

August 12, 1997

“A”

Subject: Credit Union Service Organization (CUSO) Investment - Changes in Ownership and Purpose

Opinion No.: 97-15 (**Redacted**)

Dear “A”:

Thank you for your phone call of July 22 requesting an opinion on a CUSO investment. Below I have provided a statement of the issues and paraphrased your question followed by my response.

Statement of issues: A credit union has invested in a CUSO. After the investment was made, the ownership of the CUSO changed so that it was no longer owned primarily by credit unions. As a result of the ownership change, the CUSO will no longer primarily serve credit unions and their members. At the time of the ownership change, the credit union’s total investment in the CUSO (equities and loans) amounted to less than 1/10th of 1% of the credit union’s net capital.

RCW 31.12.425(h) provides in pertinent part that a credit union may invest in a CUSO if:

1. Membership or ownership of the CUSO “is confined primarily to credit unions”; and
2. The CUSO’s purpose “is to strengthen, advance, or provide services to the credit union industry.”

Question: May the credit union keep the investment in the CUSO even though it no longer satisfies the provisions of RCW 31.12.425(h) noted above?

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Response: No, the credit union may not keep a CUSO investment that no longer satisfies these provisions, unless

A. Approved by Division of Credit Unions (Division). The credit union has applied for and received approval from the Division to keep the investment or make additional investments in the CUSO, under RCW 31.12.425(j) and Chapter 208-436 WAC. These applications will not be granted as a matter of course, but only on a case-by-case basis; or

B. Investment is de minimis in amount and risk. The amount of the investment is de minimis and the risk to the credit union is not material to the credit union's financial condition. Certainly an investment of less than 1/10th of 1% of the net capital of the credit union is de minimis in amount.

Unless the credit union has received Division approval or the investment is de minimis, as discussed above, the credit union must promptly adopt a reasonable plan to divest the investment or to bring it into conformance with the provisions of RCW 31.12.425(h).

It should be noted that this issue takes on a different light after January 1, 1998, the effective date of the credit union modernization act passed by the 1997 session of the state legislature (Chapter 397, Laws of 1997). Section 36 of Chapter 397 amends RCW 31.12.425(h) by deleting the ownership requirement described in 1 above. However, the CUSO investment is allowable only if the primary purpose of the CUSO "is to strengthen, advance, or provide services to the credit union industry and credit union members."

Summary:

According to the above opinion, "A" would be allowed to keep the CUSO investment, if "A" can show that the investment is de minimis in amount and risk, or "A" has obtained the Division's approval of the investment.

If you have further questions on this issue, please give me a call.

Sincerely,

Linda K. Jekel
Program Manager