

Converting Your Credit Union from a Federal to State Charter

Division of Credit Unions

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Credit Union Charter Conversion - Federal to State

I. The dual chartering system

The dual chartering system offers credit unions a choice between a state and federal charter. The nature of the dual chartering system is that each system develops its own set of policies, creating a competitive tension between the two. There are many similarities and many differences between the policies of each. There are also distinct advantages and disadvantages to each, depending on the business strategy of the credit union. The beneficiaries of this scenario are the credit unions and their members.

II. Overview of the Washington State charter for credit unions

Regulators and share insurance

Federally chartered credit unions are regulated by the National Credit Union Administration (NCUA), under the Federal Credit Union Act and NCUA rules. Their share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF), which is administered by the NCUA.

The Division of Credit Unions (Division) of the Washington Department of Financial Institutions is the primary regulator for Washington State-chartered credit unions. Washington credit unions are organized and regulated under the following:

1. The Washington State Credit Union Act, Chapter 31.12 of the Revised Code of Washington (RCW), and
2. The Division's rules are set forth in the following Chapters of the Washington Administrative Code (WAC):
 - a. Chapter 208-400: Credit Union Corporate Governance
 - b. Chapter 208-418: Fees Charged to Credit Unions and Related Parties;
 - c. Chapter 208-424: Regulatory Relief for Small Credit Unions;
 - d. Chapter 208-436: Supervisory Approval of Investment Practices;
 - e. Chapter 208-440: Credit Union Participation with Commercial Arrangements with Third Parties;
 - f. Chapter 208-444: Miscellaneous Credit Union Rules;
 - f. Chapter 208-460: Member Business Loans;
 - g. Chapter 208-472: Field of Membership Expansion;
 - h. Chapter 208-476: Other Real Estate Owned;
 - i. Chapter 208- 490 Guidance for Credit Unions; and
 - j. Chapter 208-600 Mortgage Lending and Homeownership.

A copy of Chapter 31.12 and the Division's rules (WAC) can be found on our website at www.dfi.wa.gov/cu.

When a federally chartered credit union converts to Washington state charter, it must maintain its share insurance with the NCUSIF, see RCW 31.12.408. Consequently, converted state credit unions are also regulated by the NCUA, through its insurance function. The NCUA's "insurance" rules are set forth at Part 741 (12 C.F.R. Part 741). A copy of these rules can be found on the NCUA web site at www.ncua.gov. In part, these rules cross-reference to certain federal charter rules that state charters must also comply with. Toward the end of this document is a list of NCUA rules that apply to Washington state chartered credit unions. Federal credit unions considering charter conversion should review the NCUA insurance rules (Part 741), so they are aware of the NCUA rules that will apply to them as a state charter.

Examinations

The Division and NCUA work cooperatively to examine and supervise state credit unions for safety and soundness and for compliance with federal consumer protection laws. In addition, the Division examines for compliance with state laws.

The NCUA does not participate in every state chartered credit union exam. Under our current exam program plan with NCUA Region V, joint examinations are conducted:

1. On all state chartered credit unions with total assets over \$1 billion;
2. In frequently on state credit unions with total assets under \$1 billion that have a CAMELS rating of 1 and 2 and which there is no specific insurance risk factors;
3. On a case-by-case basis of state chartered credit unions under \$1 billion with a CAMELS rating of 3; and
3. On all state credit unions under \$1 billion with CAMELS ratings of 4 or 5.

Credit unions are notified in advance whether their examination will be joint or not. On joint examinations, the Division's examiner-in-charge meets with management and the Board of Directors, prepares the examination report and CAMELS rating, and forwards a copy of the report to the NCUA. Note: NCUA will present its own CAMELS rating on all joint examinations.

Information Systems and Technology (IS&T) Exams

Credit unions must ensure that their use of information systems and technology (IS&T) is safe and sound. The Division typically performs IS&T examinations during regularly scheduled safety and soundness examination.

Funding and fees

The Division is funded by fees paid by state credit unions and related parties. The fees go into a dedicated, non-appropriated (revolving) fund. No general fund revenues of the state are used to pay for the Division's operations.

The Division relies primarily on the payment of quarterly asset assessments by credit unions for its revenue. Semi-annual asset assessment billings are done in January and July. A converting

federal credit union will pay a pro-rated quarterly asset assessment for the 6 month period in which it completes its conversion, see WAC 208-418-040(3).

Below are examples of the Division’s current asset assessments.

<u>Total Assets</u>	<u>Annual Asset Assessment</u>	<u>Semi-Annual Asset Assessment</u>
\$1 Billion	\$119,232	\$59,616
\$501 Million	\$ 84,722	\$42,361
\$250 Million	\$46,446	\$23,223
\$100 Million	\$23,532	\$11,766
\$50 Million	\$11,766	\$5,883
\$20 Million	\$5,184	\$2,592
\$10 Million	\$3,452	\$1,726

The Division can also charge hourly fees for the review of certain application requests, and pass-through the costs of examinations performed by third parties under personal service contracts. However, these fee charges have been used sparingly by the Division in the past. See WAC 208-418-070 for the particulars of our fee rule.

During any fiscal year (July 1 to June 30), the Division cannot increase its assessment and fee rates in excess of the “fiscal growth factor” for the year, without prior legislative approval.

Nonrefundable NCUA operating fee

Federal credit unions pay an annual operating fee to the NCUA, payable early in the year. State credit unions do not pay such a fee to the NCUA. The NCUA may not refund operating fees paid by a federal credit union during the year of conversion.

Field of membership (FOM)

Washington state credit unions enjoy a broader field of membership policy than federal charters. See the Division’s explanatory statement on FOM, which is enclosed with this document and the Division’s FOM application rules, Chapter 208-472 WAC.

Financial reporting

State credit unions must continue to file financial reports on forms 5300, with the same frequency as federal credit unions, see NCUA Rules, Section 741.6 (12 C.F.R. Section 741.6). State credit unions file their 5300 with the Division, which in turn validates and uploads it to the NCUA.

Contact List of DCU Management Team Members

Please see our website for a listing of Division management personnel and their positions <https://dfi.wa.gov/about-dfi/dfi-staff-directory> .

Department of Financial Institutions (DFI)

The Division of Credit Unions is one of the four Divisions of the Washington Department of Financial Institutions (Department). The four Divisions are as follows:

1. Division of Credit Unions regulates state chartered credit unions;
2. The Securities Division regulates securities offerings and issuers, securities broker-dealers and investment advisers, and franchises and other business opportunities;
3. The Division of Banks regulates state commercial banks and savings institutions, trust companies and trust departments, business development corporations, small business (7a) lenders and agencies of non-US banks; and
4. The Division of Consumer Services regulates consumer loan companies, loan originators, mortgage brokers, loan servicers, escrow agents and officers, check cashers and sellers, money transmitters and currency exchanges, and tax refund loan facilitators.

Taxes

State and federal credit unions are non-profit entities under the Internal Revenue Code, and therefore are exempt from the payment of federal income taxes. However, state credit unions must file individual informational returns annually with the IRS on Form 990.

State and federal credit unions are exempt under Washington statute from the payment of state business and occupation taxes. See RCW 82.04.405.

Federal credit unions are exempt under federal law from the payment of state sales taxes. However, state credit unions do not enjoy such an exemption, and therefore must pay taxes on their purchases.

III. Advantages and disadvantages of a state charter

Advantages – The following are the advantages of a Washington state chartered credit union:

- Local regulator operating smaller agency with statewide as opposed to nationwide outlook;
- Local legislature and legislators;
- More expansive set of state powers and authorities (such as field of membership);
- Ability to continue to exercise federal powers, through the state “parity provision” (RCW 31.12.404; and
- Opportunity to build consensus with Division on regulatory policy, such as modernization of Washington State Credit Union Act and Division rules.

Disadvantages – The following is a disadvantage of a Washington state chartered credit union:

- The additional cost of sales tax on Washington purchases.

IV. The charter conversion process

Applicable statutes and rules - To convert to a WA state charter, a federal credit union must comply with the following provisions:

1. RCW 31.12.467 – Merger or conversion of a federal out-of-state, or foreign to a state credit union.
2. Section 125(a) of the Federal Credit Union Act (12 U.S.C. Section 1771(a)). Section 1771 of the Federal Credit Union Act is titled “Conversions from Federal to State Credit Union”. See instructions for accessing the Federal Credit Union Act on the NCUA website – www.ncua.gov.
3. NCUA Rules at 12 C.F.R. Section 701.1. The title of this Section is “Federal Credit Union Chartering, Field of Membership Modifications and Conversions”. See instructions for accessing the NCUA Rules on the NCUA web site – www.ncua.gov.
4. Chapter 4, NCUA Chartering & FOM Manual – use the URL below to go to the NCUA Chartering & FOM Manual

<http://www.ncua.gov/Legal/Documents/IRPS/IRPS2003-1.pdf>

Additionally, the conversion must be completed in accordance with any applicable provisions of the federal credit union’s charter and bylaws. The credit union may continue to use the same name, except for the word “federal”, see Chapter 4 of the NCUA Chartering & FOM Manual.

Field of membership (FOM) of the converted credit union

The Washington State Credit Union Act includes a “parity provision,” RCW 31.12.404 that grants state credit unions all the powers and authorities conferred on federal credit unions as of December 31, 1993 or a subsequent date no later than July 23, 2017.

Generally, FOM expansions by federal credit unions approved by the NCUA after 1993 were based on powers and authorities existing on or before December 31, 1993. Accordingly, a converted credit union may keep the field of membership it had as a federal charter. In order to simplify conversions, we prefer not to address FOM expansion requests in the conversion process. Subsequent to the conversion, the state credit union may include additional groups in its FOM, in accordance with the Division’s rules set forth in Chapter 208-472 WAC.

Major conversion steps

The major steps for conversion are as follows:

1. The credit union’s Board adopts the conversion proposal (by at least a majority vote);
2. The credit union files an application to convert with the Division;
3. The credit union files an application to convert with the NCUA Region V;
4. The Division approves the application;
5. NCUA Region V approves the application;
6. The credit union distributes a notice of the meeting to its members, including disclosures approved by the NCUA;
7. The members of the credit union approve the conversion (by at least a majority of those voting);
8. The credit union files the necessary documentation with the Division and NCUA Region

V; and

9. The Division files the articles of conversion and the articles of incorporation with the Secretary of State to complete the conversion.

It should be noted that the federal credit union may not take its conversion plan to a membership vote until after it has received approval from both the Division and NCUA Region V.

Time period for conversion

In the absence of any unusual complications, a federal credit union can anticipate completion of its conversion within 90-120 days after filing its application.

Conversion forms

NCUA requires certain forms to be completed and filed for the conversion, including:

1. NCUA 4221 – Notice of Meeting of the Members to Convert from a Federal to State Chartered Credit Union;
2. NCUA 4505 – Proof of Results of the Membership Vote on the Proposed Conversion;
3. NCUA 4506 – Ballot for Conversion Proposal; and
4. NCUA 9600 – Information to be Provided in Support of the Application of a State Chartered Credit Union for the Insurance of Accounts.

These forms can be printed from the NCUA website by taking the following steps:

1. Logon to the NCUA website (www.ncua.gov);
2. Type in what form you are looking for in the search box; and
3. Click on the form you are looking for.

In the interest of efficiency, the Division accepts these forms for its purposes as well. If you wish to revise the NCUA forms or create your own, you will need prior approval from the Division and the NCUA.

Possibility of a conversion exam

An on-site examination may be required by the Division or NCUA, or both, particularly for credit unions with a CAMELS rating of “3” or higher. Therefore, it is recommended that the credit union allow at least 60 days after filing the conversion applications to obtain Division and NCUA Region V approvals. More time may be needed, if an examination requires corrective actions by the credit union prior to the conversion.

Notice to members

The converting federal credit union must prepare a notice of meeting of its members, which must disclose the anticipated costs of the conversion, as well as reasons for and against the conversion, see Chapter 4 of the NCUA Chartering & FOM manual. The NCUA is particularly concerned with disclosing the costs of eliminating the word “federal” from the credit union’s name. Converting credit unions must arrange for the issuance of new credit cards and check stock to members with the new name within a reasonable period of time after the conversion is completed.

We recommend that you contact other converted credit unions for additional insights.

Conversion application filed with NCUA Region V - The conversion application filed with NCUA Region V should contain the following:

1. Statement of specific reasons supporting the conversion;
2. Copy of the credit union's most recent balance sheet and income statement;
3. Current schedule of delinquent loans;
4. Board resolution reflecting approval of the conversion proposal by at least a majority vote;
5. NCUA form 9600;
6. Proposed Notice of Meeting of the Members (NCUA form 4221);
7. Proposed Ballot for Conversion Proposal (NCUA form 4506); and
8. Evidence that the Division is in agreement with the conversion proposal.

Conversion application filed with the Division - The conversion application filed with the Division should contain the following:

1. Cover letter, including the name of the contact person at the credit union, and a brief description of the credit union's business operations, including any out-of-state operations;
2. Copy of the application documents and information filed with NCUA Region V;
3. Copy of the most recent NCUA examination report and the credit union's response to the report;
4. Copy of credit union's current charter and bylaws; and
5. Proposed articles of incorporation and bylaws for the state credit union, including an opinion of counsel that the articles and bylaws comply with Chapter 31.12 RCW.

The converting credit union may continue to use its Federal bylaws, with appropriate changes (names, etc.). The Northwest Credit Union Association has a set of Model Bylaws. If the credit union is conducting business in another state, the Division will work with the other state's regulator to determine if the credit union must qualify to conduct business in the other state.

Membership vote

Once the Division and the NCUA Region V approve the conversion, the conversion plan must be approved by a majority vote of the credit union's membership. Voting alternatives should include in-person at the annual or special membership meeting, and by mail-in ballot or completed ballot drop-off at a credit union. Secure electronic voting methods can also be used. See Section 125(a) of the Federal Credit Union Act (12 U.S.C. Section 1771(a)).

Completion of the conversion

After approval of the conversion by the Division, NCUA Region V, and the credit union's members, the credit union may take the steps necessary to complete the conversion process. The conversion must be completed within 90 days after the membership vote. See Section 125(a) of the Federal Credit Union Act (12 U.S.C. Section 1771(a)).

To complete the conversion, the following must be submitted to:

The Division:

1. Certification from the NCUA that it is satisfied with the procedures and presentation of the issues leading to the vote and its results;
2. Completed Articles of Conversion (DCU form), see page 21;
3. NCUA form 4505;
4. Three copies of the new state credit union's bylaws, with a cover letter certifying that the bylaws were approved by the credit union's Board of Directors; and
5. Three signed and certified copies of the Articles of Incorporation of the new state credit union and two signed Articles of Conversion.

NCUA Region V:

- NCUA Form 4505;
- Copy of the Articles of Conversion, bearing the stamp of the Secretary of State;
- The credit union's federal charter and federal insurance certificate; and
- The credit union's most recent month-end financial reports on NCUA Form 109A and 109B.

The conversion is complete when the Division files the Articles of Conversion and the Articles of Incorporation with the Washington Secretary of State. The credit union should immediately file a copy of these Articles, bearing the stamp of the Washington Secretary of State, with the NCUA Region V, but no later than 10 days after the Articles are filed with the Washington Secretary of State. There is a need for immediacy here, because the existence of the federal credit union does not apparently cease until the filing is made with NCUA Region V. See the Federal Credit Union Act at Section 125 (12 U.S.C. Section 1771(a)), and Chapter 4 of the NCUA Chartering and FOM manual, on pages 4-6 through 4-10. The NCUA will issue a new insurance certificate to the newly formed state credit union.

Transfer of assets and liabilities

Upon the conversion date, the state credit union succeeds to all the assets and liabilities of the federal credit union, see RCW 31.12.467(a); Federal Credit Union Act at Section 125(a)(4) (12 U.S.C. Section 1771(a)(4)).

Name change

If, because of the conversion, the credit union needs to change the name it uses in its signs, advertising, stationery, etc., the credit union should make the change as soon as possible after the conversion. The credit union will need to notify appropriate parties of the name change, such as bonding companies, title companies, etc.

Please see our website (www.dfi.wa.gov/cu) for the necessary procedures to complete a name change. To find the Division's Name Change Manual click on "Guidance, Guidelines and

Manuals” and then click on “Credit Union Name Change”.

V. NCUA Region V contact

To contact NCUA Region V regarding conversions, call or write to:

National Credit Union Administration, Region V
1230 W. Washington Street, Suite 301
Tempe, AZ 85281
Phone: (602) 302-6000

NCUA Rules Applicable To Federally-Insured, Washington State-chartered Credit Unions

last revised on 6/5/18

Section 701.14

Change in Official or Senior Executive Officer in Credit Unions that are Newly Chartered or are in Troubled Condition

Section 701.32

Payment on Shares by Public Units and Nonmembers

Part 702

Capital Adequacy - Prompt Corrective Action

Part 707

Truth in Savings

Part 708a

Bank Conversions and Mergers

Part 708b

Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

Part 709

Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation

Part 711

Management Official Interlocks

Part 713

Fidelity Bond and Insurance Coverage for Federal Credit Unions

Part 715

Supervisory Committee Audits and Verifications

Part 716

Privacy of Consumer Financial Information

Part 722

Appraisals

Part 725

NCUA Central Liquidity Facility

Part 740

Accuracy of Advertising and Notice of Insured Status

Part 741

Requirements for Insurance

Part 745

Share Insurance and Appendix

Part 747

Administration Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations

Part 748

Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts and Bank Secrecy Act Compliance

Part 749

Records Preservation Program and Appendices – Record Retention Guidelines, Catastrophic Act Preparedness Guidelines

Part 760

Loans in Areas Having Special Flood Hazards

Part 761
Registration of Residential Mortgage Loan Originators

Division's Explanatory Statement on Field of Membership

Last revised January 2003

FOM statutes, rules, and guidelines

Generally - The Washington State Credit Union Act ("Act"), Chapter 31.12 RCW, sets forth the field of membership (FOM) requirements for state credit unions. These statutory requirements are brief:

RCW 31.12.382 Limitation on membership - (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. [1994 c 92 § 178; 1984 c 31 § 6. Formerly RCW 31.12.045.]

RCW 31.12.384 - Membership. (1) A credit union may admit to membership those persons qualified for membership as set forth in its bylaws. (2) An organization whose membership, ownership, or employees are comprised principally of persons who are eligible for membership in the credit union may become a member of the credit union. [1997 c 397 § 27; 1984 c 31 § 16. Formerly RCW 31.12.145.] These provisions of the Act are implemented by the Division's rules set forth at Chapter 208-472 WAC.

Types of FOMs

Washington State-chartered credit unions may include occupational groups, associational groups, or community groups in their FOM. Moreover, a credit union may have one (or more) of each of these types of groups in its FOM. See RCW 31.12.382 and WAC 208-472-010.

Occupational groups. See the definition in WAC 208-472-015(10). A credit union with a current composite CAMELS rating of 1 or 2 may add qualified occupational groups, as defined in WAC 208-472-015 (14) if it meets the requirements of WAC 208-472-020 (2) (a).

Associational groups. See the definition in WAC 208-472-015(2). Associations must be comprised primarily (50% + 1) of natural persons. Business members of an association and other associated persons defined in the rule may be members of the credit union. A credit union with a current composite CAMELS rating of 1 or 2 may add qualified associational groups, as defined in WAC 208-472-015 (12), if it meets the requirements of WAC 208-472-020 (2) (a).

Communities. See the definition in WAC 208-472-015(4). A credit union with a community charter in its FOM may take as a member any person who lives, works, worships, or goes to school in the community. See WAC 208-472-015(4) and RCW 31.12.382. In addition, a credit union with a community FOM may take as a member any business that is located in the

community. See RCW 31.12.384.

A credit union applying to add a community to its FOM does not have to give up any of its select employer groups (SEGs) or associational groups in the community.

As previously indicated, a credit union may include more than one community in its FOM. These communities may be physically separate and distinct, or they may be contiguous. A credit union with a current composite CAMELS rating of 1 or 2 may add qualified community groups, as defined in WAC 208-472-015 (13), if it meets the requirements of WAC 208-472-020 (2) (a).

Limitations on direct marketing to occupational and associational groups

A credit union may not conduct direct marketing targeted primarily at the persons in an occupational or associational group, unless the group was included in the FOM bylaws of the credit union prior to March 8, 2002 or a management official of the occupational or associational group has provided the credit union with a written statement, signed by the official, that the groups desires service by the credit union. See WAC 208 472-030.

Application requirements for credit unions currently rated composite CAMELS 3, 4, or 5.

Credit unions with a current CAMELS composite rating of 3, 4, or 5 are not eligible to add FOM groups under the streamlined procedures. In such cases, an application must be made to DCU requesting FOM expansion. Applications must include the items required in WAC 208-472-025 (1).

NCUA Rules & Regulations, Part 741 Requirements for Insurance

How to Access NCUA Rules & Regulations, Part 741

1. Logon to the NCUA web site (www.ncua.gov);
2. Click on Regulation & Supervision;
3. Click on NCUA Regulations (near the bottom and left part of the page);
4. Click on NCUA Rules and Regulations;
5. Click on “Go directly to page“; and
6. Scroll down to Part 741 and click on 741.

The Federal Credit Union Act §1771 Conversion from Federal to State Credit Union

How to Access the Federal Credit Union Act §1771

1. Logon to the NCUA web site (www.ncua.gov);
2. Click on Regulation & Supervision;
3. Click on NCUA Regulations (near the bottom and left part of the page);
4. Click on Federal Credit Union Act; and
5. Click on “The Federal Credit Union Act”.

NCUA Chartering & FOM Manual – Chpt. 4 Conversion from a Federal to State Charter

How to Access the NCUA Chartering & FOM Manual – Chpt. 4

1. Logon to the NCUA web site (www.ncua.gov);
2. Enter “Chartering and FOM Manual” in the Search Box;
3. Click on Chartering and FOM Manual; and
4. Go to Chapter 4 Charter Conversions.

NCUA Charter Conversion Forms Chartering & FOM Manual – Chpt. 4

See previous page or the directions below on how to access the NCUA Chartering & FOM Manual

How to Access the NCUA Charter Conversion Forms

- Form 4221 – Notice of Meeting of the Members to Convert from Federal to State Chartered Credit Union
- Form 4505 – Affidavit and Proof of Results of Membership Vote – Proposed Conversion from Federal Credit Union to a State Credit Union
- Form 4506 – Ballot of Conversion Proposal – Federal to State Conversion
- NCUA 9600 – Information to be Provided in Support of the Application of a State Chartered Credit Union for Insurance of Accounts.

1. Logon to the NCUA web site (www.ncua.gov);
2. Enter “Form and the form number you want in the Search Box; and
3. Click on the Form number that you want.

**Articles of Conversion of an Out-of-state or Federal Credit Union to a
Washington State-chartered Credit Union**

_____ Submit original and one copy
UBI # of Converted Credit Union Fee:

Phone # of Credit Union

To Credit Union: Please type or print in black ink.

1. These Articles of Conversion concern the conversion of

_____ (Converting Credit Union) to
_____ (Converted Credit Union.

2. The Converting Credit Union is [check one]:

_____ A. Operating under the Federal Credit Union Act; or

_____ B. Operating under the law of the State of _____.

3. The Converted Credit Union will be operating under Chapter 31.12 RCW.

4. The board of directors and members of the Converting Credit Union have given all required approvals of the conversion, in accordance with applicable law.

5. The conversion has received all necessary regulatory approvals.

6. The conversion will be effective [check one]:

_____ A. As of the close of business on the date this Articles of Conversion document is filed with the Secretary of State; or

_____ B. At the time and on the date specified below, which in no event is more than 90 days after the date this Articles of Conversion document is filed with the Secretary of State:

_____.

Articles of Conversion of Credit Union
Page Two

7. The undersigned Officer hereby represents to the best of his or her knowledge that this document is true and correct.

Signature of Credit Union Officer, Title

Date

Approved for filing:

Assistant Director, Division of Credit Unions Date
Department of Financial Institutions