

Response to Draft from Parker Cann,  
Columbia Credit Union, Vancouver, WA

REMARKS SHOWN AS FOOTNOTES IN RED

## Chapter 208-800 WAC

### CREDIT UNION ALTERNATIVE SHARE INSURANCE PROGRAMS<sup>1</sup>

#### NEW SECTION

**WAC 208-800-010 Reason for rules.** Washington state law requires state-chartered credit unions to maintain share insurance on depository accounts. In the United States, most credit unions are insured by the federal National Credit Union Share Insurance Fund (NCUSIF). Washington law allows credit unions to choose an alternative share insurance program, provided it is "equivalent" to federal insurance. Alternative share insurance programs are generally provided by corporations, by contractual arrangement with credit unions, and are not guaranteed by the federal or state government. These rules explain the qualification standards, definitions and application procedures for a nongovernmental, private organization applying for approval to do business in Washington state as an alternative share insurance program, and requirements for annual review of approved programs.

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<sup>1</sup> My understanding is that some/many of the NCUA rules will fall away when a credit union becomes insured by an alternative share insurer. Will DCU pick up some of these requirements by separate rule? See RCW 31.12.516(5).

NEW SECTION

**WAC 208-800-020 Requirements for alternative share insurance programs.** Washington state law requires an alternative share insurance program to be equivalent to federal share insurance. According to the law, equivalency may be established by a share insurance program meeting three standards: Holding reserves proportionately equal to the federal share insurance program; maintaining adequate reserves and access to additional sources of funds through replenishment features, reinsurance or other sources; and having share insurance contracts reflecting national geographic diversity. An alternative share insurance program must meet these standards, as determined by a finding of the director of the department of financial institutions, and must continue to meet the standards on an ongoing basis, in order to do business in Washington state.

NEW SECTION

**WAC 208-800-030 Definitions<sup>2</sup>.** (1) "Equivalent" means equal in value, measure, force, effect or significance.

(2) "Equivalent share insurance program" means a private share insurance program that meets the statutory standards set forth in RCW 31.12.408 as an alternative to federally guaranteed credit union share insurance for state-chartered credit unions.

(3) "Alternative share insurer" means a corporation, or other entity other than the federal government, that provides primary share insurance.

(4) "Equity ratio" means the ratio of fund equity less unreserved contingent liabilities divided by the aggregate amount of all insured shares, as established annually by the NCUA board as the normal operating level.

(5) "Proportionately equal reserves" mean reserves based upon an equity ratio that equals the NCUSIF's equity ratio.

(6) "Adequate reserves" mean reserves sufficient to meet regulatory safety and soundness standards, with the highest available level of safety for share accounts.

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<sup>2</sup> One would assume that alternative insurance would cover both shares and deposits, but the rule may not be clear on its face. Maybe some wording could be added to clarify.

(7) "Access to additional sources of funds" means availability of funds, other than premium or assessment revenue, to be relied upon for payment of insured claims, and documented by contract, statute or title. Funds in this category must have reasonable liquidity.

(8) "Replenishment" means the practice of requiring an additional assessment and collection of insurance premiums, as required by contract between an alternative share insurer and an insured credit union, to restore the equity ratio if it falls below the allowable minimum percent.

(9) "Reinsurance" means a contractual agreement between an alternative share insurer and a reinsurer authorized or licensed to do business in Washington state, requiring either:

(a) The establishment of a trust account to hold unearned premium funds, backed by a letter of credit; or

(b) A joint custodial ownership of the trust account by the alternative share insurer and the reinsurer; or

(c) Some other customary form of reinsurance guarantee. The reinsurer issuing the insurance contract is liable to the alternative share insurer for the payment of policy benefits.

(10) "Other sources of funds" mean any other corporate assets, contractual arrangements, or investments of the alternative share insurer, if any, permitted under state or federal law, and satisfactory to the director.

(11) "Insurance contract" means an executed contract between a private share insurance provider and a state-chartered credit union for the provision of alternative share insurance. A contract with a credit union counts as one contract, regardless of the number of branches the credit union may have.

(12) "National geographic diversity" means the distribution of economic risk obtained by the requirement that an alternative share insurer provide proof of reasonable diversity and distribution of share insurance contracts, representing credit unions that are dispersed throughout the states in which state-chartered credit unions exist, and throughout geographic regions.

(13) "Geographic regions" for purposes of these rules, mean the following:

(a) States in the Alaskan, Hawaiian, Pacific and Mountain time zones;

(b) States in the Central time zone;

(c) States in the Eastern time zone.

(14) "Effective date for commencement of business" means the date on which an alternative share insurer may begin insuring Washington credit unions, after obtaining approval by the director to do business in Washington state. The statutory effective date for commencement of business is the first day after the end of the regular legislative session in the year following approval by the director.

(15) "NCUA" means the National Credit Union Administration, the federal government agency responsible for regulating federally chartered credit unions.

(16) "NCUSIF" means the National Credit Union Share Insurance Fund.

(17) "Director" means the director of the Washington state department of financial institutions.

(18) "Department" means the Washington state department of financial institutions.

(19) "DCU" means the division of credit unions within the department of financial institutions.

(20) "Washington credit union" means a credit union organized and operating under chapter 31.12 RCW.

#### NEW SECTION

**WAC 208-800-100 Contents of application to do business in Washington state as an alternative share insurance provider.** In order to be approved to do business in Washington state as an alternative share insurance program, an applicant must meet the statutory standards of RCW 31.12.408 and be approved by a finding by the director, after a public hearing. To provide the director with sufficient information and material to review and evaluate an applicant, and monitor for ongoing annual compliance, the application must provide the following:

(1) Access to the insurer's corporate headquarters and relevant staff, for an initial site inspection by DCU, and agreement to include DCU in annual regulatory compliance site inspections;

(2) Adequate documentation of compliance with Washington state statutory standards, set forth at RCW 31.12.408;

(3) Copy of the three most recent examination and audit reports by any state or federal regulatory agencies that have regulatory authority over the corporation;

(4) Copies of any civil or criminal legal judgments, and disciplinary or corrective actions or orders taken by any federal or state regulators within ten years prior to application, against the applicant;

(5) Documentation of the corporate relationship between the applicant and any of its subsidiaries. If the applicant's subsidiaries are in the business of providing insurance or risk management, applicant shall provide written proof of indemnification, whereby applicant's primary share insurance company assets will not be held liable for subsidiary's acts, omissions or contractual obligations;

(6) Payment of an application and investigation fee of thirty-five thousand dollars, based on the reasonable recovery of costs of site visits, examination, inspection and review of application. Fee is due at time of application. In the event that the actual costs of the investigation conducted with respect to the application are less than the amount of the fee, such difference between the fee and the actual costs submitted shall be refunded. For the purposes of this section, actual costs shall include travel and per diem expenses paid to division of credit unions personnel in connection with the investigation;

(7) Filing of articles of incorporation with the Washington secretary of state;

(8) A written statement agreeing to timely provide a copy of the executed contract for finite<sup>3</sup> reinsurance, in an amount acceptable to the director, upon commencement of business in Washington state and annually thereafter. The statement shall include an agreement to provide a minimum of thirty days written notice of cancellation of reinsurance;

(9) A listing of "other sources of funds," as defined in rule. "Other sources" are subject to audit, examination or verification by DCU and must be of a quality satisfactory to the director;

(10) Documentation of the general character of applicant's management, including a financial report and biographical report for each officer and director, and a list of any criminal convictions, material litigation, and any litigation regarding the provision of primary insurance services, in the ten-year period preceding the submission of the application in which any executive officer, board director, or person in control of the applicant has been a party;

(11) A copy of the proposed contract between the alternative share insurer and a Washington credit union. The following are required substantive provisions of the contract:

(a) **Special assessment requirement.** If the alternative share insurer's equity ratio is less than the required minimum percent, the insurer shall assess a premium charge in an amount calculated to restore the equity ratio and maintain it at or above the required minimum percentage.

(b) **Notice to the public.** An alternative share insurer shall not publicly represent, in any manner whatsoever, that it is an agency of the state or federal government, and shall comply with the provisions of Section 505, Financial Services Regulatory Relief Act of 2006, P.L. No. 109-351.

(c) **Minimum coverage.** No alternative share insurer may offer to provide primary share insurance for nonindividual retirement accounts at a credit union in an amount less than

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<sup>3</sup> Not sure what "finite" means here. A sum certain?

\$100,000 per share account.<sup>4 5</sup>

(d) **Limitation of government liability.** Washington state is not obligated to pay any deficiency of any alternatively insured credit union in the event that the insurer is unable to pay. Private alternative share insurance is governed by contract, and is not backed by the full faith and credit of the state of Washington or the federal government;

(12) Documentation of national geographic diversity, including the following factors:

(a) Number of states in which applicant currently has contracts for primary share insurance business, in relation to number of states that have state-chartered credit unions;

(b) Number of credit unions, not including branch locations, under contract for primary share insurance with applicant;

(c) Distribution of contracted credit unions by asset size;

(d) Distribution of contracted credit unions by industry or other membership measure, including geographic dispersion of members of each credit union;

(e) Distribution of contracts among geographic regions;

(f) Distribution of primary insured shares by state, including percentage of total primary insured shares per state;

(13) Any other documentation or information that may be requested by the department during the course of application;

(14) Copies of any examination materials submitted as part of the application are confidential, and are exempted from public disclosure under Washington state law RCW 31.12.565;

(15) The application documentation shall be accompanied by a statement certifying that the contents of the application are true and correct, and signed by the corporate president of the applicant, under penalty of perjury.

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<sup>4</sup> I believe that this is the first time "primary share insurance" appears in the rule. It may be helpful to clarify this point early on in the rule so it is clear that the rule is talking about primary and not excess insurance.

<sup>5</sup> I don't quite understand the import of this provision. Was the term "nonindividual" (rather than "individual") intended?

NEW SECTION

**WAC 208-800-200 Process for approval of application.** (1) An alternative share insurer shall submit the information required by WAC 208-800-100 to the director. A completed application must be received by September 1, of any year, in order for the DCU to have sufficient time for review, examination and investigation, and for the director to hold a public hearing and issue findings prior to December 1 of the year in which application is made. Failure to submit a completed application may result in delayed review and investigation, and postponement of findings by the director.

(2) The director will hold a public hearing regarding the application, and make a finding regarding whether the applicant meets the statutory standards for approval to do business in Washington state as an alternative share insurance program.

(3) The director will provide written findings to the appropriate standing committees of the state legislature by December 1 of the application year.

(4) If the application is approved by the director's findings, the alternative share insurer may commence doing business in Washington state on the first day after the next regular legislative session following approval of the application, absent any material change or repeal of the enabling statute. The alternative share insurance program may commence doing business in Washington state no sooner than that date.

NEW SECTION

**WAC 208-800-300 Post-approval requirements for alternative share insurance providers.** The department, through the DCU, is responsible for the regulatory oversight of the safety and soundness of Washington credit unions. RCW 31.12.408 requires ongoing monitoring of alternative share insurance programs that are approved to do business in the state.

(1) The director will review, on an ongoing basis and no less than annually, all approved alternative share insurance programs, to ascertain whether the programs currently meet the standards in RCW 31.12.408 and will make a written report to the appropriate standing committees of the state legislature. If

the alternative share insurance program fails to meet the required standards, the director will take the following actions:

(a) Notify all nonfederally insured Washington credit unions;

(b) Hold a public hearing for the purpose of receiving comment on the finding that the alternative share insurance program does not meet legal standards;

(c) Following the public hearing, rescind or reaffirm the finding of noncompliance;

(d) If noncompliance is reaffirmed, issue an order requiring all credit unions whose shares are insured by the alternative share insurance program to immediately file applications with the NCUA to convert to federal share insurance.

(2) Alternative share insurance programs that are found to be noncompliant with legal standards may take corrective action and reapply for authorization to do business in Washington state, by following the application procedures set forth in rule, or by such other proof of corrective action as the director may require.

(3) A review, examination and inspection fee, based upon the reasonable recovery of costs of site visits, examination and inspection, shall be charged by the division of credit unions.

(4) Ongoing review will be based upon a continuing evaluation of the criteria set forth in the application at WAC 208-800-100, as well as any safety and soundness concerns identified by the division of credit unions as part of its regular examination process for state-chartered credit unions.

#### NEW SECTION

**WAC 208-800-400 General provisions.** Nothing in these rules creates any liability upon the state of Washington for the payment of any funds to any alternatively insured credit union or its share account holders, by reason of the acts or omissions of an alternative share insurance program.