

DCU Opinion Number 01-2

Date: February 13, 2001

From: Parker Cann, Director

Subject: A State Credit Union May Accept Federal Public Funds, But May Not Accept State Public Funds

Issue

The question has arisen whether Washington State-chartered credit unions (state credit unions) may accept federal and state public funds.

Analysis

Federal Public Funds

We have concluded previously that state credit unions may serve as US Treasury tax and loan depositories and depositories of federal taxes under 31 C.F.R. Section 203.3(b) and applicable Treasury Department regulations. See our Opinion O-96-11.

We will next address the acceptance of other federal public funds. Washington State-chartered credit unions operate under Chapter 31.12 of the Revised Code of Washington (RCW), and the Division of Credit Union's (DCU's) implementing rules set forth in the Washington Administrative Code (WAC). Chapter 31.12 RCW and DCU's WACs do not specifically authorize state credit unions to accept federal (or state) public funds.

However, state credit unions have, among other powers, all the powers and authorities possessed by federal credit unions (FCUs) as of December 31, 1993. RCW 31.12.404(1). By rule, the Division may grant state credit unions the powers and authorities granted to federal credit unions after that date. RCW 31.12.404(2). The Division does not currently have any rules adopting more recent federal powers.

In general, a state credit union may exercise FCU powers as of December 31, 1993, even if other provisions of state law (e.g., other sections of Chapter 31.12 RCW) provide to the contrary. The effect here is as if the year-end 1993 FCU powers are written into Chapter 31.12 RCW.

When exercising a FCU power, a state credit union must also comply with the restrictions under NCUA's FCU rules that specifically apply to the exercise of that power. RCW

31.12.404. These FCU restrictions only apply **by virtue of the parity provision** if the state credit union is exercising the FCU power.

Consequently, in our analysis of this issue, we must look to the Federal Credit Union Act (FCUA) and NCUA's rules applicable to FCUs. FCUs may receive payments on shares from federal public units and federal political subdivisions. The maximum amount of all federal public funds plus any nonmember shares is limited to 20% of the total shares of the FCU's or \$1.5 million, whichever is greater. "Shares" are defined as regular shares, share certificates, and share draft accounts. 12 U.S.C. 1757(6) (FCUA) and 12 C.F.R. 701.32 (NCUA's rules). For purposes of a state credit union exercising this parity power, "shares" would also include deposits.

Before accepting any public funds or nonmember shares in excess of 20% of total shares, the FCU board must adopt a specific written plan and submit a request to the NCUA in accordance with 12 C.F.R. 701.32(2) and (3).

Therefore, we conclude that state credit unions may receive deposits or payments on shares from federal public units and federal political subdivisions up to the limit of 20% of total shares and deposits. A state credit union desiring to exceed that level may not do so without DCU's prior written approval.

State Public Funds

Chapter 39.58 RCW is the statutory scheme for the deposit of state or local public funds. Such funds must be deposited in public depositories. RCW 39.58.080. Credit unions are excluded from the definition of "public depository." RCW 39.58.010(2).

Therefore, we conclude that state credit unions may not receive deposits or payments on shares from state or local government agencies.

Conclusion

We conclude that a state credit union may receive deposits and payment on shares from federal public units and federal political subdivisions up to the limit of 20% of total shares.

We conclude that a state credit union may NOT may receive deposits and payment on shares from state or local government agencies.

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