

May 20, 2003

Alfred D. McCallin, Esq.
500 Courtyard Centre
116 Cleveland Ave., NW
Canton, OH 44702

Re: Permissible Activities For Credit Union Service Organizations (CUSOs).

Dear Mr. McCallin:

You have asked if developing data processing software for licensing to credit unions is a permissible activity for CUSOs. It is. You also have asked if a credit union or CUSO may invest with other investors in shares of a limited liability company (LLC) for the same purpose. A federal credit union may invest in a CUSO that is organized as an LLC but whether this is a permissible investment for a state-chartered credit union will depend on state law. As discussed more fully below, a CUSO generally would not have the authority to make this kind of investment.

NCUA's CUSO rule states that an FCU may invest in, loan to or contract with a CUSO that is sufficiently bonded or insured and engaged in the preapproved activities and services related to the routine daily operations of credit unions. 12 C.F.R. §712.5. The activities specified within each preapproved category are illustrative, not an exhaustive list. *Id.* The preapproved category of "electronic transaction services" includes, among other things, "data processing". 12 C.F.R. §712.5(d)(3). The preapproved category of "fixed asset services" includes, among other things, "sale, lease or servicing of computer hardware or software". 12 C.F.R. §712.5(f)(2). We believe developing data processing software for licensing to credit unions falls within either of these preapproved activities.

Your investment question does not specify if the investing credit unions are state-chartered or FCUs. NCUA does not directly regulate the investment activities of state-chartered credit unions in CUSOs. If your investment question pertains to a state-chartered credit union, then the answer depends on the law of the state that chartered the credit union. If a state-chartered credit union makes an investment, including an investment in a CUSO, that would not be permissible for an FCU, it is required to establish a special reserve for a nonconforming investment. 12 C.F.R. §741.3(a)(2).

An FCU may investment in a CUSO that is structured as a corporation, an LLC, or a limited partnership. 12 C.F.R. §712.3(a). An FCU may invest up to 1% of its paid-in and unimpaired capital and surplus in an LLC under its CUSO investment authority. 12 C.F.R. §712.2(a); 12 C.F.R. §712.3(a). Please note that an FCU's aggregate investment in all CUSOs cannot exceed 1%. *Id.* Additionally, an FCU may invest in a CUSO even if parties other than FCUs also are investors in that CUSO. 12 C.F.R. §712.2(c).

Generally, a CUSO does not have the independent investment authority to make the kind of investment you described. 63 Fed. Reg. 65714, 65715 (November 30, 1998). A CUSO may, however, make a limited investment in a non-CUSO service provider under certain circumstances. The CUSO rule provides:

In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

12 C.F.R. §712.5(q). You have not provided sufficient information for us to determine if the proposed investment would qualify for this limited exception.

We hope you find this information helpful. Please feel free to contact us if you have any additional questions.

Sincerely,

Sheila A. Albin
Associate General Counsel

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