

Opinion 96-1 (Redacted version)

April 11, 1996

“A” Credit Union

“B” Credit Union

“C” Credit Union

Subject: Application of “D” Credit Union, to add business park area as a community to its field of membership (“D’s application”); Interpretation No. 96-1

Dear Gentlemen:

The purpose of this letter is to respond to the concerns you expressed individually regarding “D’s” application. For your information, I approved “D’s” application on February 20, 1996. I apologize for the delay in responding to your letters.

Initially, I have provided some background below on our policies concerning community charters. Following this information, I have paraphrased your primary concerns and provided my response to each.

BACKGROUND

Generally. The Washington State Credit Union Act (“Act”) sets forth requirements on credit union field of membership (“FOM”). These requirements are fairly brief:

RCW 31.12.045. (1) Membership in a credit union shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. The director may adopt rules: (a) Reasonably defining “common bond”; and (b) setting forth standards for the approval of charters.

(2) The director may approve the inclusion within the field of membership of a credit union a group having a separate common bond if the director determines that the group is not of sufficient size or resources to support a viable credit union of its own.

RCW 31.12.145. A credit union may admit to membership those persons qualified for membership as set forth in its bylaws upon the payment of a membership fee, if any, or the purchase of one or more shares, as provided in the bylaws. A fraternal organization, partnership, or corporation having a usual place of business in this state and comprised principally of persons who are eligible for membership in the credit union may become a member of the credit union.

These provisions of the Act are implemented by the Division’s rules set forth at Chapter 419-72 WAC (“Rules”). In addition, the Division has developed Guidelines for submitting an application to add a community group to a credit union’s FOM.

Types of FOMs. Pursuant to RCW 31.12.045, Washington state-chartered credit unions may include occupational groups, associational groups, or community groups in their FOM. Moreover, the Act does not prohibit a credit union (“CU”) from having one (or more) of each of these types of groups in its FOM. See also WAC 419-72-012. Consequently, we allow a credit union to have different types of groups in its FOM.

A CU may include more than one community in its FOM. These communities may be physically separate and distinct, or they may be contiguous. In order to receive our approval, an application for addition of a community must satisfy the requirements of WAC 419-72-065. As you know, under our policies, we will not grant approval if the area **applied for** has a population of more than 75,000 (not including the population of any communities previously approved).

Overlaps. The wording of RCW 31.12.045(1) distinguishes between groups with a common bond (occupational and associational groups) and community groups. Accordingly, we have interpreted the reference in .045(2) to a “group having a separate common bond” to mean an occupational or associational group, and not a community group. The result here is that we have applied .045(2) to generally prohibit overlaps between occupational groups or associational groups, except in very limited circumstances. See WAC 419-72-025(3), -050(3). In addition, we have not applied the overlap Rules to overlaps between different types of FOM groups. That is, a CU may add an occupational group even though some of the group’s members are also eligible for membership in another CU because they are part of an associational group that is included in the FOM of the other CU.

Based on this statutory interpretation, overlaps between communities are not subject to the overlap Rules. Consequently, the Division will permit a CU to add a community to its FOM even though other CUs have the same community in their FOM, or other CUs have occupational or associational groups in the community in their FOM.

A community CU may take as a member any person who lives or works in the community. WAC 419-72-015(4). In addition, a CU with a community FOM may take as a member any business that is located in the community. See RCW 31.12.145. However, except as noted below in this paragraph, a community CU may not conduct direct marketing targeted at any occupational or associational group in the community that is part of the FOM of another CU. See WAC 419-72-065(8). We have taken the following positions on related issues:

1. If an occupational or associational group in the community is served by a community CU, and the individual group is not expressly included in the CU’s FOM bylaw, the application of another CU to add the occupational or associational group to its FOM will be evaluated without regard to the overlap Rules.
2. If the application is approved, both credit unions can serve the group and direct market to the group.
3. Although a community CU may be permitted to serve individuals in an occupational or associational group in the community, the CU will not be allowed to add the group to its FOM bylaws. Otherwise, the CU would be able to effectively block other CUs from adding the occupational or associational group to its FOM because of the restrictive overlap Rules.

CONCERNS AND RESPONSE

1. Shouldn’t both the federal and state credit union regulators be “on the same page” when approving expansion requests like “D’s”?

RESPONSE: The nature of the federal-state dual chartering system is that each system develops its own set of policies, creating a competitive tension between the two. Free from some of the rigidity of the federal system, state charters are often better able to innovate to serve the needs of their members. The beneficiaries in this scenario are the credit unions and their members.

Obviously, the state of Washington is not “on the same page” as the NCUA when it comes to FOM expansion. However, most credit unions strongly support the dual chartering system because it has better allowed them to serve and grow.

2. Approval of “D’s” application will have significant negative impact on the financial well being of our credit union.

RESPONSE: Under WAC 419-72-075(7), one factor to be considered in approving an FOM expansion request is whether approval will threaten the viability of another credit union. In order to deny an application for this reason, the approval of the application must present an immediate threat to another credit union’s viability. In this case, there was no evidence presented of such a threat.

3. “D” is attempting to use the Division as a tool to avoid the policies and procedures as found in the NCUA manual.

RESPONSE: The nature of the dual chartering system is that each credit union is free to choose the type of charter which is most advantageous for its intended operation. As a state-chartered credit union, “D” is now entitled to use its full powers under state law, whether or not federal credit unions would be permitted to do the same. See also the response to 1 above.

4. We feel that “D’s” application does not meet the Division’s guidelines for a community charter. We believe that the application is merely an expansion of “D’s” existing community, not a new and distinct community. The boundaries of the proposed community are a geographic extension of “D’s” existing community boundaries, and the area is not separate and distinct by any means.

RESPONSE: The Act and Rules permit a credit union to add additional communities to its FOM, as long as each community application is supported by required documentation. New communities may be entirely separate and distinct from the CUs existing FOM community, or may be contiguous to it.

5. The “D” application is in form and substance an addition of a new community to “D’s” FOM. It is one which exceeds the charter guidelines of the Division. The resulting “community”, should “D” be allowed to expand its geographic area, would be exceedingly large, and in violation of the Division’s internal policies as well as the section of WAC 419-72-015 that defines community size.

RESPONSE: Our policies require that each community **applied for** have a population of no more than 75,000. The population limit does not apply to the aggregate population of all communities in the CU’s FOM. Upon review, “D’s” application satisfied these requirements, as well as the requirements of WAC 419-72-015.

6. We agree that competition is a healthy thing for the consumer and for the financial institution, however, with the attacks being made on credit unions by the banking industry concerning credit union uniqueness and tax issues, the approach the Division is taking to community charters does not serve us well.

RESPONSE: I know that there is a fair amount of consternation among certain credit unions about the granting of community charters by the Division. However, we are charged by statute with the responsibility to administer the Act and its implementing Rules. We do not have the authority to deny applications which otherwise satisfy our regulatory framework because approval may lead to decisions by Congress that have an adverse impact on the movement. If you feel our approvals may lead to such adverse developments, perhaps credit unions should strive to reach a consensus on FOM issues that would reduce the amount of risk to the movement.

7. “D” has defined its boundaries in its community FOM to change as the boundaries of “E” change. This current request is outside of this boundary and enters into an area that is already served by another credit union with an existing community charter. There is no economic reason or economic advantage for overlapping community chartered credit unions.

“D’s” application is a direct attempt to overlap another credit union’s geographic service area field of membership boundaries.

RESPONSE: Approval of an FOM expansion application is not based on whether or not the application has economic “reason” or “advantage” among affected credit unions. The Act and Rules permit “overlapping” communities, whereas overlapping occupational or associational groups will not be approved except in limited circumstances. See WAC 419-72-025(3); -050(3).

8. In effect, the Division is granting, piece by piece, community charters that will eventually result in county or even state-wide community charters. This opens an avenue for the banking industry to bring suit against the Division for violating its own guidelines on community charters

RESPONSE: In theory, our policies may permit a CU over time to piece together communities that in the aggregate encompass an entire county. Depending on the circumstances, it is possible that this could be done consistently with the Act and Rules.

However, I think it is highly unlikely that a credit union's FOM will be expanded to encompass the entire state, for two reasons:

1. When we review an application for addition of a community to a CU's FOM, we look at service levels of its existing FOM, and ability to service the community applied for. As a CU gained a bigger and bigger FOM, reaching regional or state-wide proportions, it would have a more difficult time satisfying our requirements on these service issues.

2. Very few CUs are interested in such a large FOM.
See also my response to comment 6 above.

Please don't hesitate to call me if you have any additional questions about "D's" application.

Sincerely,

J. Parker Cann
Assistant Director