



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

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3800
January 22, 1986

Office of General Counsel

Mr. Mike Chommie
Insurance Department Intern
Office of Commissioner of Insurance
State of North Dakota
State Capitol
Bismarck, ND 58505

Dear Mr. Chommie:

This responds to your letter dated December 18, 1985, to Mr. Martin Kushner of our Office of Examination and Insurance concerning the rules regulating the sale of fire and casualty insurance by credit unions. Inasmuch as the NCUA is the Federal regulatory agency for federally chartered credit unions (and to a very limited extent the Agency regulates federally insured state-chartered credit unions), our response will be limited to Federal credit unions (FCU). For information regarding rules regulating your state-chartered credit unions, we suggest you contact the appropriate State agency.

Pursuant to Section 721 of the NCUA Rules and Regulations (12 C.F.R. §721), Section 107(16) (the incidental powers clause) of the FCU Act (12 U.S.C. §1757(16)), and applicable state law, FCU's are authorized to provide insurance to their members. As provided by state law, an FCU may be required to be licensed as an agent or may be required to designate an employee as agent for purposes of selling insurance to their members. If the insurance is directly related to a share account or an extension of credit by the FCU, the FCU is not limited by NCUA as to the amount it may be reimbursed for acting as agent (of course the state may limit the amount of monies received by an FCU in this regard). However, if the insurance is not directly related to a share account or an extension of credit by the FCU, then the FCU is limited to a cost reimbursement basis. See Part 721 of the NCUA Rules and Regulations.

The Federal Credit Union Act and the NCUA Rules and Regulations do not address whether a credit union must sell insurance under a "DBA" or whether a Federal credit union located in North Dakota can solicit insurance sales from out-of-state credit union members or vice versa. Therefore, state law would govern those issues. A more detailed analysis of the insurance services an

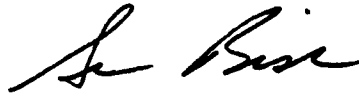
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FCU can provide and the amount of commission it may receive can be found in the preamble to Section 721 (copy enclosed).

I hope we have been of assistance. If you have any further questions, please contact Ms. Yvonne Gilmore in this Office.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

YG:cch

Enclosure

**NATIONAL CREDIT UNION
ADMINISTRATION**

12 CFR PART 721

**Federal Credit Union Insurance and
Group Purchasing Activities**

AGENCY: National Credit Union
Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA amends its regulations in order to allow Federal credit unions to receive income in connection with the sale to their members of credit-related insurance and share account-related insurance. Previous rules limited Federal credit unions to receiving reimbursement from the insurance company for the credit union's administrative costs. The rule is issued with a delayed effective date (August 1, 1985) so that Federal credit unions will have sufficient time to study the effects of and prepare to comply with relevant state insurance laws.

EFFECTIVE DATE: August 1, 1985.

ADDRESS: National Credit Union
Administration, 1776 G Street, NW.,
Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:
Robert M. Fenner, Director, or Hattie M.
Ulan, Attorney, Department of Legal
Services at the above address or
telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background

Part 721 of NCUA's Rules and Regulations authorizes Federal credit union (FCU) participation in insurance and other group purchasing activities, through which insurance and other goods and services are made available from third party vendors to credit union members. Part 721 has two sections. Section 721.1 authorizes FCU's to perform administrative functions for the vendor. Section 721.2 generally limits FCU's to receiving reimbursement for the cost of their involvement in the insurance or group purchasing activity.

In July of 1984, the NCUA Board requested public comment on a proposed change to § 721.2 that would allow FCU's to receive income in excess of cost in connection with the sale of credit-related insurance to members. (See 49 FR 30739, 8/1/84.) The proposal was based in part on NCUA's determination that an FCU may, as a matter of law, be permitted to generate income in connection with an insurance or group purchasing activity that is "incidental" to the exercise of an expressly authorized power (e.g., the power to make loans to members). The Board also requested comment on

whether any other insurance or group purchasing activity (in addition to credit-related insurance) may be considered incidental to the exercise of an express power, and if, so, whether § 721.2 should be amended to allow FCU's to generate income from those activities as well.

NCUA received a total of seventy comment letters in response to the proposal. Two credit union trade associations, one insurance underwriter, two insurance trade associations, four state credit union leagues, one state credit union service system, one attorney, eight insurance agencies and forty-five credit unions responded to the proposal. Forty-eight commenters favored removing the reimbursement restrictions on credit-related insurance and twenty-one commenters were opposed. The majority of the credit unions favored removing the restrictions, while the insurance representatives were generally opposed.

After review of the comments and further consideration of the issues, the Board has determined to remove the reimbursement limits for insurance directly related to extensions of credit and for insurance directly related to the opening and maintenance of share, share certificate and share draft accounts. The following analysis addresses the major issues raised in the proposal and in the comment letters.

Analysis

Authority

Federal credit unions, like all financial institutions, are institutions of statutorily limited powers. The powers of FCU's are enumerated in section 107 of the Federal Credit Union Act (12 U.S.C. 1757). Included are several specific powers, such as the power to make loans to members, to make certain investments, and to accept share, share draft and share certificate accounts. The various specific powers are followed by the authority "to exercise such incidental powers as shall be necessary or requisite to enable (the FCU) to carry on effectively the business for which it is incorporated." (12 U.S.C. 1757(15).) Prevailing case law construes this "incidental powers" clause to authorize activities that are "convenient or useful in connection with performance of one of (the credit union's) established activities pursuant to its express powers." *American Bankers Association v. Connell*, 447 F. Supp. 296, 298 (D.D.C., 1978).

The NCUA Board has consistently construed the powers of Federal credit unions broadly, in order to afford maximum flexibility to FCU's in

providing services to their members. It is clear, however, that a Federal credit union may engage in an insurance or group purchasing activity for the purpose of generating income only if that activity is expressly authorized or is properly incidental to the exercise of an express power. Involvement in "nonincidental" insurance and group purchasing is permitted on a cost reimbursement basis on the theory that the FCU is not engaging in the particular activity or business, but rather is simply providing informational or good-will services to members and receiving reimbursement for the cost of the FCU's involvement.

Scope of Rule Change

Consistent with the above analysis, and after review of the comments, the Board has determined to eliminate the reimbursement restrictions for any sale of insurance which is "directly related to an extension of credit by the credit union or directly related to the opening or maintenance of a share, share draft or share certificate account at the credit union." (See § 721.2(b)(2) of the final rule.)

Included among the types of insurance that may be incidental to an extension of credit by an FCU are: credit life insurance, credit disability insurance, loss of income insurance, property and casualty insurance on motor vehicles, boats and residential dwellings, title insurance, mortgage guarantee insurance, and mechanical breakdown insurance on motor vehicles. Life savings insurance is the primary existing example of share-related insurance of which the Board is aware. Most FCU's that offer life savings insurance do so pursuant to a group plan under which the FCU itself pays the premium for all members. Some FCU's have chosen, however, to offer life insurance on a member-pay basis in connection with share, share certificate and share draft accounts. In addition, other credit unions are offering life and disability insurance in connection with IRA accounts.

Federal credit union involvement in other insurance and in group purchasing of other goods and services will continue to be limited to a cost reimbursement basis.

Reverse Competition

In its proposal, the Board asked whether reimbursement restrictions should be retained in order to prevent "reverse competition" in the sale of credit insurance. That is, it has previously been suggested that in the absence of reimbursement restrictions, credit unions would seek out insurance

delayed to provide FCU's adequate time to educate themselves on state laws they may have to comply with under the new regulation.

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions because the rule will increase their management flexibility and reduce their paperwork burdens. A Regulatory Flexibility Analysis is, therefore, not required.

Financial Regulation Simplification Act

Since this final rule reduces burdens and delay would cause unnecessary harm, the NCUA Board finds that full and separate consideration of all the requirements of the Financial Regulation Simplification Act is impracticable. The NCUA Board has, however, considered most of these policies, as set forth in the preamble above.

List of Subjects in 12 CFR Part 721

Credit unions, insurance, Group purchasing.

Dated: April 17, 1985.

Rosemary Brady,

Secretary of the Board.

Authority: 12 U.S.C. 1757(15); 12 U.S.C. 1786(a).