

December 27, 2000

William Sydney Smith, Esq.  
Smith, Schneider, Stiles, and Serangeli, P.C.  
604 Locust, Suite 1000  
Des Moines, Iowa 50309-3715

Re: Corporate Credit Union Investment for Employee Benefit Plans.

Dear Mr. Smith:

You have asked if the investment a federally insured state-chartered corporate credit union (the corporate) intends to make in an insurance company investment contract is subject to the investment restrictions in our corporate rule. Our understanding is that the investment is for employee benefit purposes and, thus, is not subject to the investment restrictions. 12 C.F.R. §§704.5, 704.6, Part 704 Appendix B. You also asked if the corporate may continue holding the investment if the employee dies or otherwise fails to vest before the scheduled date of plan termination. No, the corporate will then be holding an investment contract on its own behalf and it would be impermissible.

Our understanding is that the corporate will make a one-time payment to an insurance company (the company) to fund a section 457(f) deferred compensation plan for the corporate's employee. The company will hold the funds for a term of years, during which the company, the corporate, and the employee each may direct the investment of some of the funds. Investment choices include debt and equity securities. At the end of the term, the corporate gets back its payment from the company. If the plan investments are worth more than the corporate's payment, the company will pay the excess to the corporate for the benefit of the employee. Alternatively, the company may use the excess to purchase an annuity contract in the name of the credit union for the benefit of the employee. The corporate will not receive more than its one-time payment unless the employee dies or fails to vest during the term of years.

A federal credit union or a federally insured corporate credit union investing on its own behalf is subject to the restrictions in the Federal Credit Union Act and our regulations. 12 U.S.C. §1757(7); 12 C.F.R. Part 703 (natural person federal credit unions); 12 C.F.R. §704.5 (federally insured corporate credit unions). NCUA's long-standing position is that these provisions do not apply when an FCU as employer is acting pursuant to its authority to provide retirement benefits to employees. 12 U.S.C. §1761b(12); 12 C.F.R. §701.19. Our view is that this analysis also applies to state-chartered corporate credit unions, assuming they have analogous authority under state law to provide employee benefits. We conclude that the corporate may not hold this investment contract past the time when it is no longer needed to meet an employee benefit obligation, for example, if the employee dies or fails to vest in the plan. In that case, the corporate must take steps to terminate or dispose of the investment contract.

We defer to the Office of Corporate Credit Unions regarding the safety and soundness of the plan, including, for example, if the corporate has the ability to fund the plan and if it constitutes reasonable compensation for services. We also defer to state authorities on whether state law limits the investments state-chartered credit unions may make in employee benefit plans. 12 C.F.R. §704.17(a). In addition, please note that we express no opinion on the permissibility of your proposed plan under other federal laws, such as the Employee Retirement Income Security Act of 1974 or the Internal Revenue Code.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/PMP:bhs  
SSIC 4660  
00-1053

cc: Office of Corporate Credit Unions