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Office of General Counsel

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Re: Credit Union Service Organizations (Your
October 17, 1989, Letter)

Dear Mr. Sandow:

You have requested our opinion as to whether a company which acts as a nonbank custodian of IRA deposits may be considered a credit union service organization (CUSO). Federal credit unions (FCU) may invest in and make loans to state corporations provided the FCU complies with all of the provisions of Section 701.27 of the NCUA Rules and Regulations (12 C.F.R. 701.27). The custodial activity you describe is a permissible CUSO activity under the regulation. However, we cannot render an opinion, as requested by the IRS, on whether a company, chartered under Oregon law, is authorized to accept IRA deposits as a custodian. That is a question of state law. If it can, and its activities are in compliance with Section 701.27, then it would qualify as a CUSO.

BACKGROUND

You represent a Federal credit union ("FCU") which would like to form a CUSO to act as a nonbank custodian of IRA deposits

FOIA
Vol. I Part C (19)
Vol. III Part C, 2a CUSO Custodian Activities

Dean T. Sandow, Esq.
December 26, 1989
Page 2

as that term is defined under Internal Revenue Code Section 408 and other related Internal Revenue Service ("IRS") regulations. The IRS has requested that the NCUA make a statement indicating that the CUSO is authorized to act as custodian for IRA deposits. The CUSO will not act as trustee with regard to the IRA funds; it will only be the custodian of such funds. The CUSO will not exercise any investment discretion with regard to IRA deposits. You stated in your letter that the CUSO is a corporate entity chartered by the State of Oregon and is authorized under its Articles of Incorporation and the Oregon Business Corporation Act to do all things necessary and proper to carry out its corporate purpose, including specifically the developing and administering of IRA plans.

ANALYSIS

Section 701.27 of the NCUA Rules and Regulations (12 C.F.R. 701.27) provides, in part:

(a) Sections 107(7)(I) and 107(5)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I) and 1757(5)(D)) authorize Federal credit unions to invest in and make loans to credit union service organizations. This regulation implements those sections by addressing various issues, including monetary limits on loans and investments, the structure of credit union service organizations, their customer base, and the range of services and activities that they may provide. The regulation also establishes prudential standards for Federal credit union involvement with credit union service organizations, through provisions concerning conflicts of interest, accounting practices, and NCUA access to books and records. The regulation applies only in cases where one or more Federal credit unions have invested in or made loans to an organization pursuant to Section 107(7)(I) or 107(5)(D). The regulation does not regulate credit union service organizations directly but rather establishes conditions of Federal credit union investments in and loans to such organizations.

Section 701.27(d)(5)(ii) states, in part:

A Federal credit union may invest in and/or loan to those credit union service organizations that provide only one or more of the following services and activities:

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Dean T. Sandow, Esq.
December 26, 1989
Page 3

(ii) . . . developing and administering IRA, Keogh, deferred compensation, and other personnel benefit plans; trust services; acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity

Section 701.27(e) provides:

(e) Other laws. A credit union service organization must comply with applicable Federal, state and local laws.

The preamble to the proposed CUSO rule explained that the regulation was not intended to preempt any requirements that a state may impose on a CUSO providing one of the listed activities. (See 50 F.R. 37001, 9/11/85.)

In our view, the first question is whether, under State law, the CUSO is permitted to act as custodian for IRA deposits. The Articles of Incorporation submitted and your letter indicate it to be a proper activity. However, we cannot make a determination on that issue. That is an issue of state law. Once you have made a positive determination under state law, the next step in the analysis is whether an FCU may invest in or loan to a state-chartered entity which is authorized to act as a custodian for IRA deposits. In our view, the activity you describe, custodian of IRA deposits, fits squarely in the above-quoted regulation. Hence, assuming the CUSO is acting in custodial capacity in compliance with state law, an FCU can invest in or loan to it. Please note that an FCU which makes loans to or invests in any CUSO must comply with all the requirements found in Section 701.27.

Sincerely,



HATTIE M. ULAN
Associate General Counsel