

March 29, 1999

Christopher Turner, Corporate Counsel  
Southwest Corporate Federal Credit Union  
7920 Belt Line, LB-109  
Dallas, Texas 75240

Re: Corporate Credit Unions Lending to Credit Union Service Organizations.

Dear Mr. Turner:

The Office of Corporate Credit Unions referred your October 15, 1998, letter to this office for a response. You have asked whether a corporate credit union may lend to a natural person credit union service organization (CUSO) that would be engaged in indirect lending services. This raises two, separate issues. The first issue is the authority of a corporate credit union to lend to a credit union service organization (CUSO). As explained below, a corporate credit union may lend to a corporate CUSO under its CUSO lending authority and, under its general lending authority, may lend to either a natural person CUSO or a corporate CUSO if they are members of the corporate credit union. The second issue is whether the proposed indirect lending activity, that involves the purchase and pooling of nonmember loans, is a permissible CUSO service. As explained below, the answer is no.

The CUSO provision of our corporate rule states explicitly that a corporate credit union may only lend to a corporate CUSO and is not authorized to lend to a natural person CUSO under Part 712. 12 C.F.R. §704.11(e). You cite certain language in the preamble to the final corporate rule as authority for your position that a corporate may make loans to a natural person CUSO. 62 Fed. Reg. 12929, 12936 (March 19, 1997). That discussion pertains to a corporate's general lending authority, not its authority to lend to corporate CUSOs. The discussion concerned deleting the provision defining a corporate CUSO as an entity that had received a loan from a corporate. The preamble stated that this provision was being deleted based on comments that it would restrict the ability of corporates to lend to natural person CUSOs. *Id.* The lending authority referenced in the preamble is a corporate's authority to make loans to members under §704.7(d), not a corporate's authority to lend to a corporate CUSO under §704.11.

In summary, a corporate may make loans to its members, including natural person CUSOs if they are members, under §704.7(d). However, if a corporate wishes to lend under the corporate CUSO authority in §704.11, the CUSO must be "at least partly owned by a corporate credit union." 12 C.F.R. §704.11(a)(1).

Mr. Christopher Turner

Page Two

Regarding the second issue of whether the proposed indirect lending is a permissible service, the corporate rule restricts the services of a corporate CUSO to those related to the normal course of business of credit unions. 12 C.F.R. §704.11(a)(3). In your letter, you discuss and refer to permissible CUSO

activities under Part 712 of our regulations which applies to natural person CUSOs. Part 712 does not apply to corporate CUSOs, although its provisions may provide limited guidance on permissible activities. We note that the permissible activities under Part 712 include services provided to natural person members which would not be permissible for a corporate CUSO.

Although your letter does not fully explain the indirect lending activity contemplated, it appears from the facts you provided that it is not a permissible activity under either Part 704 or Part 712. You correctly state that a CUSO may engage in indirect lending under its authority to provide "loan processing, servicing and sales." 12 C.F.R. §712.5(i)(2). The attached letter from Richard S. Schulman to Guy A. Messick, dated January 5, 1995, describes the conditions under which a CUSO may participate in an indirect lending program. One of the requirements is that the CUSO have a binding contract to sell a loan to a credit union before it purchases a loan. Your letter states that the CUSO intends to purchase some nonmembers' loans, pool them and then sell them on the secondary market. You cite as authority for this activity a letter from Richard S. Schulman to Edward A. Keirn, dated September 20, 1996. You state that the second paragraph of the letter indicates that nonmember loans could be held until a pool is formed. The second paragraph is merely a recitation of the proposed activity. The letter goes on to say in explicit language that the proposed activity is impermissible.

In conclusion, the proposed indirect lending program, if it involves the purchase and pooling of nonmember loans, was not permissible under the former CUSO regulation and is not permissible now.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/MFR:bhs  
SSIC 3501  
98-1244

Enclosure

cc: Robert Schafer, Director, OCCU