



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

Office of General Counsel

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September 12, 1989

Philip L. Carson, Esq.  
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Fort Wayne, Indiana 46802-3173

*Credit Union Service Organization Investment*  
Re: ~~Professional Federal Credit Union~~ (Your  
August 10, 1989, Letter)

Dear Mr. Carson:

You have asked whether it is permissible for a Federal credit union ("FCU") to invest in a credit union service organization ("CUSO") that engages in no business activity other than the ownership of stock of two subsidiary corporations. Provided the services of the subsidiary corporations are limited to those listed in Section 701.27 of NCUA's Rules and Regulations (12 C.F.R. 701.27) for FCU's involvement with CUSO's, this is a permissible activity.

You also asked whether a CUSO can serve members of a credit union that has not invested in or made loans to the CUSO. An FCU may only invest in or loan to a CUSO if the CUSO primarily serves credit unions and/or the membership of affiliated credit unions. If the CUSO service is being provided to both credit union members and credit unions, the CUSO's service to credit union members must be primarily to members of credit unions that have invested in or loaned to the CUSO. If the CUSO serves only credit unions and not credit union members, the credit unions served need not invest in or loan to the CUSO.

FOIA

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## BACKGROUND

Professional FCU owns all of the stock of Pro-Fed Financial Services, Inc. ("Services"), an Indiana corporation. Services owns all of the stock of Pro-Fed Financial Planning, Inc. ("Planning") and NEI Leasing, Inc. ("Leasing"). Both Planning and Leasing are also Indiana corporations. Planning provides financial planning and consulting services to Professional FCU members. Leasing originates motor vehicle leases and then sells the leases to various credit unions. Services engages in no business activity other than the ownership of all of the stock of Planning and Leasing.

## ANALYSIS

Your first question was:

"Since Pro-Fed Financial Services provides no services can the credit union invest in or make loans to it?"

When the NCUA Board amended the CUSO regulation (Section 701.27 of NCUA's Rules and Regulations), it discussed the permissibility of a CUSO forming subsidiaries, stating:

While CUSO's may establish corporations and partnerships, they may not be used as vehicles by which to circumvent this regulation. FCU's investing in or making loans to a CUSO that is merely a shell corporation for the purpose of forming other corporations with which to circumvent the regulation will be required to divest their investments and loans. The formation, by a CUSO, of a subsidiary corporation or a partnership should be done only in connection with carrying out permissible activities under the rule.

See 51 Fed. Reg. 10353 (March 26, 1986).

The services performed by the subsidiaries are within Section 701.27. Although not specifically set forth in Section 701.27, this Office has previously stated that a CUSO may contract with a third party provider of services rather than provide the services itself. In light of the preamble language noted above and a CUSO's ability to contract with a third party, we believe that FCU investment in or loans to

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Services is permissible even though Services does not directly provide any services to the FCU.

Your second question was:

"Can NEI Leasing serve members of credit unions if those credit unions have not invested in or made loans to the CUSO? Currently the CUSO is wholly owned by Professional FCU so these other credit unions would not appear to fit the definition of affiliated."

Section 701.27(d)(4) of NCUA's Rules and Regulations states:

A Federal credit union may invest in or loan to a credit union service organization only if the organization primarily serves credit unions and/or the membership of affiliated credit unions . . . .

If a CUSO is providing a permissible service directly to credit unions, an investment in or loan to the CUSO providing the service is not required by each credit union receiving the service. However, if the service provided by the CUSO is a service primarily to credit union members, any credit union wishing to make the service available to its members through the CUSO must be an "affiliated credit union," i.e., one that has invested in or loaned to the CUSO. (See Section 701.27(c)(1) of NCUA's Rules and Regulations (12 C.F.R. 701.27(c)(1).)

You stated that, since Leasing will immediately sell the leases it makes to credit unions, the leasing activity provided by Leasing is a service to a credit union rather than to credit union members. It is our opinion that the leasing service is to both credit unions and their members. Section 701.27 requires an FCU investment in or loan to the CUSO whenever a service is being primarily provided to the FCU's members by the CUSO, regardless of whether the credit union also benefits from the service.

One point needs to be clarified regarding the sale of leases by Leasing. You stated that Leasing immediately sells the leases to credit unions. We assume that you mean that Leasing enters into a lease with an FCU member, and then sells the lease to the FCU to which the member belongs. Section 701.23 of NCUA's Rules and Regulations (12 C.F.R. 701.23) places limitations on FCU purchase of loans and leases. In this instance, the regulation would serve to limit an FCU to purchasing only the leases of its members, and only if the leases are ones that the FCU is empowered to

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grant itself. (See Section 701.23(b) of NCUA's Rules and Regulations (12 C.F.R. 701.23(b)).) NCUA's Interpretive Ruling and Policy Statement 83-3 sets forth the requirements for FCU leasing. State-chartered credit unions that purchase leases from Leasing are subject to the credit union laws of the state where they are chartered.

Sincerely,

*Hattie M. Ulan*

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Assistant General Counsel