



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

LS/HMU:cch
3500
July 1, 1985

Francis J. Moran, Esquire
Suite 714
Lewis Tower Building
Fifteenth & Locust Streets
Philadelphia, PA 19102

Dear Mr. Moran:

This is in response to your letter of May 2, 1985, to Hattie Ulan of this Office, concerning a contract to provide travel services to Federal credit union (FCU) members. A copy of the contract was enclosed with your letter.

In your letter you indicate that the FCU you represent may wish to offer travel services through its credit union service organization (CUSO). The CUSO regulation is found at Section 701.27 of the NCUA Rules and Regulations (12 C.F.R. §701.27). The regulation sets out four categories of permissible CUSO activities with a nonexclusive list of example activities under each category. The regulation also contains a fifth catch-all category of other CUSO activities, which must be approved by the NCUA Board. Travel services are not specifically listed as a preapproved activity for CUSO's (see Section 701.27(b)(1)-(4) for preapproved activities). The issue of travel services as an additional permissible CUSO activity (see Section 701.27(b)(5)) has not been presented to or approved by the NCUA Board.

As you may know, NCUA is currently in the process of promulgating a new CUSO regulation. It is anticipated that a new rule will be finalized within the next several months. One of the purposes of revising the CUSO regulation is 'to clarify what activities (including travel services) a CUSO may properly offer. Until such time when a new revised final rule is issued, the NCUA Regional Directors have agreed on an informal policy that CUSO's already offering travel services may maintain their status quo. However, no new travel services can be started at this time.

You indicate in your letter that the FCU itself may offer the travel services. Part 721 of the NCUA Rules and Regulations (12 C.F.R. Part 721) allows FCU's to offer various types of group purchasing plans to their membership involving third party vendors. An FCU may legally offer and endorse a third party vendor's travel services package to their membership. Additionally, the FCU may be reimbursed for the administrative services it performs for the third party vendor (e.g., FCU's cost of mailing out brochures).

FOIA file: Vol. III, C, 2a - CUSOs



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We have briefly reviewed the contract enclosed with your letter, and find it to be impermissible for the FCU to enter into for several reasons. First, paragraph 3.7 of the contract provides that the FCU will receive \$10.00 for each membership fee collected by the travel services vendor as well as 2 1/2 percent of the gross amount paid to the vendor by any member who makes payment from an FCU account or from a credit card issued by the FCU. Second, paragraph 3.6 of the contract provides that the FCU will be reimbursed for its administrative costs. It appears that payment to the FCU under paragraph 3.7 is in addition to reimbursement for administrative costs and is, therefore, impermissible under Part 721 of the Regulations. We also have some question as to the potential liability the FCU assumes pursuant to paragraph 3.9 of the enclosed contract. While Part 721 of the Regulations authorizes FCU's to offer vendors' plans and provide administrative functions on behalf of the vendors, accepting liability for the failure of their members to make payment to the vendor exceeds the FCU's authority outlined in Part 721. Lastly, paragraph 3.8 of the contract states that the vendor will maintain a "bank account" with the FCU. Unless the vendor is within the field of membership of the FCU, the vendor cannot maintain a share account there. However, an accounts payable in connection with a legitimate business relationship with the vendor could be established. This however, should be distinguished from an insured share account.

In conclusion, a CUSO not currently engaged in travel services may not start up such services at this time. Further, the draft contract enclosed with your letter is objectionable for the reasons outlined above.

I hope that we have been of assistance.

Sincerely,

A handwritten signature in dark ink, appearing to be 'S R Bisker', written over a horizontal line.

STEVEN R. BISKER
Assistant General Counsel