

June 17, 1997

“A”

“B”

Subject: Response to Your Letter

Opinion no.: 97-10 (Redacted)

Dear “A”:

By letter, you requested our opinion regarding WCUSGA reserve requirements for WCUSGA credit unions that have converted to NCUSIF or that have merged into NCUSIF credit unions. I addressed the latter issue in regard to merged credit unions by letter, to “C” Credit Union. A copy of that letter is enclosed for your convenience.

Based on your letter and our subsequent conversations, I believe that the remaining issue here is what is the appropriate share/deposit basis for calculating the amount of the WCUSGA reserves which must be maintained by former WCUSGA-guaranteed credit unions that convert after March 6, 1996 to NCUSIF insurance.

My conclusion, as discussed in more detail below, is that credit unions that have converted to NCUSIF after March 6, 1996 (converted credit unions) must maintain WCSUGA contingency and capital reserves until year-end 1998, based on the amount of their shares/deposits as of the year-end immediately prior to their conversion. The reserve calculations should disregard changes in the amount of the credit union’s shares/deposits after the year-end date.

Discussion

Background

The Washington Credit Union Share Guaranty Association Act, Chapter 31.12A RCW (the Act), was amended in 1996 to provide for the phase out of WCUSGA coverage by year-end 1998. Chapter 5, Laws of 1996. During legislative discussions on the bill, it was apparent that legislators were concerned that WCUSGA credit unions may wait until later in the transition period to apply to convert. The legislators believed that the interests of WCUSGA credit unions and their members would be served best if the credit unions converted to NCUSIF early on in the period. Among other provisions in Chapter 5, WCUSGA credit unions were required to file an application for conversion by September 1 or December 1, 1996, depending on their CAMEL rating. In general, the 1996 amendments took effect on March 6, 1996.

As amended, the Act specifies that converted credit unions:

1. Must maintain WCUSGA contingency reserves in accordance with RCW 31.12A.050 and capital reserves required by WCUSGA, and
2. Are subject to WCUSGA assessments under RCW 31.12A.090.

These requirements continue in effect until year-end 1998. RCW 31.12A.007(5). The purpose of these requirements is to maintain a sound financial base for WCUSGA as credit unions are converting over to NCUSIF insurance.

However, the cited Section dealing with WCUSGA contingency reserves, RCW 31.12A.050, does not specifically address the share/deposit basis for calculating the WCUSGA contingency reserve of the converted credit union.

In general, the Act requires WCUSGA credit unions to maintain and adjust their contingency reserves based on the amount of the shares/deposits as of the prior year-end. RCW 31.12A.050(1)(a) and (c)(ii). In accordance with these provisions, at the time of conversion to NCUSIF, the WCUSGA credit union will be carrying WCUSGA reserves based on the amount of its shares/deposits as of the prior year-end.

Converted Credit Unions

In the abstract, converted credit unions could be required to:

1. Adjust their WCUSGA reserves after each year-end, based on year-end shares/deposits.
2. Maintain their WCUSGA reserves based on their shares/deposits as of the date of conversion.
3. Maintain their WCUSGA reserves based on their shares/deposits as of the year-end prior to the conversion.

Prior to March 6, 1996, WCUSGA members converting to NCUSIF insurance were required to give one year's prior notice before withdrawing from WCUSGA. See Chapter 92, Section 227, Laws of 1994. During the notice period, these members were required

by WCUSGA to continue to adjust their contingency reserve levels for year-end variations in their share/deposit levels, in accordance with RCW 31.12A.050. In the 1996 amendments, however, the Legislature repealed the pre-existing wording dealing with conversions. The Legislature could easily have inserted new wording in the Act to require converted credit unions to adjust their reserves each year based on shares/deposits at year-end. Because the Legislature did not, it is doubtful that the Legislature intended such a result.

Moreover, in most cases, credit union shares/deposits are increasing over time; adjusting the converted credit union's reserve levels based on changes in the amount of its shares/deposits, as of the date of conversion, would require them to absorb a larger pro rata portion of any assessments by WCUSGA than would otherwise be the case if reserves were based on shares/deposits as of year-end. Application of the statute in this fashion will tend to cause NCUSIF credit unions to postpone their conversion until immediately after year-end, when all WCUSGA members have their reserve balances adjusted based on year-end shares/deposits. This result would be inconsistent with Legislative intent behind Chapter 5.

In the absence of statutory direction otherwise, I believe that converted credit unions should base their WCSUGA contingency and capital reserves on the amount of their shares/deposits as of the year-end prior to the conversion. The reserve calculation should disregard any changes in the amount of the credit union's shares/deposits after the year-end date. This interpretation is consistent with the Act, and will best further the statutory scheme for the phase out of WCUSGA.

Please give me a call if you have any further questions about this issue.

Sincerely,

J. Parker Cann
Assistant Director