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To: Opinion File

From: J. Parker Cann

Subject: Effective Date of Credit Union Mergers
Opinion No. O-98-10

Overview

If the surviving credit union in a merger is a Washington State-chartered credit union, when does the merger become legally effective? The Washington State Credit Union Act (Credit Union Act) is unclear on this point.

The effective date can impact whether another Division assessment is due and other significant matters. We believe that there would be value in providing more certainty for credit unions on the effective date of mergers.

Analysis

The Credit Union Act addresses certain aspects of mergers. RCW 31.12.461, .464(4), 467(3). However, the CU Act does not specify when a credit union merger becomes effective.

The NCUA form Merger Agreement (NCUA 6304) - that most credit unions use - provides that the merger will be effective on the date entered on the first line of the Agreement. The instructions on the second page of the form direct credit unions not to fill in the date or sign the Agreement until the merger is completed.

In analyzing this issue, we reviewed the parallel provisions under the Washington Business Corporation Act. The Business Corporation Act provides that a merger becomes effective when articles of merger are filed with the Washington Secretary of State, or at a later date as specified in the articles (not to exceed 90 days). RCW 23B.11.050, 23B.01.230. The rationale appears to be that the merger takes effect on the date provided in the public record maintained by the Secretary of State. In the credit union context, credit unions do not file articles of merger, but do file the signed merger agreement with the Secretary of State (through the Division).

Conclusion

In the absence of direction in the Credit Union Act, the Division has determined to adopt the rationale of the Business Corporation Act - that mergers become effective as provided in the public record maintained by the Secretary of State. Accordingly, credit union mergers will become legally effective on the date the Division files the merger agreement with the Secretary of State, or a later date as specified in the agreement itself (not to exceed 90 days).

Coordination with the Division

The credit union submitting the merger agreement to the Division should contact the Division prior to submission to coordinate the date inserted by the credit union in the first line of the agreement. The date should be the future date that the merging credit unions want the merger to take legal effect - either the date the Division will file the merger agreement with the Secretary of State, or a later date (not to exceed 90 days). The credit union should make sure that the merger agreement is received by the Division at least 5 business days before the date that the Division intends to file the agreement with the Secretary of State.

Merger of books

We have observed that in many cases the books of the credit unions are merged **before** the credit unions have submitted their signed merger agreement to the Division for filing with the Secretary of State. In the future, credit unions may merge their books **no sooner** than the legal effective date of the merger.