

May 27, 1997

“A”  
“B” Credit Union

Subject: Maintenance of WCUSGA Reserves By “B” Credit Union (NSUSIF insured) after Merger of “C” Credit Union (WCUSGA guaranteed) into “B” Credit Union

Opinion no.: 97-9 (Redacted)

Dear “A”:

In our recent conversation, you inquired what level of WCUSGA reserves must be maintained by “B” as the continuing credit union after the merger of “C” with “B.” I understand that the merger should be completed this year.

The issue here is what is the appropriate share/deposit basis for calculating the amount of the WCUSGA reserves which must be maintained by “B” after the merger.

My conclusion, as discussed in more detail below, is that “B” must maintain WCUSGA contingency and capital reserves until year-end 1998, based on the amount of “C” WCUSGA-guaranteed shares and deposits as of the year-end prior to the merger. The amount of shares and deposits at “B” over and above this amount are disregarded for the purpose of calculating the amount of WCUSGA reserves which must be maintained by “B”.

### **Background**

I understand that “B” and “C” have entered into a merger agreement whereby “C” will merge into “B”, with “B” as the continuing credit union. The shares and deposits at “B” are federally insured, by the National Credit Union Share Insurance Fund (NCUSIF). The shares and deposits at “C” are guaranteed by the Washington Credit Union Share Guaranty Association (WCUSGA), pursuant to Chapter 31.12A RCW (the Act).

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, it was apparent that legislators were concerned that WCUSGA credit unions might wait until later in the transition period to apply to convert. The legislators believed that it is in the best interests of WCUSGA credit

unions, and their members, for the credit unions to convert 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 WCUSGA member credit unions that merge into credit unions insured by NCUSIF:

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). By operation of law, the continuing NCUSIF-insured credit union is responsible to maintain WCUSGA reserves pursuant to this Section.

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)(b) and (c). Pursuant to these provisions, prior to the merger of a WCUSGA member into a NCUSIF credit union, the WCUSGA credit union will be carrying WCUSGA reserves based on the amount of its shares/deposits as of the prior year-end. There is no express mechanism in the Act for the level of these reserves to be adjusted based on changes in shares/deposits as of the date of the merger.

### **Discussion**

There appear to be two sub-issues here:

- a. Whether WCUSGA reserves should be based on the amount of shares/deposits of the disappearing credit union as of the prior year-end, or as of the merger date.

In a related context, the Act provides that when a nonmember merges into a WCUSGA member, with the member as the continuing credit union, the continuing WCUSGA credit union must increase its contingency reserve based on the disappearing credit union's shares/deposits as of the date of the merger. RCW 31.12A.050(1)(a) and (c)(iii). It is clear from the wording of this Section, however, that it was not intended to apply to the situation where a NCUSIF credit union is the continuing credit union in the merger.

In the 1996 amendments, the Legislature could easily have inserted new wording in the Act to require continuing NCUSIF credit unions to adjust the reserves of the disappearing credit union based on shares/deposits as of the merger date, similar to the provision noted above in RCW 31.12A.050(1). Because the Legislature did not insert such wording, it is doubtful that it intended such a result.

Weakened credit unions that require a merger with a stronger credit union may actually be suffering a downward trend in shares/deposits. Application of the statute to require an adjustment of reserves to the merger date may tend to cause NCUSIF credit unions to

postpone acquiring weaker WCUSGA credit unions until later in the phase-out period, to diminish their exposure to WCUSGA assessments. This would be inconsistent with Legislative intent behind Chapter 5.

In the absence of explicit statutory direction, I believe that the continuing NCUSIF credit union should base its WCUSGA contingency and capital reserves on the amount of the disappearing WCUSGA credit union's shares/deposits as of the year-end prior to the merger. This arrangement is consistent with other provisions of the Act, and will best further the statutory scheme for the phase-out of WCUSGA.

- b. Whether the continuing credit union's shares/deposits, in addition to those attributable to the disappearing credit union, are subject to WCUSGA reserve calculations.

RCW 31.12A.007(5) states:

Members that ... merge with a credit union insured under the federal share insurance program shall continue to maintain **their** contingency reserve ... and capital reserve ... . (emphasis supplied)

This subsection makes it clear that the reserves must be maintained only in regard to the disappearing credit union. Accordingly, the continuing NCUSIF credit union should base its WCUSGA contingency and capital reserves solely on the amount of the disappearing WCUSGA credit union's shares/deposits. The reserve calculation should disregard shares/deposits at the continuing credit union over and above this amount.

If you have any further questions in this regard, please give me a call.

Sincerely,

J. Parker Cann  
Assistant Director