

February 15, 2006

Guy Messick, Esq.  
Messick & Weber PC  
108 Chesley Drive  
Media, PA 19063

Re: Permissibility of CUSO Assisting Credit Union in Providing Payroll Services.

Dear Mr. Messick:

You have asked if a federal credit union (FCU) may provide payroll services for its business members and if a credit union service organization (CUSO) may assist an FCU with this activity. An FCU may provide payroll services and a CUSO may assist a credit union in providing these services. The CUSO may not, however, provide payroll services directly to credit union members.

Under your proposal, credit union members would contract with an FCU for payroll services. The business member would maintain a payroll account at the FCU, and the FCU would make disbursements from this account to the business's employees each payday. The FCU would deduct the appropriate amounts for income taxes and employee-paid benefit premiums. The FCU would then contract with the CUSO for assistance in providing the payroll services. CUSO staff would work with FCU staff and provide advice and any hands-on assistance the FCU needs to implement the payroll service.

FCUs may provide payroll services to members as an incidental powers activity. The Federal Credit Union Act (FCU Act) allows FCUs to "exercise such incidental powers" as necessary to carry on its business. 12 U.S.C. §1757(17). NCUA's incidental powers regulation includes a list of categories of activities that meet this test and are preapproved as incidental powers for FCUs. Preapproved activities include electronic financial services, payroll deduction and tax payment services to members. 12 C.F.R. §§721.3(c), (j). Providing payroll services to members includes elements of electronic financial services, payroll deduction and tax payment, and we conclude it is a permissible incidental power for FCUs. Id.

Further, we conclude an FCU may use a CUSO to market the service on behalf of an FCU and implement the payroll services. According to your description, the CUSO's role would include advising credit union personnel and providing hands-on assistance as needed, in addition to marketing the service. The FCU Act requires that the business of CUSOs "relates to the daily operations of the credit unions they serve" and any CUSO services must be "associated with the routine operations of credit unions." 12 U.S.C. §1757(5)(D), (7)(I). Generally, NCUA's regulations track the provisions in the FCU Act and require CUSO activities to

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relate to the “routine daily operation of credit unions.” 12 C.F.R. §712.5. The CUSO regulation includes categories of preapproved activities for CUSOs. Id. The list of preapproved activities for CUSOs includes clerical, professional and management services, including marketing services, and electronic transaction services. 12 C.F.R. §712.5(b), (e). We believe, if structured as you propose, the CUSO’s role is permissible, because its activities fall within categories of activities preapproved for CUSOs to offer to credit unions. Id.

We caution, however, that the CUSO may not provide payroll services to credit union members directly. NCUA’s longstanding view is that clerical, professional and management services and electronic transaction services are preapproved activities for CUSOs only if the services are provided to credit unions. A CUSO may not provide these services directly to credit union members.

If you have further questions, please feel free to contact Staff Attorney Elizabeth Wirick or me.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/EAW:bhs  
05-1204