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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 21, 1988

Office of General Counsel

Steven R. Bisker, Esq.
Haden & Bisker
450 Maple Avenue, East
Suites 202-203
Vienna, VA 22180

Re: Permissibility of CUSO Investment
(Your letter dated February 4, 1988)

Dear Mr. Bisker:

You asked whether a credit union service organization ("CUSO") can maintain that status if it invests a portion of its funds in a company that will hold as an investment stock of a corporation that is a life insurance underwriter. In our view, such an investment would take away an entity's status as a CUSO.

Twenty-two CUSO's plan to invest \$40,000 each in a separate corporation. That corporation will establish three wholly-owned subsidiaries. The corporation and two of these wholly-owned subsidiaries will provide insurance agency, loan system, and financial planning services, -- all permissible services and activities for a CUSO. The third subsidiary, however, will be a life insurance underwriter.

Section 107(7)(I) of the FCU Act (12 U.S.C. 1757(7)(I)) establishes an FCU's authority to invest in CUSO's, as well as setting forth limitations on such investments. Section 107(7)(I) authorizes an FCU to invest its funds in:

the shares, stocks, or obligations of any ... organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: Provided, however, That such authority does not include the power to ... invest in shares, stocks or obligations of an insurance company [Emphasis added.]

FOIA Vol. III, C, 2a - CUSO's

Steven R. Bisker
April 21, 1988
Page Two

This prohibition is also found in the CUSO regulation [12 C.F.R. 701.27(b)(1)(iii)].

We believe an FCU investment in an insurance company remains that even if filtered through one or more corporations. We would only recognize an entity holding "shares, stocks or obligations of an insurance company" as a CUSO if that action is not an "investment" -- for example, if the acquisition is a form of payment or is in substance a security deposit for obtaining services permitted under Section 701.27 of NCUA's Rules and Regulations. (See the attached letter dated December 17, 1987, setting forth an example of such a situation.) The plan you present strikes us as being a straightforward investment.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy P. McCollum". The signature is fluid and cursive, with a large initial "T" and "M".

Timothy P. McCollum
Assistant General Counsel

Attachment



NATIONAL CREDIT UNION ADMINISTRATION

Washington, DC 20456

December 17, 1987

GC/ST-2
3500

Office of General Counsel

John T. Collins, Esq.
Steptoe & Johnson
1330 Connecticut Avenue
Washington, DC 20036

Re: CUSO Investment in Third Party to Obtain Permissible
Services (Your November 3, 1987, Letter)

Dear Mr. Collins:

A Federal credit union ("FCU") may, pursuant to 12 C.F.R. §701.27, invest in a credit union service organization ("CUSO") which, in order to provide EFT and ATM services to the FCU contracts with a third party to provide these services. You have asked if the FCU's CUSO investment is made impermissible: (a) if the third party performs other services for the public which would not be permissible for a CUSO; and (b) if the CUSO, as a contract requirement, invests in the third party or an entity related to the third party. We do not believe those changed circumstances would alter the CUSO's status.

An FCU wishes to obtain EFT and ATM services from a third party which provides these and other services, such as processing medical claims, to the public. The third party, however, requires a small capital investment in itself or a related entity from everyone for which it provides services. Perhaps mindful that certain prior NCUA opinions cast doubt on an FCU's power directly to enter into a contract requiring such as investment,¹

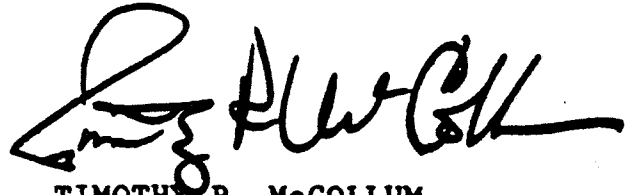
¹ It may become necessary at some point to reconsider certain of our prior opinions in this area. Contractual requirements for investment can, in some circumstances, be functionally equivalent to a prepayment or security deposit. In order to evaluate fully a particular "investment," we would need more formally presented information than we have at hand here, and more time to obtain the views of other NCUA departments. Your client would rather we not expend on this particular matter the time and effort that would be required.

John T. Collins, Esq.
December
Page Two

the FCU proposes to establish a CUSO to contract with the third party and make the investment.

NCUA's CUSO regulation (12 C.F.R. §701.27) permits a credit union to invest in and loan to a CUSO: (a) "if the organization primarily serves credit unions and/or the membership of affiliated credit unions"; and (b) if the CUSO "provide[s] only one or more of" certain listed services and activities, including ATM and EFT support. 12 C.F.R. §701.27(b)(4), (5). The proposed CUSO as described would primarily serve credit unions and would provide only ATM and EFT services. That it would have to hold a relatively small investment in a third party with which it contracts to obtain those services, or in an entity related to the third party, would not alter the nature of the services the CUSO would be providing credit unions.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

TPM:sg