



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

October 4, 1991

James H. McFarland
Jackson, Murdo & Grant, P.C.
203 North Ewing Street
Helena, Montana 59601-4298

Re: Credit Union Service Organization
("CUSO") Joint Venture (Your Letter
of September 10, 1991)

Dear Mr. McFarland:

You have requested an opinion regarding whether three CUSOs may form a joint venture to engage in share draft processing activity. Within the confines of this opinion, CUSOs may form a joint venture as you describe.

BACKGROUND

The three CUSOs propose the formation of a joint venture to engage in share draft processing for Montana credit unions. You represent that these services are to be provided to credit unions only, and not credit union members or other CUSOs. Other services, such as statement printing and bulk form buying, may be offered at a later date by the joint venture. You describe the proposal as follows:

The joint venture would have its own taxpayer identification number and be treated like a partnership for tax purposes. Each CUSO, with the consent of its Board of Directors, would contribute capital to the joint venture to acquire the necessary equipment. The share draft processing activity would be

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co-located with one of the CUSO's and its employees would be utilized. Each participating CUSO would proportionately share the costs and profits according to the terms of the joint venture agreement. A bank in the community where the CUSO share draft processing operation is located would be utilized to receive the items from the Federal Reserve. The items would then be transported to the CUSO and processed. See Your Letter of September 10, 1991, p. 1.

In addition, you note that Montana credit union share draft processing is now done under contract with banks, and that it would be an advantage to Montana credit unions to have the processing of approximately two million credit union share drafts each month performed through CUSOs "by providing a service and retaining the profits from that service within the credit union family." See Your Letter of September 10, 1991, p. 2.

ANALYSIS

When the NCUA Board amended the CUSO regulation (12 C.F.R. §701.27), it discussed the permissibility of a CUSO forming subsidiaries and partnerships, 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, 10355 (March 26, 1986).

Data processing, accounting services, payment item processing, and the provision of forms and supplies are permissible CUSO services and activities under the CUSO rule. 12 C.F.R. §701.27(d)(5)(i). These are the services and activities that the joint venture contemplates performing.

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It is our opinion that CUSOs may invest in the joint venture without jeopardizing their affiliated FCUs' compliance with the CUSO rule.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

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