



State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CREDIT UNIONS**

P.O. Box 41200 • Olympia, Washington • 98504-1200

Courier Address: 150 Israel Rd. SW • Tumwater, WA • 98501-6456

Telephone (360) 902-8701 • TDD (360) 664-8126 • (800) 372-8303 • FAX (877) 330-6870 • <http://www.dfi.wa.gov>

Interpretive Letter

Division of Credit Unions Interpretive Letter I-14-04

DATE: July 15, 2014

TO: Washington State Credit Unions

FROM: Linda Jekel, Director  
Division of Credit Unions

RE: Charitable Donation Accounts

Background

Washington State-chartered credit unions under the Washington Credit Union Act (“Act”) have had the authority to invest in charitable donation accounts under RCW 31.12.402(20). Recently, a Washington State-chartered credit union (“Credit Union”) requested for authority to invest Credit Union funds in investments not specifically listed in RCW 31.12.436 for a limited purpose. The limited purpose is to fund charitable donation accounts (CDA) in a manner similar to that permitted to federal credit unions.

Determination

It is the policy of the Division of Credit Unions that a Washington State-chartered credit union may invest its funds into a charitable donation account (CDA) if the investment conforms to RCW 31.12.436 and RCW 31.12.402(20).

The Division will approve, for the limited purpose of funding CDAs, with the authority to fund investments of their choosing beyond those specifically approved in RCW 31.12.436(2). This authority is conditional with the requirements as set forth below.

If any credit union wishes to deposit or invest its funds in a CDA in manner not specifically permitted to credit unions by chapter RCW 31.12.436, the credit union shall, before engaging in the proposed investment practice, make written application to the director for authority to make the proposed investment.

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To be approved, the credit union must demonstrate that the investment in CDAs would be a safe and prudent asset for the applicant credit union.<sup>1</sup>

If the credit union is rated a CAMEL 3, 4, or 5, a special examination may be required prior to deciding whether to approve, defer, or deny the CDA application.

Any complete CDA application not acted upon within six months after its receipt by the director shall be deemed denied unless the director, in writing, informs the applicant credit union that the application is being held for further review.<sup>2</sup>

The director may revoke or modify a previously approved investment to the applicable credit union, if the director finds the previously authorized investment is no longer a safe and prudent practice, has become inconsistent with applicable state or federal law, or has ceased to be a safe and prudent investment practice in one or more particular credit unions. The director must send written notice of the revocation or modification to the applicable credit union.<sup>3</sup>

**Requirements**

Washington State-chartered credit unions under the Washington Credit Union Act (“Act”) have had the authority to invest in charitable donation accounts under RCW 31.12.402(20). The definition of a qualified organization must meet the following:

Work with community leaders to develop and prioritize efforts to improve the areas where their members reside by making investments in the community through contributions to organizations that primarily serve either a charitable, social, welfare, or educational purpose, or are exempt from taxation pursuant to section 501(c)(3) of the internal revenue code.

The Credit Union has the authority to invest in CDAs with the investments listed in RCW 31.12.436(1). If the Credit Union wishes to make investments that are not outlined in RCW 31.12.436(1), the credit union will need to make application under RCW 31.12.436(1)(l). In addition, the Federal Deposit Insurance rules require a state-chartered credit union to maintain a reserve of the difference between the market value and the book value of investments not listed in 12 CFR 741.3(a)(2).

- 1) If the CDA is approved, the approval will be conditional with the following specific requirements:
  - a) The primary purpose of the CDA must be to generate funds to donate to organizations that serve a charitable, social, welfare, or educational purpose, or are exempt from taxation pursuant to section 501(c)(3) of the internal revenue code.

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<sup>1</sup> WAC 208-436-010 through 050

<sup>2</sup> WAC 208-436-060

<sup>3</sup> WAC 208-436-080

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- b) The total investment (aggregate) is limited to five percent of the applicant credit union's net worth for the duration of the CDAs.
- c) A minimum of 51 percent of the total return from such an account must be distributed to one or more qualified organizations.
- d) Distributions must be made to qualified organizations no less frequently than every five years, or in the event the account terminates in less than five years.
- e) Assets of CDAs must be held in segregated custodial accounts or special purpose entities specifically identified as CDA.
- f) If the applicant credit union structures its CDA using a trust, the trustee must be an entity regulated by the Office of the Comptroller of the currency (OCC), the U.S. Securities and Exchange Commission (SEC), another federal regulatory agency, or a state financial regulatory agency.
- g) The terms and conditions controlling the account must be documented in a written agreement.
- h) Upon termination of the CDA, the applicant credit union may receive a distribution of the remaining assets in cash or in kind of the remaining assets if those assets are permissible investments for Washington state-chartered credit unions<sup>4</sup> as described in RCW 31.12.436(1).

Conclusion

A Washington State- chartered credit union may fund charitable donation accounts per RCW 31.12.402(20) using investments listed in RCW 31.12.436(1). If a Washington State-chartered credit union wishes to make investments that are not outlined in RCW 31.12.436(1), the credit union will need to make application to the Director of Credit Unions under RCW 31.12.436(1)(l).

The Division of Credit Unions does not provide legal advice. This interpretive letter is applicable to all state-chartered credit unions and is not a substitute for legal advice given to a credit union.

If you have any questions, please contact Linda K. Jekel, Director of Credit Unions, at linda.jekel@dfi.wa.gov, or (360) 902-8778.

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<sup>4</sup> 12 C.F.R. part 703