



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Credit Unions

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DCU Opinion Number 02-4

Date: April 30, 2002
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Subject: DCU Summary - New Field of Membership (FOM) Rules Effective March 8, 2002

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Introduction

The Division of Credit Unions (Division or DCU) adopted new field of membership (FOM) rules effective March 8, 2002. In order to help credit unions understand the new FOM rules, the Division conducted three technical assistance sessions on March 12, 2002, in Yakima, March 18, 2002, in Spokane, and March 28, 2002, in Federal Way. This Opinion incorporates and supersedes the summary handed out at the technical assistance sessions.

Explanation

1. Overview

A. “A credit union may admit to membership those persons qualified for membership who are within its field of membership as stated in its bylaws.” WAC 208-472-010. The new FOM rules took effect on March 8, 2002.

B. If you use the Model FOM Bylaws form, your FOM appendix and small occupational group (SOG) Log will also be considered part of your bylaws, because of the internal references in the Model. When we say Model FOM Bylaws in the new rules and this Opinion, we mean the attached Model FOM Bylaw provision and Appendix.

C. Credit unions may continue to have more than one occupational group, associational group and community in their FOM.

D. CAMEL 1s and 2s: the addition of “qualified” FOM groups is now a business decision for the Board of Directors (Board). We refer to the addition of qualified groups by the Board as the “streamlined” process.

E. CAMEL 3s, 4s and 5s: these credit unions must still submit an application to the Division, except for SOGs. These credit unions can still add SOGs without applying to the Division, assuming they have a SOG enabling amendment that was approved by the Division before March 8, 2002.

F. The Division will no longer approve SOG enabling amendments. The benefit of having an approved SOG enabling amendment is that the credit union can still add SOGs if it is a CAMEL 3, 4 or 5. A SOG may have no more than 500 employees in each group.

G. The FOM rules eliminate remaining overlap protections.

H. The FOM rules create a restriction on direct/targeted marketing to occupational and associational groups.

I. “Director” in the rule is the Director of the Department of Financial Institutions (DFI). But the DFI Director has given a general delegation of the Director’s authority to the Director of the

Division of Credit Unions. For this reason, the remainder of this memo will refer to the Division as the decision-maker under the rules.

J. It is not necessary to send your applications/requests/questions in the first instance to the Director of DFI.

K. The rules provide the Division with certain waiver authority:

- ◄ To facilitate service to low and moderate income members
- ◄ For application requirements under WAC 208-472-025(1)

2. The all-important definitions (WAC 208-472-015)

A. The definition of occupational group is simplified. [Note use of term “enterprise.”]

B. The definition of associational group is simplified. [Note that there is no longer a requirement that the members meet once a year. Note also the use of the term “organization.”]

C. The students-as-associational-group concept has been simplified.

D. The definition of community is simplified. The provision that Seattle and King County are not communities has been deleted.

E. Recognition has been added that credit unions can take a portion of an FOM group.

F. We tried to make the list of “secondary persons” entitled to join a credit union more consistent among the different groups. See WAC 208-472-015(ii) through (viii), (4)(b) through (g), and (10)(b) through (h).

G. Note the catch-all at the end of the list of secondary persons – “Other persons approved by the Division.” We envision a written request to the Division for the approval of “other persons.”

H. Our intention was to make the definitions of the FOM groups self-executing so that credit unions can let the primary and secondary persons listed in the definitions join even if their FOM bylaws don’t include them all.

I. An occupational or associational group is qualified for the streamlined process if it is located wholly or partly in Washington. However, an occupational or associational group with more than 6,299 employees or members (as applicable) in Washington will not be considered qualified unless it is already included in the FOM bylaws of another credit union.

J. A community is qualified for the streamlined process if it is a:

- ◄ Washington school district
- ◄ Incorporated Washington city
- ◄ Washington county with no more than 75 people per square mile

K. Occupational groups/associational groups/communities that are not “qualified” are considered nonqualified.

L. As used in the FOM rules and this Opinion, “FOM groups” includes occupational groups, associational groups, and communities.

3. Changing to the Model Bylaws

A. “Each credit union must keep its FOM bylaws substantially in the form of the model FOM bylaws prescribed by the division. Credit unions that have not converted to the model FOM bylaws prior to March 8, 2002 must do so by December 31, 2002.” WAC 208-472-020(1).

B. Credit unions that converted to the Division’s Model FOM Bylaws in effect before March 8, 2002 must also make the changes to conform to the new attached Model FOM Bylaws by December 31, 2002.

C. Division approval is not necessary to change to the Model FOM Bylaws. The Division will no longer maintain a copy of each credit union’s FOM bylaws and appendix.

D. Sue Graham at the Division is available to answer your questions about the Model. Sue can be reached at (360) 902-8816 and sgraham@dfi.wa.gov

4. The details (WAC 208-472-020; -025)

A. A credit union rated composite CAMEL 1 or 2 by the Division may add one or more “qualified” occupational groups/associational groups/communities to its FOM bylaws upon approval of its Board, without Division approval. The new rules provide that FOM additions by the streamlined process are deemed approved by the Division.

B. An occupational or associational group is qualified for this purpose if it is located wholly or partly in Washington. However, an occupational or associational group with more than 6,299 employees or members (as applicable) in Washington will not be considered qualified unless it is already included in the FOM bylaws of another credit union.

C. The 6,299 figure implements the “sufficient size or resources” test in RCW 31.12.382(2).

D. A community is qualified if it is a Washington school district; city; or county with no more than 75 people per square mile. For population density figures in the year 2000, see www.ofm.wa.gov/popden/rural.htm

Please note in WAC 208-472-015(14), which sets forth the definition of “qualified community,” that the term “members” was used in error (it really does not fit in the context); it should have been “employees.”

E. With qualified groups, the underlying enterprise, organization, or community, as applicable, must be named in the FOM appendix. “Anybody that works in the paper business” is not acceptable.

F. More than one group may be added at the same Board meeting.

G. A CAMEL 1 or 2 credit union may not add nonqualified groups to its FOM bylaws without the prior written approval of the Division.

H. A CAMEL 3, 4 or 5 credit union may not add groups to its FOM bylaws without the prior written approval of the Division, except for SOGs added pursuant to a SOG enabling amendment approved by the Division before March 8, 2002.

I. The Division's decision on an FOM application will be based on the safety and soundness of the applicant and the applicant's compliance with the Division's FOM rules.

J. The 75,000 population limit on an individual community (contained in prior FOM guidelines of the Division) is eliminated.

K. A credit union adding an FOM group of more than 500 persons, whether by application or otherwise, must provide notice of the addition to all state and federal credit unions headquartered in the county(ies) in which the group is primarily located.

L. Overlap protection for occupational and associational groups is eliminated. A credit union may add occupational and associational groups, whether by the streamlined process or by application, whether or not they are included in the FOM bylaws of another credit union. However, a variation of the direct marketing restriction has been maintained and expanded to all occupational and associational groups, whether or not within a community.

M. A credit union may not conduct **direct marketing targeted primarily** at persons in an occupational or associational group unless (a) the group was included in the FOM bylaws of the credit union before March 8, 2002, or (b) the credit union has received a written statement from a management official of the underlying enterprise or organization to the effect that the group wants service from the credit union. See attached DCU Bulletin No. B-02-06.

N. The Division's requirements for the contents of FOM applications are significantly reduced.

O. Credit unions may, upon Board approval (and without Division approval):

- ◄ Delete exclusionary clauses, SOG enabling amendments, and non-existent groups from their FOM bylaws.

- ◄ Revise their SOG enabling amendments to delete the SOG requirements except for the limit on the number of employees, which is now 500 per group.

- ◄ Aggregate communities (already included in your FOM Bylaws) into a larger community.

- ◄ Make non-substantive changes to their FOM bylaws.

No notice is required to other credit unions for these changes.

P. The Board may delegate authority to delete non-existent groups.

Q. The FOM rules apply to Washington credit unions as well as out-of-state and foreign credit unions operating a branch in Washington pursuant to RCW 31.12.471.

R. The FOM rules do not restrict FOM groups added to a credit union's FOM bylaws before March 8, 2002. Your old bylaws may be broader.

S. For the first time, the Division's FOM rules state:

- "Family member" is determined by each credit union
- Once a member, always a member
- Once a member, your family continues to be eligible to join

These provisions confirm long-standing Division interpretations.

5. Getting the notices out (WAC 208-472-020(2); -025(1))

A. Notice is necessary only if an individual occupational group or associational group or community has more than 500 employees, members or residents, as applicable.

B. Notice is required whether you are adding an FOM group through the streamlined or application process.

C. Written notice should be provided by mail, e-mail or similar means. A newspaper, billboard, radio or TV ad is not sufficient.

D. The credit union must provide notice to every credit union, state or federal, that is headquartered in the county or counties in Washington in which more than half of the FOM group's Washington employees, members, or residents, as applicable, is located.

E. In the streamlined process, the credit union must mail or otherwise provide the notice **BEFORE** the Board meeting at which the addition is approved. Use your own judgment as to how much lead-time to give. Review your internal procedures on who should authorize the notice, because it must be given before Board approval of the addition of the group.

F. Sample notice letters for the streamlined and application process are enclosed. Please do **NOT** send a copy of your notices to the Division.

G. The 20-day comment period on additions has been eliminated, but, of course, the Division is always happy to receive your cards and letters.

6. The direct/targeted marketing restriction (WAC 208-472-030)

A. "A credit union may not conduct direct marketing targeted primarily at the persons in an occupational or associational group unless:

- (1) The group was included in the FOM bylaws of the credit union prior to March 8, 2002. An occupational or associational group is "included" in the FOM bylaws of a credit union if the underlying enterprise or organization, as applicable, is named or within an industry described in the credit union's FOM bylaws. A group that does not satisfy the prior

sentence, but that is within a community in a credit union's FOM bylaws, is not considered "included" in the FOM bylaws of the credit union; or

(2) A management official of the underlying enterprise or organization has provided the credit union with a written statement, signed by the official, that the group desires service by the credit union.”

B. The direct/targeted marketing restriction applies to every state credit union. The restriction applies whether or not a credit union has added an occupational or associational group, and whether or not the addition of an FOM group overlaps another credit union. The restriction was drafted in this manner so that it applied equally to all credit unions and so that credit unions could determine from their own records whether or not they satisfy an exception. See attached Division Bulletin No. B-02-06.

C. No credit union may direct/target market unless one of the two exceptions applies.

D. Credit unions may have listed occupational or associational groups in an old version of their FOM bylaws before they converted to a community charter (federals mostly). This will satisfy the first exception.

E. Management official letters received before, on, or after March 8, 2002 may satisfy the second exception.

F. Credit unions that want to direct/target market to occupational/associational groups in their communities may have to obtain written statements from management officials, even if they served the group in the past or offered it payroll deduction. Some catch-up in this sense may be necessary here – we understand it may take a little time to fill in the gaps, so to speak.

G. Solicitation of a management official does not equate to direct/targeted marketing in violation of the restriction.

7. CAMEL 3s, 4s and 5s (WAC 208-472-020(2))

A. Give the Division a call first.

B. CAMEL 3s

◄ In general, the Division will not approve the addition of communities by a CAMEL 3. The Division may approve other FOM groups.

◄ However, a CAMEL 3 can continue to add small occupational groups (SOGs), without application to the Division, if the SOG enabling amendment was approved by the Division before March 8, 2002.

C. CAMEL 4s and 5s

◄ In general, the Division will not approve the addition of any type of FOM group by a CAMEL 3 or 4.

‡ However, a CAMEL 3 or 4 can continue to add SOGs, without application to the Division, if the SOG enabling amendment was approved by the Division before March 8, 2002.

8. Interstate issues

A. Washington credit unions

- ‡ FOM groups may be located outside of Washington State.
- ‡ Check with Division if part or all of the group is located outside of Washington State. It may be necessary for the credit union to file a notice or application with the credit union regulator in the other state.

B. Other state credit unions

- ‡ The new rules apply to out-of-state, state credit unions with a branch in Washington.

9. Transitional issues

A. Make changes necessary to conform to new Model FOM Bylaws (attached).

B. Develop notice templates, if you plan to add FOM groups.

C. Compile your management statements if you intend to conduct direct/targeted marketing to occupational or associational groups.

D. Delete SOG enabling amendment requirements except for the population limit, which should be changed to 500 employees.

E. The Division will not accept applications from CAMEL 1 or 2 credit unions for “qualified” FOM groups after March 8, 2002.

10. The importance of documentation in the streamlined process

A. “Each credit union must maintain accurate, complete and up-to-date FOM bylaws.” WAC 208-472-020(1). The burden here is on the credit unions.

B. Your FOM appendix should be reprinted IN ITS ENTIRETY and dated EVERY TIME an FOM group is added.

C. Document, document, document!

- ‡ Current FOM bylaws and appendix
- ‡ Statements of management official
- ‡ Proof of mailing

- ◄ Notices to other credit unions
- ◄ Board resolutions

D. Keep central file with FOM documentation

FOM Decision Trees

1. Approval of FOM addition(s)

A. Is your credit union's most recent composite CAMEL rating by the Division a 1 or 2?

If **NO**, contact the Division about making application under WAC 208-472-025(1).

If **YES**, go to question 1.B.

B. Is the FOM group to be added a:

(1) School district in Washington?

(2) Incorporated city in Washington?

(3) County in Washington with a population of no more than 75 people per square mile?

[The population should be based on the most recent census or more recent, credible data.]

If **NO**, go to question 1.C.

If **YES**, go to question 1.D.

C. Is the FOM group to be added an occupational or associational group located wholly or partly in Washington, with no more than 6,299 employees or members (as applicable) in Washington or, if it exceeds that limit, is the group within the FOM bylaws of another state or federal credit union?

If **NO**, you must file an application under WAC 208-472-025(1).

If **YES**, go to question 1.D.

D. Did you, **before your Board approved the amendment**, mail or otherwise provide notice of the FOM addition(s) to all state and federal credit unions headquartered in the county(ies) in Washington where the FOM group is primarily located?

If **NO**, stop here and provide the notice.

If **YES**, go to question 1.E.

E. Has your Board approved an amendment to your FOM appendix which names the underlying enterprise, organization, school district, city or county (with less than 75 people per square mile) and which indicates the date that the Board approved the amendment?

If **NO**, you need to revise the amendment.

If **YES**, you're done the process.

2. The direct/targeted marketing restriction

A. Do you intend to conduct direct marketing targeted primarily at the persons in an occupational or associational group?

If **NO**, you can ignore the restriction.

If **YES**, go to question 2.B.

B. Is the underlying enterprise or organization named in your FOM appendix? [Not just within a community named in your FOM appendix.]

If **NO**, go to question 2.C.

If **YES**, you can direct market to the group.

C. Is the underlying enterprise within an industry named in your FOM appendix?

If **NO**, go to question 2.D.

If **YES**, you can direct market to the group.

D. Do you have a written statement from a management official of the enterprise or organization, signed by the official, indicating that the group would like service by the credit union?

If **NO**, you cannot conduct direct marketing targeted primarily at the persons in the group.

If **YES**, you can direct market to the group.

Notice Templates

Notice for streamlined process

To Managing Officer/President addressed

Subject to approval of its Board, _____ Credit Union intends to add the following occupational group/associational group/community to its field of membership (FOM) bylaws: _____.

_____ Credit Union

Notice for application process

To Managing Officer/President addressed

_____ Credit Union has applied to the Washington State Division of Credit Unions to add the following occupational group/associational group/community to its field of membership (FOM) bylaws: _____.

_____ Credit Union

Chapter 208-472 of the Washington Administrative Code (WAC) contains all of DCU's field of membership rules. Effective March 8, 2002, Chapter 208-472 WAC was amended to read as follows, in its entirety:

Chapter 208-472 WAC

CREDIT UNION FIELD OF MEMBERSHIP

WAC 208-472-010 Authority.

A credit union may admit to membership those persons qualified for membership who are within its field of membership as stated in its bylaws. A credit union may amend its field of membership bylaws to add one or more occupational groups, associational groups and communities to its field of membership, as approved by the director pursuant to this chapter. The FOM groups may be located inside or outside the state.

The director may waive any provision of this chapter as the director deems appropriate to facilitate credit union service to low and moderate income persons.

In addition to the field of membership powers or authorities reflected in this chapter, a credit union has the field of membership powers and authorities granted pursuant to RCW 31.12.404.

WAC 208-472-015 Definitions.

Unless the context clearly requires otherwise, as used in this chapter:

(1) "Affiliate" of an enterprise or organization means a person that controls, is controlled by, or is under common control with, the enterprise or organization. "Control" means twenty-five percent or greater stock ownership.

(2) "Associational group" is a group with a common bond of association related to membership in an organization, or a portion of such a group. The organization must satisfy each of the following criteria:

- (a) The organization's primary purpose must be other than providing eligibility for credit union services;
- (b) The organization's membership must be primarily composed of natural persons; and
- (c) The organization's organizational documents must define membership eligibility.

In regard to an associational group within a credit union's FOM bylaws, the credit union may admit to membership:

- (i) Members of the organization;
- (ii) Directors, employees, volunteers and retirees of the organization or its subsidiaries or affiliates;
- (iii) Natural persons under contract to work for the organization or its subsidiaries or affiliates;

- (iv) Family members (as determined by the credit union) of any of the above-described natural persons;
- (v) The spouse of any of the above-described natural persons if the person qualified for membership at the time of his or her death;
- (vi) The organization and its subsidiaries and affiliates;
- (vii) Organizations and enterprises more than half of whose owners, members or employees are eligible to be members of the credit union; and
- (viii) Other persons approved by the director.

Students of a school, college or university are deemed to be members of an organization that constitutes an associational group. In regard to such an associational group within a credit union's FOM bylaws, the credit union may admit to membership the students of the school, college or university as well as the family members (as determined by the credit union) of the students.

(3) "CAMEL" means the CAMEL rating system used by the division, or a successor rating system used by the division.

(4) "Community" is a well-defined geographic area that is recognized by those who live or work there as a neighborhood, community, or rural district, or a portion of such an area.

In regard to a community within a credit union's FOM bylaws, the credit union may admit to membership:

- (a) Natural persons who live, work, worship or go to school in the community;
- (b) Enterprises and organizations that have offices within the community, and natural persons under contract to work for the enterprises or organizations;
- (c) Directors, employees, volunteers and retirees of the above-described enterprises or organizations;
- (d) Family members (as determined by the credit union) of any of the above-described natural persons;
- (e) The spouse of any of the above-described natural persons if the person qualified for membership at the time of his or her death;
- (f) Enterprises and organizations more than half of whose owners, members or employees are eligible to be members of the credit union; and
- (g) Other persons approved by the director.

(5) "Credit union" means a credit union organized (or chartered) and operating under chapter 31.12 RCW, and an out-of-state or foreign credit union operating in this state in accordance with RCW 31.12.471.

(6) "Director" means the director of financial institutions.

(7) "Division" means the division of credit unions of the Washington state department of financial institutions.

(8) "FOM" means field of membership.

(9) "FOM groups" includes occupational groups, associational groups and communities.

(10) "Occupational group" is a group with a common bond of occupation related to employment by, or work for, an enterprise, or a portion of such a group. The group must be primarily composed of natural persons.

In regard to an occupational group within a credit union's FOM bylaws, the credit union may admit to membership:

- (a) Employees of the enterprise;
- (b) Directors, employees, volunteers and retirees of the enterprise or its subsidiaries or affiliates;
- (c) Natural persons under contract to work for the enterprise or its subsidiaries or affiliates;
- (d) Family members (as determined by the credit union) of any of the above-described natural persons;
- (e) The spouse of any of the above-described natural persons if the person qualified for membership at the time of his or her death;
- (f) The enterprise and its subsidiaries and affiliates;
- (g) Enterprises and organizations more than half of whose owners, members or employees are eligible to be members of the credit union; and
- (h) Other persons approved by the director.

(11) "Primarily" or "primary" means more than one-half.

(12) "Qualified associational group" means an associational group located wholly or partly in the state. However, if the members of the organization in Washington exceed 6,299, the group will not be considered qualified unless the group is within the FOM bylaws of another credit union or federal credit union.

An associational group that does not satisfy this definition is considered to be a nonqualified associational group.

(13) "Qualified community" means a community in the state that constitutes a:

- (a) School district;
- (b) City; or
- (c) County with a population of no more than 75 people per square mile.

A community that does not satisfy this definition is considered to be a nonqualified community.

(14) "Qualified occupational group" means an occupational group located wholly or partly in the state. However, if the members of the enterprise in Washington exceed 6,299, the group will not be considered qualified unless it is within the FOM bylaws of another credit union or federal credit union.

An occupational group that does not satisfy this definition is considered to be a nonqualified occupational group.

(15) "SOG" means a small occupational group added pursuant to a SOG enabling amendment approved by the director prior to March 8, 2002.

WAC 208-472-020 FOM bylaws; addition of FOM groups.

(1) **General.** Each credit union must keep its FOM bylaws substantially in the form of the model FOM bylaws prescribed by the division. Credit unions that have not converted to the model FOM bylaws prior to March 8, 2002 must do so by December 31, 2002. Each credit union must maintain accurate, complete and up-to-date FOM bylaws.

(2) **CAMEL 1s and 2s.**

A credit union rated a composite CAMEL 1 or 2 by the division:

(a) May add qualified occupational groups, qualified associational groups and qualified communities to its field of membership bylaws if the credit union satisfies each of the following:

- (i) If the FOM group has more than 500 employees, members or residents, as applicable, in Washington, the credit union has, before its board of directors approves the amendment, mailed or otherwise provided notice of the addition to each credit union and federal credit union headquartered in the county(ies) in Washington in which the FOM group is primarily located; and
- (ii) The credit union's board has approved the amendment, which names the underlying enterprise, organization or community, as applicable, and indicates the date that the board approved the amendment.

Additions made in accordance with this subsection (2)(a) are deemed approved by the director; and

(b) May not add nonqualified occupational and associational groups and nonqualified communities to its field of membership bylaws without the prior approval of its board of directors and the prior written approval of the director under WAC 208-472-025.

(3) **CAMEL 3s, 4s and 5s.** A credit union rated a composite CAMEL 3, 4 or 5 by the division may not add the following FOM groups to its field of membership bylaws without the prior approval of its board of directors and the prior written approval of the director under WAC 208-472-025:

- (a) Occupational groups, except for SOGs;
- (b) Associational groups; and
- (c) Communities.

In general, the director will not approve:

- (i) The addition of a community to a credit union's bylaws if the credit union is rated a composite CAMEL 3 by the division; or
- (ii) The addition of an occupational or associational group or a community to a credit union's bylaws if the credit union is rated a composite CAMEL 4 or 5 by the division.

(4) **Other changes.** A credit union may, upon approval of its board of directors, amend its FOM bylaws to:

- (a) Delete exclusionary clauses;
- (b) Delete FOM groups that no longer exist;
- (c) Delete its SOG enabling amendment;
- (d) Revise its SOG enabling amendment to delete the SOG requirements other than the limitation on the number of employees, which is 500 per SOG;
- (e) Aggregate communities into a larger community. For example, if a credit union has added each of the school districts within a county as communities, it may amend its FOM bylaws to designate the county as a community rather than listing each of the school districts as a community; and
- (f) Make nonsubstantive changes.

The board may delegate the authority to delete FOM groups that no longer exist.

In amending its FOM bylaws under this subsection (4), other than deletions, the credit union must indicate in its bylaws the date that the board approved the amendment.

(5) A person that is a member of a credit union may continue to be a member even though the person is no longer within the field of membership bylaws of the credit union, subject to the credit union's right to terminate the person's membership. The family members (as determined by the credit union) of a credit union member continue to be eligible to join the credit union, even though the credit union member is no longer within the FOM bylaws of the credit union.

WAC 208-472-025 Application for addition of FOM groups--Approval of director.

(1) In order to request the approval of the director to add an FOM group to its bylaws under WAC 208-472-020 (2)(b) or (3), a credit union must submit a written application in duplicate to the director. The application must include the following items, and any other information and materials requested by the director:

- (a) The name of the FOM group that the applicant desires to add to its bylaws;
- (b) A copy of the resolution of its board of directors approving the bylaws amendment, certified by the board chairperson or secretary;
- (c) A detailed description of the FOM group, including, but not limited to, location and number of employees, members or residents, as applicable, with supporting documentation;
- (d) An explanation how the FOM group satisfies the definition of such a group in WAC 208-472-015;
- (e) If the applicant is applying to add an associational group, an explanation of the qualifications for membership in the organization, and a copy of the organization's organizational documents;
- (f) An explanation how the addition of the FOM group will affect the financial condition of the applicant. In addition, if the applicant is applying for a community, three year pro forma income statements and balance sheets and key ratios (including, but not limited to, return on average assets, net worth, asset growth and share growth);
- (g) If the applicant is applying to add a nonqualified occupational or associational group in excess of 6,299 employees or members, as applicable, a reasoned justification why the group

does not have sufficient size or resources, including individual and sponsor support, and financial, physical and human resources, to support a viable credit union of its own; and (h) If the group has more than 500 employees, members, or residents, as applicable, a statement that the applicant has mailed or otherwise provided notice of the application to each credit union and federal credit union headquartered in the county(ies) in Washington in which the FOM group is primarily located.

The director may waive any of the items in this subsection as the director deems appropriate, such as in the case of the addition of FOM groups located wholly out-of-state.

(2) An application filed pursuant to subsection (1) of this section is deemed complete when the director has received all of the information required by subsection (1) of this section. If an incomplete application is received, the director will give written notice to the applicant no more than thirty days from the date the original application was received that additional information is necessary. The applicant will be allowed thirty days after receipt of the notice to provide the requested information. If the applicant fails to do so, the director will return the application and it will be deemed withdrawn.

(3) The director will give the applicant written notice of approval or denial within thirty days after the application is deemed complete. The director's determination whether to approve an application will be based on consideration of the safety and soundness of the applicant and the applicant's compliance with this chapter.

(4) To add a separate FOM group located wholly out-of-state to its field of membership bylaws, a credit union should first contact the director to determine how to proceed with the application to the director and whether the credit union is required to file an application or notice with the credit union supervisory authority in the other state.

WAC 208-472-030 Direct marketing restriction.

A credit union may not conduct direct marketing targeted primarily at the persons in an occupational or associational group unless:

(1) The group was included in the FOM bylaws of the credit union prior to March 8, 2002. An occupational or associational group is "included" in the FOM bylaws of a credit union if the underlying enterprise or organization, as applicable, is named or within an industry described in the credit union's FOM bylaws. A group that does not satisfy the prior sentence, but that is within a community in a credit union's FOM bylaws, is not considered "included" in the FOM bylaws of the credit union; or

(2) A management official of the underlying enterprise or organization has provided the credit union with a written statement, signed by the official, that the group desires service by the credit union.

WAC 208-472-035 Application.

(1) This chapter also applies to the conversion of an out-of-state, foreign or federal credit union to a credit union chartered and operating under chapter 31.12 RCW.

(2) This chapter does not apply to mergers where the continuing credit union is organized (or chartered) and operating under chapter 31.12 RCW. The continuing credit union may amend its FOM bylaws to add the FOM groups of the merging credit union.

(3) This chapter does not restrict FOM groups added to a credit union's bylaws prior to March 8, 2002.

DCU's Model FOM Bylaw Provision

Bylaws

Article _____. Membership

Section 1. Membership. Membership in the Credit Union is limited to those persons listed in the Field of Membership Appendix attached to these Bylaws, which is incorporated into and made a part of these Bylaws by this reference.

[DCU's Model FOM Appendix

DCU instructions are in bracketed wording in italics and need not be included in your Appendix.]

Field of Membership Appendix

To the Bylaws of [*Insert Credit Union name*] Credit Union

The Credit Union's field of membership is limited to the following persons:

Occupational Groups

A. Approved Occupational Groups

1. Employees of the Credit Union or any of its credit union service organizations; date of regulatory approval: _____ [*if readily available from the Credit Union's records*]
2. Employees of _____; date of regulatory approval: _____ [*if readily available from the Credit Union's records*]
3. Employees of _____; date of Board approval: _____ [*if regulatory approval is not required*]
4. Etc.

B. Small Occupational Groups [*include only if the Credit Union has received approval of a SOG enabling amendment before March 8, 2002*]

Employees of any of the enterprises listed as small occupational groups (SOGs) on the attached SOG Control Log; date of regulatory approval of SOG enabling amendment:

Each SOG must have no more than 500 employees at the time it is approved by the Board. The SOG Control Log (Log) must include the name of each SOG and the date it was approved by the Board. The Log is incorporated into and made a part of this Appendix by this reference. The Log may be amended at any time by the Board without the approval of or notice to the Division of Credit Unions.

C. Other Natural Persons, Enterprises and Organizations

1. The directors, employees, volunteers and retirees of any of the above-described enterprises or their subsidiaries or affiliates
2. Natural persons under contract to work for any of the above-described enterprises or their subsidiaries or affiliates
3. Family members (as determined by the Credit Union) of any of the above-described natural persons

4. The spouse of any of the above-described natural persons if the person qualified for membership at the time of his or her death
5. The above-described enterprises and their subsidiaries and affiliates
6. Enterprises and organizations more than half of whose owners, members or employees are eligible to be members of the Credit Union
7. Other persons approved by the director

Associational Groups

A. Approved Associational Groups

1. Members of _____; date of regulatory approval: _____ [*if readily available from the Credit Union's records*]
2. Members of _____; date of Board approval: _____ [*if regulatory approval is not required*]
3. Etc.

B. Other Natural Persons, Enterprises and Organizations

1. The directors, employees, volunteers and retirees of any above-described organizations or their subsidiaries or affiliates
2. Natural persons under contract to work for any of the above-described organizations or their subsidiaries or affiliates
3. Family members (as determined by the Credit Union) of any of the above-described natural persons
4. The spouse of any of the above-described natural persons if the person qualified for membership at the time of his or her death
5. The above-described organizations and their subsidiaries and affiliates
6. Organizations and enterprises more than half of whose owners, members or employees are eligible to be members of the Credit Union
7. Other persons approved by the director

Communities (Including Neighborhoods and Rural Districts)

A. Approved Communities

1. Natural persons who live, work, worship or go to school in the community described as _____; date of regulatory approval: _____ [*if readily available from the Credit Union's records*]
2. Natural persons who live, work, worship or go to school in the community described as _____; date of Board approval: _____ [*if regulatory approval is not required*]
3. Etc.

B. Aggregated Communities [*include only if the Credit Union has aggregated some its communities*]

1. The County of _____; date of Board approval: _____

This is an aggregation of the following communities approved by the Division of Credit Unions (or its predecessor) or the Board, as appropriate:

- a. _____; date of regulatory approval: _____ [*if readily available from the Credit Union's records*]
- b. _____; date of Board approval: _____ [*if regulatory approval is not required*]
- c. Etc.

2. Etc.

C. Other Natural Persons, Enterprises and Organizations

- 1. Enterprises and organizations that have offices within the above-described communities, and natural persons under contract to work for the enterprises or organizations
- 2. The directors, employees, volunteers and retirees of any of the above-described enterprises or organizations
- 3. Family members (as determined by the Credit Union) of any of the above-described natural persons
- 4. The spouse of any of the above-described natural persons if the person qualified for membership at the time of his or her death
- 5. Enterprises and organizations more than half of whose owners, members or employees are eligible to be members of the Credit Union
- 6. Other persons approved by the director



Signed on _____, _____ and attested to by:

Chairman/President of the Board

Secretary



DCU BULLETIN
Division of Credit Unions
Washington State Department of Financial Institutions
Phone: (360) 902-8701 **FAX: (360) 704-6901**

April 17, 2002

No. B-02-06

New Direct/Targeted Marketing Restriction
Applies To All State Credit Unions

We have learned that some credit unions may not be aware of the direct/targeted marketing restriction in our new field of membership (FOM) rules.

Effective March 8, 2002, no state-chartered credit union may conduct direct marketing targeted primarily at persons in an occupational or associational group, unless one of two exceptions (discussed below) applies.

Exceptions

A state-chartered credit union (Credit Union A) may not conduct direct marketing targeted primarily at persons in an occupational or associational group unless:

- (1) The group was included in the FOM bylaws of Credit Union A prior to March 8, 2002. An occupational or associational group is “included” in the FOM bylaws of Credit Union A if the underlying enterprise or organization, as applicable, is named or within an industry described in the Credit Union’s FOM bylaws. A group that does not satisfy the prior sentence, but that is within a community in Credit Union A’s FOM bylaws, is not considered “included” in the FOM bylaws of the Credit Union; or

- (2) A management official of the underlying enterprise or organization has provided Credit Union A with a written statement, signed by the official, that the group desires service by the Credit Union. The management official’s letter may be received before, on, or after March 8, 2002.

Effect of restriction

If Credit Union A wishes to conduct direct/targeted marketing to persons in an occupational or associational group, **the Credit Union must assure itself that it satisfies one of the two exceptions noted above in regard to the group.** The exceptions were drafted so that credit unions could look to their own records to determine if an exception exists.

If, after reviewing its records, Credit Union A determines that it does not satisfy the first exception, it must obtain a written statement signed by a management official of the group, stating that the group desires the Credit Union's service, before undertaking direct/targeted marketing to the persons in the group.

In order to satisfy the second exception, Credit Union A may have to obtain a management official's letter even though the Credit Union conducted direct/targeted marketing to the group prior to March 8, 2002. For example, suppose Credit Union A was conducting direct/targeted marketing to an occupational group in a community in its FOM before March 8, 2002, but the group was not included in its FOM bylaws and the Credit Union did not have a management official's letter requesting service on file. Under the new FOM rules, Credit Union A would have to obtain a management official's letter before continuing with direct/targeted marketing to the persons in the group.

Credit unions should maintain centralized documentation to support their direct/targeted marketing.

Why the restriction?

As we were receiving input on the preliminary rule draft, several credit unions expressed concern that some credit unions may, under the new rule, aggressively market to groups already served by another credit union. These concerned credit unions urged the Division to add a direct marketing restriction to the rule. In response to these concerns, we included the direct/targeted marketing restriction in the final rule.

As we began drafting the restriction, we realized that in fairness it should apply to all credit unions and, frankly, that it would become quite complicated if it did not. So the final rule includes a prohibition on direct/targeted marketing applicable to all credit unions, with two exceptions. The exceptions were drafted so that credit unions may look to their own records to determine if an exception exists.

If you have questions about this Bulletin, please contact Sue Graham at (360) 902-8816 or sgraham@dfi.wa.gov.