

July 21, 1998

Mr. Martin Serna, Chairman of the Board
New Mexico Educators Federal Credit Union
P.O. Box 8530
Albuquerque, New Mexico 87198

Re: Credit Union Mortgage Service (CUMS).

Dear Mr. Serna:

We have been asked by Region V Director Phillip R. Crider to provide a legal opinion on two issues related to the credit union service organization (CUSO), Credit Union Mortgage Service Limited Partnership (CUMS). As explained below, CUMS' structure is impermissible and it is engaging in an unauthorized CUSO activity.

CUMS is set up as a limited partnership. The general partner is a CUSO, REFC-NM, and the limited partner is New Mexico Educators Federal Credit Union, the FCU. REFC-NM is the wholly-owned CUSO of New Mexico Educators Service Corporation, a CUSO wholly-owned by the FCU. As explained in the attached letter from Richard S. Schulman to Guy A. Messick, dated September 26, 1994, an FCU may only act as a limited partner in a CUSO and "may not charter a corporation to participate as a CUSO as the general partner of a limited partnership CUSO." The preamble to the proposal of the recently revised CUSO rule clarifies this point. 62 Fed. Reg. 111779, 11781 (March 13, 1997). "[A] CUSO will not be permitted to evade the limited liability insulation of the limited partnership format by forming a corporation CUSO to be a general partner of a limited partnership CUSO." *Id.* The FCU formed the CUSO, New Mexico Educators Service Corporation, which in turn formed the CUSO, REFC-NM, which in turn is acting as the general partner of the CUSO, CUMS. The regulation prohibits an FCU from investing in a CUSO structured in this way.

CUMS is making nonmember business loans. FCUs are only permitted to invest in CUSOs engaging in certain preapproved activities and services. 12 C.F.R. §712.5. With respect to lending, the preapproved services only include "consumer mortgage loan origination," "loan support services," and "student loan origination." 12 C.F.R. §712.5(c), (i) and (m). As part of loan support services, which is an authorized activity, a CUSO can provide underwriting and processing services in connection with business loans for credit union members. However, making business loans is not a permissible CUSO activity.

Your attorney states that there have been only a few business loans to nonmembers. The issue in this case is not whether the level of activity is such that the CUSO is failing primarily to serve credit unions or credit union members

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as required by NCUA regulation. 12 C.F.R. §712.3(b). The threshold issue, as noted above, is whether the activity, itself, is permissible, not to whom the loans are made.

Your attorney contends that the CUSO's structure and activities are permissible under state law. We do not dispute his contention. The issue is not whether the CUSO is complying with state law, but rather, whether it is a permissible investment for an FCU. As explained above, it is not.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MFR:bhs
SSIC 3501
98-0502
Enclosure

cc: Region V