

May 18, 1995

Redacted Opinion No.: 95-A

Re: Opinion Regarding WAC 419-72-065(8)

Dear "A"

By letter dated April 26, 1995, you requested our opinion regarding the interpretation of recent amendments to WAC 419-72-065(8), effective May 18, 1995. Subsection (8) deals with applications for inclusion of a community group in a credit union's field of membership (FOM). The following is a discussion of the issues you presented and our conclusion.

BACKGROUND

Section -065 sets forth the information and items that must accompany an application to the Director for inclusion of a community group in a credit union's field of membership. Subsection -065(8) requires the applicant to include a written plan which, among other things, provides that the credit union will not conduct "direct marketing aimed at any occupational or associational group with an office in the community if the group is already included" in a the FOM of another credit union.

You have requested our opinion whether the required plan would prohibit outdoor or general advertising, or direct mail or marketing if done on a community-wide or area-specific basis, if the advertising or marketing would reach the employees of a firm or the members of an association who as a group are explicitly within the FOM of another credit union.

Section 31.12.045 limits a credit union's membership to a specified FOM. Consequently, a credit union's marketing efforts to its members and potential members is similarly limited to those within its FOM. RCW 31.12.045. (WAC 419-72-065(8) and RCW 31.12.045 are referred to below as the "applicable provisions".)

Subsection -065(8) merely reiterates one specific aspect of this limitation. This Subsection was intended to prohibit a credit union with a community FOM from direct marketing to the employees of a firm or the members of an association if:

1. The employees or members as a group are not explicitly within the credit union's FOM;
2. An office of the firm or association is within the community; and
3. The employees or members as a group are explicitly within the FOM or another credit union.

STATEMENT OF ISSUES AND CONCLUSIONS

In the interest of answering your question as well as other related questions which may foreseeably arise, we have restated the questions as follows:

1. Mass Marketing

Question. Can a credit union, without violating the applicable provisions, mass market in all or part of its FOM community, even though the marketing may reach the employees of a firm or the members of an association who are not as a group explicitly in its FOM?

Response. Yes. Although “direct marketing” is not defined in the WAC, we intended to use this term in its normal sense, to include such methods as mailing. The term does not include typical media advertising or other mass marketing, such as through radio, television, newspaper, magazine, or billboard, which is of general circulation or which reaches a broad segment of the community. (Of course, the segmentation cannot be based on employment or membership if the employees or members are not as a group explicitly in the credit union’s FOM).

2. Direct Marketing to an Entire Community or Zip Code Area

Question. Can a credit union, without violating the applicable provisions, direct market to all those who live or work in its FOM community or in a zip code area within its FOM community, even though the marketing may reach the employees of a firm or the members of an association who are not as a group explicitly in the FOM?

Response. Yes. The applicable provisions were not intended to prohibit such direct marketing on a community-wide or area-specific (zip code) basis.

3. Direct Marketing to a Segment of the Community

Question. Can a credit union, without violating the applicable provisions, direct market to a segment of those living or working in its FOM community, for example, to all those with incomes over \$45,000, even though the marketing may reach the employees of a firm or the members of an association who are not as a group explicitly in its FOM?

Response. Yes. The applicable provisions were not intended to prohibit such direct marketing. Of course, the segmentation cannot be based on employment or membership if the employees or members are not as a group explicitly in the credit union’s FOM.

I hope these conclusions have answered your questions.

Sincerely,

B. Anne Pulitano
Assistant Director