

February 26, 1991

David B. Beckhorn
Chief Operating Officer
Wegmans Federal Credit Union
2599 E. Henrietta Rd.
Rochester, New York 14623

Re: Credit Union Service Organizations (Your January 29, 1991, Letter)

Dear Mr. Beckhorn:

You have asked the following questions: 1) Can a credit union service organization (CUSO) provide services to a member of an affiliated credit union, even though the volume of services provided to the member will greatly exceed the volume of services provided to the affiliated credit union? Yes, such service to a member can be provided. 2) Are paid employees of an affiliated federal credit union's (FCU) sponsor prohibited from serving as officials of the FCU if the sponsor receives services from the CUSO? No, they are not so prohibited.

BACKGROUND

Wegmans Food Markets Inc. (Wegmans), the sponsor and a member of Wegmans Federal Credit Union, is considering establishing a CUSO. The FCU would invest in the CUSO. The CUSO would be established to perform check processing, credit card draft processing and ATM servicing for both Wegmans and the FCU. It is anticipated that the volume of services performed by the CUSO would be significantly greater for Wegmans than for the FCU. Currently, all members of the board of directors, supervisory committee and credit committee of the FCU are paid employees of Wegmans.

ANALYSIS

CUSO Customer Base

Section 701.27 of NCUA's Rules and Regulations (12 C.F.R. 701.27) regulates FCU investment in and loans to CUSOs. Section 701.27(d)(5) limits FCU investment in and loans to CUSOs that provide the services set forth in Section 701.27(d)(5)(i) and (ii), including credit card and debit card services; check cashing and wire transfers; and ATM services. The proposed CUSO services are permissible activities under Section 701.27(d)(5)(i).

The proposed CUSO must also comply with the requirement in Section 701.27(d)(4) that the CUSO primarily serve credit unions and/or the members of affiliated credit unions for an FCU to make a permissible investment in it. Primarily is not defined in the regulation. Section 701.27(c)(1) defines affiliated credit unions as "those that have either invested in or made loans to a credit union service organization." Assuming FCU investment, a CUSO could perform the above noted services for Wegmans since Wegmans is a member of an affiliated credit union. Furthermore, there is no prohibition on a CUSO serving only credit unions or only the membership of affiliated credit unions. Therefore, in your scenario, it is permissible for the CUSO to provide a greater volume of services to Wegmans than to the FCU.

Conflicts

Section 701.27(d)(6)(i) of the regulation covers conflict of interest and addresses the issue of compensation for FCU officials and senior management employees in connection with a CUSO. It provides in part that:

Individuals who serve as officials of, or senior management employees of an affiliated Federal credit union (as defined in (c)(1)), and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization either directly or indirectly, or from any person being served through the credit union service organization. . . .

The CUSO regulation defines official as "any director or committee member." (See Section 701.27(c)(2).)

The clear language of the regulation prohibits a CUSO from compensating officials and senior management employees of an FCU for services rendered to the CUSO. The preamble to this section (51 FR 10358, 3/26/86) provides further clarification. It states in part that the rule:

. . . . provides that officials and employees may not receive direct or indirect compensation from persons being served through the CUSO. Thus, the rule now clearly prohibits credit union officials and employees, and their family members, from receiving commission or fee income or other compensation from the credit union's members in connection with the member's use of the CUSO.

In your situation, the employees of Wegmans, who are serving as FCU officials, are compensated for their employment at Wegmans and not in connection with services provided to Wegmans by the proposed CUSO. Therefore, the conflict provision does not apply.

Sincerely,

HATTIE M. ULAN
Associate General Counsel

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