

October 12, 2001

Thomas R. Detmer, Associate General Counsel  
CUNA Mutual Group  
P.O. Box 391  
5910 Mineral Point Road  
Madison, WI 53701-0391

Re: FCU's Retention of Benefit Plan Investments Following Employee Separation.

Dear Mr. Detmer:

You have asked if a federal credit union (FCU) investing in the shares of a mutual fund for a particular employee benefit option plan may retain those shares for a limited time after employee separation pending the employee's decision to exercise an option on the shares. As discussed below, we have no objections to the FCU's retention of the mutual fund investments under the circumstances you describe.

You represent that your plan is similar to the employee benefit option plan we considered in the attached letter from me to Michael P. Connors, dated May 11, 2000. Mutual fund investments, otherwise impermissible for an FCU investing for its own account, are permissible when used to fund an employee benefit plan as described in the Connors letter. In a variation on that plan, you would like to give an employee in your plan a five-year period after separation from the FCU to exercise his or her option. The FCU would continue to hold the underlying shares until the former employee exercises the option or the exercise period expires, whichever occurs first. In discussions with staff, you have noted that these post-separation exercise periods are standard in employee benefit plans used by for-profit corporations and provide tax and other benefits for participating employees.

We have stated previously that an FCU cannot continue to hold an otherwise impermissible investment after an employee retires. This is discussed in a letter from me to Steve Rixman, dated February 26, 1999. The facts in that situation, however, involved a deferred compensation agreement in which all the FCU's obligations to the employee ended at retirement and so the FCU's justification for holding the underlying investment ended when the employee retired and left the FCU. Your option plan has a specific, reasonably limited, post-separation option exercise period. An FCU may continue to hold an investment to fund its potential liability to the former employee under such a plan. As in the plan considered in the Connors letter, the investments held by an FCU for your option plan have no direct economic benefit for the FCU. When the FCU's potential liability ends, either because the former employee exercises the option or the exercise period expires, the FCU must divest itself of the impermissible investment.

Sincerely,

Sheila A. Albin  
Associate General Counsel

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01-0626

Enclosure