions as of December 31, 1993. RCW 31.12.404(1). This provision is commonly referred to as the parity provision. For convenience, we will refer to the December 31, 1993 date as the parity strike date.

As of the parity strike date, the Federal Credit Union Act (FCUA) allowed federal credit unions to convert or merge into non-credit union financial institutions, such as state or federal mutual savings banks, but only with the prior written approval of the National Credit Union Administration (NCUA). 12 U.S.C. Section 1785(b)(1), 1752(7) (1994). The FCUA required the NCUA to look at six criteria in approving or disapproving such transactions:

1. The history, financial condition, and management policies of the credit union;
2. The adequacy of the credit union's reserves;
3. The economic advisability of the transaction;
4. The general character and fitness of the credit union's management;
5. The convenience and needs of the members to be served by the credit union; and
6. Whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

12 U.S.C. Section 1785(c) (1994).

As of the parity strike date, there were no NCUA rules which applied to the conversion or merger of federal credit unions into savings banks. 60 Fed. Reg. 12661 (March 8, 1995). Consequently, there were no substantive or procedural requirements in NCUA rules that applied to these conversions and mergers.

However, NCUA rules or policies on this subject, even if they existed, would not necessarily be dispositive of the issues. The Director of Financial Institutions has taken the position that, under the parity provisions in Title 30, 32 and 33 RCW, and Chapter 31.12 RCW, the Director determines what powers and authorities are granted by federal law to federal charters, relying primarily on federal statute and not bound by federal agency rule or interpretation.

Consequently, based on the State CU Act, state credit unions have the authority to **convert** into state or federal mutual savings banks, subject to approval of the Division of Credit Unions based on the six criteria listed above and subject to requirements of DFI's Division of Banks under applicable safety and soundness standards inferred in RCW 32.32.500.

Mergers

Unlike conversions, mergers necessarily involve two corporations. In this context, the credit union merges into (combines with) another entity, the savings bank. The two entities can and often do exist independently prior to the merger. Consequently, we believe that a state credit union/state savings bank merger must be authorized by both State Acts. An authorization in the State CU Act alone could not affect the merger authority of state savings banks.

The State MSB Act and State CU Act (as noted above) expressly authorize a state savings bank to merge with a credit union. RCW 32.32.500; RCW 31.12.404(1). Consequently, state credit unions may **merge** with state mutual savings banks, subject to approval of the Division of Credit Unions based on the six criteria listed above and subject to requirements of DFI's Division of Banks under applicable safety and soundness standards inferred in RCW 32.32.500.

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This memo does not express any opinions regarding applicable federal law.

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