

DCU Opinion Number 03-1

Date: December 30, 2003

From: Linda K. Jekel, Director of Credit Unions

Subject: A Washington State Chartered Credit Union May Apply for Approval to Invest in the Business Development Corporation of Eastern Washington, an Industrial Development Corporation

Issue

The question has arisen:

- Whether a Washington State-chartered credit union (WASCU) may invest in Business Development Corporation, an industrial development corporation (IDC) chartered under Chapter 31.24 RCW; and
- What regulatory requirements/guidelines might apply to an IDC investment.

At this time, we understand that the re-formation documents for Business Development Corporation (BDC) have not been finalized. As a result, we were not able to determine if your request would represent an investment in BDC or a loan to BDC. Because business lending to members is already authorized in RCW 31.12.402(2) and Chapter 208-460 WAC, I have limited this opinion to your question of whether a Washington State chartered credit union (WASCU) can invest in BDC. If you want further clarification of loaning to BDC, please provide us with your question(s).

Analysis

The scope of this opinion is confined to IDCs chartered under Chapter 31.24 RCW as an investment for WASCUs.

Authority

You asked whether a WASCU may invest in the Business Development Corporation of Eastern Washington (BDC), an industrial development corporation. A WASCU may make investments not specifically permitted to credit unions by Chapter 31.12 RCW, if the credit union makes application to the director of credit unions for authority to make the proposed investment, before engaging in the proposed investment practice. Therefore, a WASCU can apply to the director of credit unions to invest in BDC. WAC 208-436-010 (a) through (f) lists the information to be contained in the application to invest in BDC and sent to the Division of Credit Unions for

approval. In addition, the director may require supplementary information as part of the application. See RCW 31.12.436(11), WAC 208-436-010, and WAC 208-436-020.

In analyzing this issue, we also looked for any investment restrictions for federally insured credit unions under the National Credit Union Administration (NCUA) regulations. According to NCUA's requirements for federal insurance in 12 C.F.R. 741, state chartered credit unions may make investment beyond the investments specifically permitted in 12 C.F.R. 703. NCUA investment regulations do not mention industrial development corporations (IDC) specifically, but neither are IDCs specifically prohibited. However, an investment in an IDC would be a nonconforming investment and would require a special reserve. The amount of the special reserve must be an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. See 12 C.F.R. Part 741.3(2).

Other regulatory requirements

In entering into and implementing an investment in BDC, a WASCU must comply not only with the statutes and rules cited above, but also with corporate governance requirements. One of the board of directors' duties (unless delegated) is to:

- Establish policies under which the credit union may invest. See RCW 31.12.255(2).

Applicable pronouncements

Some of the regulatory pronouncements that may apply to an IDC arrangement include (but are not limited to):

- A. RCW 31.12.436(11); RCW 31.12.402(2); Chapter 31.24 RCW; RCW 31.12.255(2)(f)
- B. Chapter 208-436 WAC
- C. 12 C.F.R. Parts 741.3(2) and 703

Please feel free to contact us if you are not able to locate any of these materials.

Before entering into an investment in BDC, a WASCU should seek out the opinion of knowledgeable counsel concerning compliance with applicable regulatory pronouncements.

Conclusion

A Washington State-chartered credit union (WASCU) may invest in the Business Development Corporation, an industrial development corporation chartered under Chapter 31.24 RCW, after completing the application requirements contained in WAC 208-436-010 and 020 and after obtaining approval from the director of the Division of Credit Unions.

In attached table, I listed the information required for the investment application per WAC 208-436-010 (a) through (f). For an investment application in BDC and as supplementary application information, please also provide (1) a copy of the proposed investment policy including the controls for an investment in BDC and (2) information on how you will determine the market value of the investment.

Attachment: Application to invest in Business Development Corporation of Eastern Washington (BDC).

Application information requirements
(a) The name of the credit union;
(b) The proposed source or sources of the funds to be deposited or invested;
(c) A detailed description of the type of deposit or investment the credit union proposes to make, including the names of any natural persons, corporations, financial institutions or government agencies serving as banker, trustee, management agent, broker, guarantor, seller of securities, or purchaser of securities;
(d) References, if known to the applicant, showing that other state chartered credit unions have been permitted to make the same type of investment or deposit;
(e) Copies of statutes, regulations, rulings, official correspondence or other information showing that federally chartered credit unions are permitted to make the type of investment or deposit proposed in the application;
(f) Such other information as the applicant credit union wishes to offer in evidence that the proposed investment or deposit would be a safe and prudent one for the applicant credit union to engage in.
Supplementary information required
(1) Copy of proposed investment policy
(2) How market value and the non-conforming investment reserve will be determined