

July 7, 1992

John G. Wienert
Assistant Vice President and
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P.O. Box 50355
Atlanta, GA 30302

Re: FCU/CUSO Ownership of Reinsurance Corporation (Your March 4, 1992, Letter)

Dear Mr. Wienert:

You have asked whether a credit union or credit union service organization (CUSO) may own a credit life and credit accident and health reinsurance corporation. They may not. Please be advised that our answer with respect to credit union ownership of such an entity applies only to federal credit unions (FCUs). You should check with the appropriate state regulator to determine the answer for a state chartered credit union.

Analysis

It has long been the position of the National Credit Union Administration (NCUA) that an FCU has neither the express nor the incidental authority to underwrite insurance. However, an FCU can offer various types of insurance to its members pursuant to Part 721 of the NCUA Rules and Regulations, 12 C.F.R. Part 721. Section 721.1 provides that an FCU may endorse such insurance plans and perform administrative functions on behalf of a third party insurance vendor. An FCU may also make insurance available to its members through a credit union service organization (CUSO). Section 701.27(d)(5)(ii) of the Regulations provides that an FCU may invest in a CUSO that acts as an agent for the sale of insurance. Section 107(7)(I) of FCU Act, however, prohibits FCUs from investing in the shares, stocks or obligations of an insurance company. Thus, an FCU cannot have an ownership interest in an entity that underwrites insurance. In addition, an FCU cannot invest in an entity that owns an insurance underwriting subsidiary. The statutory prohibition against FCUs investing in insurance underwriters supports NCUA's position that FCUs have neither express nor incidental authority to underwrite insurance directly.

You argue that reinsuring is significantly different from underwriting and should be permitted for FCUs. We disagree. Reinsurance is defined as a contract in which one party, the reinsurer, agrees to indemnify another, the reinsured, against liability which the latter may sustain under a separate contract of insurance with a third party, the original insured. 44 Am. Jur. 2d Insurance ~1831. Thus, like insurance, reinsurance is a contract by which one party, for compensation, assumes particular risks of the other party. *Id.* at ~1. You state that insurance generally creates a contract of indemnity or liability between the insurer and the policyholder, whereas reinsurance generally does not create a contract between the reinsurer and the policyholder. Your statement is correct if by "policyholder" you mean "original policyholder." What you fail to state, however, is that reinsurance creates a contract of indemnity or liability between the reinsurer and the reinsured, who becomes a second policyholder. Given the similarities between insurance and reinsurance, we believe that the prohibitions against FCU involvement with the former apply equally to the latter. Thus, FCUs may neither act as reinsurers nor invest in entities that reinsure.

Sincerely,

Hattie M. Ulan

Associate General Counsel

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