November 18, 2003

James E. Burbott, II, General Counsel
WesCorp Federal Credit Union
924 Overland Court
San Dimas, California 91773-1750

Re: Participation in California Workers' Compensation Self Insured Group.

Dear Mr. Burbott:

You have informed us of your plans to join with five California state-chartered credit unions to form a Self Insured Group (SIG) to secure your workers' compensation (WC) obligations under California law. Based on your representations, and as discussed below, we believe it is permissible under the Federal Credit Union Act and National Credit Union Administration (NCUA) regulations for you to participate in this SIG.

California generally requires that entities organized or doing business in California provide their employees with WC coverage. Employers may satisfy this requirement in various ways, including purchasing insurance from a state-operated insurance fund; purchasing insurance from private insurers; or by self-insuring, either individually or in a SIG. With the state's approval, a group of entities may form a SIG by organizing and capitalizing a nonprofit California mutual benefit corporation. The corporation pools its capital and pays the WC claims made by the organizers' employees. If the corporation is unable to pay any WC claims, the organizers are jointly and severally liable for these claims. The organizers may purchase excess insurance to protect against unusual claims volume, and WesCorp plans to do so. WesCorp believes that it will save money on WC costs through this SIG approach.

A federal credit union (FCU) may, as part of its employee compensation package, offer various forms of insurance to its employees, including life, health, and disability. Generally, the FCU will purchase this insurance coverage from third-party insurance companies. As discussed in OGC opinion letter 95-1148, FCUs may assume some of this potential insurance liability, but only if the arrangement satisfies certain specified requirements, including the placement of limits on the FCU's liability risk through the purchase of sufficient excess insurance coverage. You represent that WesCorp will be protected by excess insurance coverage that limits its potential WC claims to $2,000,000 a year, and that the SIG arrangement otherwise satisfies the requirements of OGC opinion letter 95-1148.

As you recognized in your letter to us, the formation and funding of the mutual benefit corporation raises another issue. Section 107(7) of the Federal Credit

Union Act provides that FCUs may invest in organizations which are associated with the routine operation of credit unions, but may not "invest in the shares, stocks, or obligations of an insurance company . . . or any other similar organization . . . except as otherwise expressly authorized by this Act." 12 U.S.C. §1757(7)(I). We refer to the investment authority in §107(7) as the "leeway provision." The statutory exceptions to the leeway provision, including the prohibition on investment in insurance companies, are restated in §704.11(e) of the corporate rule. 12 C.F.R. §704.11(e).

In the enclosed OGC opinion letter from Timothy McCollum to Steve Bisker, dated April 21, 1988, we stated that the leeway provision's prohibition on investment would prevent an FCU from owning stock in a credit union service organization that owned stock in a life insurance underwriter. We recognized, however, that the acquisition of shares, stocks, or obligations in an insurance company would not be an *investment* subject to the prohibitions of the leeway provision "if the acquisition is a form of payment or is in substance a security deposit for obtaining [permissible services for the credit union]." Id. Similarly, and based on your representations, we do not believe that the funds WesCorp will provide to the mutual benefit corporation are an "investment" as that term is used in the leeway provision. WesCorp's intent in participating in the SIG is to obtain a service, that is, state-mandated WC coverage for its employees, in the most economical way possible. You state that the SIG will be organized so that WesCorp "cannot receive any dollar benefit [from its participation] greater than that which was contributed and/or paid on an annual basis." Since there is no possibility of any profit or positive return on WesCorp's contributions, in the form of dividends or interest in excess of WesCorp's contributions, its contributions to the SIG are not an investment subject to the leeway provision or §704.11(e) of the corporate rule.

This opinion extends only to the permissibility of your proposal under the Federal Credit Union Act and NCUA's regulations. You have not provided us with any documentation for your participation arrangement, and we express no general opinion as to its permissibility under California state law or other federal law.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/PMP:bhs
03-0819
Enclosure

GC/HMU:sg
4693

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 21, 1988

Office of General Counsel

Steven R. Bisker, Esq.
Haden & Bisker
450 Maple Avenue, East
Suites 202-203
Vienna, VA 22180

Re: Permissibility of CUSO Investment
(Your letter dated February 4, 1988)

Dear Mr. Bisker:

You asked whether a credit union service organization ("CUSO") can maintain that status if it invests a portion of its funds in a company that will hold as an investment stock of a corporation that is a life insurance underwriter. In our view, such an investment would take away an entity's status as a CUSO.

Twenty-two CUSO's plan to invest $40,000 each in a separate corporation. That corporation will establish three wholly-owned subsidiaries. The corporation and two of these wholly-owned subsidiaries will provide insurance agency, loan system, and financial planning services, -- all permissible services and activities for a CUSO. The third subsidiary, however, will be a life insurance underwriter.

Section 107(7)(I) of the FCU Act (12 U.S.C. 1757(7)(I)) establishes an FCU's authority to invest in CUSO's, as well as setting forth limitations on such investments. Section 107(7)(I) authorizes an FCU to invest its funds in:

> the shares, stocks, or obligations of any organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: Provided, however, That such authority does not include the power to ... invest in shares, stocks or obligations of an insurance company .... [Emphasis added.]

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This prohibition is also found in the CUSO regulation [12 C.F.R. 701.27(b)(1)(iii)].

We believe an FCU investment in an insurance company remains that even if filtered through one or more corporations. We would only recognize an entity holding "shares, stocks or obligations of an insurance company" as a CUSO if that action is not an "investment" -- for example, if the acquisition is a form of payment or is in substance a security deposit for obtaining services permitted under Section 701.27 of NCUA's Rules and Regulations. (See the attached letter dated December 17, 1987, setting forth an example of such a situation.) The plan you present strikes us as being a straightforward investment.

Sincerely,

Timothy P. McCollum
Assistant General Counsel

Attachment