

March 11, 1997

“A”
“B” Credit Union

Subjects: 1. Federal Parity for State Credit Unions
 2. NCUA Part 741 - NCUA Rules Applicable to FISCUs
 3. State/NCUA Law Applicable to FISCU Supervisory Committees and Member
 Business Loans

Opinion No.: 97-3 (**Redacted version**)

Dear A:

I apologize for the delay in getting back to you on these issues. I've attempted below to answer some of the common questions and answers about differences between Washington state law and NCUA regulations. Before I get to the questions, however, let me provide some background on the relevant concepts here.

PARITY

Washington State-chartered credit unions operate under Chapter 31.12 of the Revised Code of Washington (RCW), and the Division of Credit Union's implementing rules set forth in the Washington Administrative Code (WAC).

The Washington legislature has granted state credit unions, among other powers, all the powers and authorities possessed by federal credit unions (FCU powers) as of December 31, 1993. RCW 31.12.136(1). By rule, the Division may grant state credit unions the powers and authorities granted to federal credit unions after that date. RCW 31.12.136(2). The Division does not currently have any rules adopting more recent federal powers.

In general, a state credit union may exercise FCU powers as of December 31, 1993, even if other provisions of state law (e.g., other sections of Chapter 31.12 RCW) provide to the contrary. The effect here is as if the FCU powers are written into Chapter 31.12.

When exercising a FCU power, a state credit union must also comply with the restrictions under NCUA's FCU rules that specifically apply to the exercise of that power. These FCU restrictions only apply **by virtue of the parity provision** if the state credit union is exercising the FCU power. Consequently, if a state credit union intends to use a FCU power, it should understand the restrictions that go with it. I have to acknowledge that in some cases it is not clear which FCU restrictions may apply to the exercise of a FCU power. If you are not able to sort this out in a given instance, feel free to ask for our opinion on the issue.

We tell our examiners to look first to state law to determine if a credit union has authority to conduct an activity. If not, then the examiner should ask the credit union what FCU power that it is using as authority. It is incumbent on the credit union to know what FCU authority it is relying on, and the restrictions in NCUA's FCU rules that apply to the exercise of the power.

NCUA PART 741

For Washington State-chartered credit unions, the Division is the credit union's primary regulator. However, federally-insured state credit unions (FISCUs) are also subject to certain NCUA requirements. These are set forth in Part 741 of the NCUA's rules. Part 741 requires FISCUs, in part, to comply with specified NCUA FCU rules set forth outside of Part 741.

For your convenience, the NCUA rules applicable to FISCUs are set forth on the enclosed list. Although the list is a long one, you will note that many of the listed FCU rules do not apply to the day-to-day operations of natural person credit unions.

Because FISCUs must comply with Part 741, they should make every effort to familiarize themselves with it and to keep up-to-date on any changes.

COMMON QUESTIONS

1. Why is federal parity limited to powers and authorities as of a certain date?

Washington courts have held that it is an unconstitutional delegation of state legislative power for the legislature to adopt a statute which in effect automatically adopts future federal statutes and rules as part of state law. See, e.g., Diversified Investment Partnership v. Department of Social and Health Services, 113 Wn. 2d 19, 775 P. 2d 947 (1989). If enacted without a date, the credit union parity provision could be subject to constitutional challenge.

2. What statutes and regulations should FISCUs in Washington know?

- **WASHINGTON STATE LAW - enabling Act and Division rules**
- Statute: Washington State Credit Union Act - Chapter 31.12 RCW.
- Division Rules: WAC Chapters 208-418, -436, -440, -444, -464, and -472.
- Informal Division pronouncements: opinions, guidelines, etc. The Division distributes a list of its new opinions semi-annually. Enclosed is the most recently issued list of Division opinions.
- **OTHER WASHINGTON LAW**
- Uniform Commercial Code, Financial Institution Individual Account Deposit Act, etc. A good listing of these laws is contained in the Washington Credit Union League's Compliance Manual.
- **FEDERAL LAW- NCUA**
- Statute: Federal Credit Union Act, Title II, Sections 1781 - 1790c.
- NCUA Rules: Parts 741 and other NCUA rules referred to in 741. Enclosed is a complete list of all the NCUA rules applicable to FISCUs.
- Informal NCUA pronouncements: IRPS, manuals, opinions, etc.
- **OTHER FEDERAL LAW**
- Federal consumer compliance laws, etc. A good listing of these laws is contained in the Washington Credit Union League's Compliance Manual.

3. What should a FISCU do if a requirement in Part 741 is in conflict with a Washington State law?

We are not aware of any true conflict between the NCUA and Washington law, where compliance with one makes it literally impossible to comply with the other. Typically, Part 741 is more restrictive than state law.

If any of the Part 741 provisions on the activity are more restrictive than the state law provisions on the activity, the FISCU must comply with the more restrictive Part 741 provisions.

If, however, the Part 741 provisions are more favorable than the state law provisions on the activity, and FCUs possessed authority as of December 31, 1993 to conduct the activity, the FISCU can choose to use such authority under the parity provision.

4. Please advise on how the state law and Part 741 requirements sort out for Supervisory Committees and member business loans.

Without going through the legal rationale, our conclusions are as follows:

a. Supervisory Committee. FISCUs must comply with NCUA rules 701.12 and .13 on supervisory committees and outside audits. See NCUA rule 741.202.

Because of the parity provision, FISCUs that comply with NCUA rule 701.12 and .13 do not need to comply with RCW 31.12.335.

b. Member business loans. FISCUs must comply with NCUA rule 701.21(h) on member business loans. See NCUA rule 741.203(a).

Because of the parity provision, FISCUs that comply with NCUA rule 701.21(h) do not need to comply with WAC Chapter 208-464 (WAC Sections 208-464-010 through -090).

5. If a FISCU is uncertain as to differences between the Washington State Credit Union Act and NCUA Part 741, what steps should it take?

Initially, the credit union should identify the exact nature of the difference. If it is not able to sort out the issue, then the credit union may wish to:

- Consult with counsel; or
- Call or write to the Assistant Director of the Division of Credit Unions for clarification. If the matter is significant, the credit union may wish to request a written opinion.

I hope this information is helpful. Let me know if you have any additional questions on this matters.

Sincerely,

J. Parker Cann
Assistant Director