

May 18, 2009

Michael D. Lozoff, Chair, Financial Institutions
Credit Union Law Group
Adorno & Yoss LLP
2525 Ponce de Leon Blvd., Suite 400
Miami, FL 33134

Re: Credit Union Service Organization (CUSO) Purchase and Servicing of Non-Performing Loans.

Dear Mr. Lozoff:

You have asked about what restrictions apply to a CUSO engaging in the purchase and servicing of delinquent loans. The primary restriction for CUSOs servicing nonperforming loans is that they cannot advance new principal, because CUSOs cannot originate consumer loans except for student loans and residential mortgage loans. We conclude, however, CUSOs can restructure loans in aid of their collection activity.

According to your letter, a group of state and federal credit unions would like to create a CUSO to consolidate a number of back office functions. The CUSO would also engage in the purchase and collection of delinquent loans. You have asked if there are any restrictions to a CUSO's authority to purchase, sell, or collect delinquent loans.

NCUA's CUSO rule was recently amended to provide several new examples of permissible CUSO activities related to the routine operation of credit unions, including the "purchase and servicing of non-performing loans." 12 C.F.R. §712.5(j)(5). This amendment was intended to incorporate a prior legal opinion into the CUSO rule. See 73 FR 79307 (Dec. 29, 2008). The purchase of non-performing loans was recognized in a 2005 legal opinion letter as a permissible part of a CUSO's debt collection activity. OGC Op. 05-0919 (October 11, 2005). The 2005 opinion noted that, with limited exceptions, CUSOs are not permitted to engage in consumer lending; however, in that particular case "the CUSO [would] not be involved in any debt restructuring." *Id.* Thus, the 2005 opinion did not fully address the authority of a CUSO to engage in debt restructuring when it purchases non-performing loans.

In light of the recent changes to the CUSO rule, it may be necessary to clarify NCUA's position with regard to a CUSO's authority to engage in debt restructuring. Our view is a CUSO that purchases non-performing loans may

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restructure delinquent debt it owns, so long as the credit union made the original underwriting decision and no new credit is being extended to the borrower. CUSOs are able to restructure loans by changing terms of the loans, such as the term, payment schedules, or interest rates, but cannot advance new principal. Nevertheless, CUSOs should not restructure a loan under their authority to purchase and service non-performing loans so as to circumvent lending restrictions applicable to federal credit unions, for example, restructuring a loan with maturity terms longer or interest rates higher than permitted for a federal credit union. CUSOs continue to be prohibited from engaging in the origination of new consumer loans, other than credit card lines of credit, residential mortgage loans and student loans.

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

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/PWY:bhs
09-0349