

November 17, 2011

Mr. Samuel T. Wyrick, III
General Counsel
Wyrick, Robbins, Yates & Ponton, LLP
4101 Lake Boone Trail
Raleigh, NC 27607

Re: Credit Union Service Organization (CUSO) Trustee Activity.

Dear Mr. Wyrick:

You asked if a federal credit union (FCU) may invest in a CUSO established for the purpose of acting as a corporate trustee on deeds of trust for real estate loans made by the FCU's other CUSO. We conclude that the proposed activity is permissible. It is also permissible for a CUSO to form a subsidiary to function as the corporate trustee for its own real estate loans, but any subsidiary must also meet the requirements of NCUA's CUSO regulation to enable an FCU to invest in or lend to the CUSO. 12 C.F.R. Part 712.

Deeds of trust are three-party documents, used in some States instead of mortgages, which pledge real property to secure a loan. Typically, the borrower-trustor conveys legal title to real property to an impartial trustee to hold for the benefit of the lender-beneficiary in order to secure the loan obligation. The borrower-trustor retains possession of the property. Once the loan is fully repaid the trustee returns the title by reconveyance to the borrower-trustor. Oftentimes, an individual will act as trustee for deeds of trust. For administrative convenience and continuity purposes, however, a corporate entity will sometimes act as trustee. Under the proposed arrangement, an FCU would form a new wholly-owned CUSO, established as a "straw" corporation, to act as the trustee party on deeds of trust for loans made by its other, existing CUSO. You have asked if this arrangement is permissible. Alternatively, you have asked if a CUSO may establish a subsidiary to function in this capacity for its own loans. The answer, in both cases, is yes.

A federal credit union may only invest in, loan to, or contract with a CUSO that is primarily serving credit unions and engaged in activities and services related to the routine daily operations of credit unions. 12 C.F.R. Part 712. NCUA's CUSO rule provides an illustrative list of preapproved categories of permissible CUSO activities. 12 C.F.R. §712.5. Trust and trust-related services, including "acting as trustee," are permitted as a pre-approved CUSO activity under the CUSO rule.

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12 C.F.R. §712.5(p)(2). We believe the trustee services you have described fall within this preapproved category. Thus, a CUSO may act as trustee on deeds of trust for real estate loans made by an FCU or, as you proposed, by a CUSO. Similarly, a subsidiary CUSO may act as trustee on deeds of trust for loans made by its parent CUSO, but any subsidiary must meet the CUSO rule requirements to enable an FCU to invest in or lend to the CUSO.

The CUSO rule itself does not currently address subsidiaries, but the preamble to amendments to the CUSO rule in 1998 indicates that all tiers of a CUSO are subject to part 712 of NCUA's regulations. 63 Fed. Reg. 10743, 10746 (March 5, 1998); see also 62 Fed. Reg. 11779, 11781 (March 13, 1997). In addition, the NCUA Board recently issued a proposed rule to, among other things, codify this requirement by adding a new section to the CUSO rule to prohibit a credit union from investing in a CUSO unless all subsidiaries of the CUSO also follow all applicable laws and regulations. 76 Fed. Reg. 44866, 44869 (July 27, 2011). Accordingly, any subsidiary formed for the purpose of acting in a trustee capacity for its parent CUSO is subject to the CUSO rule.

If you have any questions, please contact Staff Attorney Pamela Yu or me at 703-518-6540.

Sincerely,

/s/

Hattie M. Ulan
Associate General Counsel

GC/PWY:bhs
11-0904