



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

February 11, 1987

GC/RD:sg
4675

Office of General Counsel

Mr. T. J. Ryan
First Financial of New Mexico FCU
P.O. Box 1355
Albuquerque, N.M. 87103-1355

Dear Mr. Ryan:

This is in response to your letter concerning the legality of Federal credit union ("FCU") investment in and loans to a corporation providing vehicle purchase and consulting services for members of the FCU. You seek our opinion as to whether the corporation would satisfy the requirements of Section 701.27 of the NCUA Rules and Regulations (12 C.F.R. §701.27).

The following is our understanding of the facts provided in your letter. A corporation will be chartered under the laws of New Mexico with three Federal credit unions (FCU's) owning 85% of the stock and two of the corporation's employees owning 15% of the stock. The corporation will be capitalized with a \$75,000 loan from the three FCU's and \$10,000 cash from the 15% owners. The formation of the corporation board of directors is not clear from your letter but presumably will conform to state corporate law and the conflict of interest provisions of 12 C.F.R. §701.27(d)(6). The corporation will primarily serve members of the three credit unions. Later, other credit unions may wish to participate through involvement and investment in the corporation. The corporation will have price agreements with fleet dealers and offer members lower charges for extended warranties, credit life and disability insurance. The credit union member can either order a vehicle from the dealer or select one off the dealer's lot. Two percent (2%) of the price of the vehicle would be added to the cost of the vehicle. The two percent would be charged by the corporation to cover operating costs. Originally, it was planned that the corporation charge a \$20.00 to \$50.00 fee which would be paid to the member's credit union as a marketing fee. As discussed in our telephone conversation of January 29, 1987, since this marketing fee would be limited by Part 721 of the NCUA Rules and Regulations to the credit union's "cost amount," you have decided to delete the \$20.00 to \$50.00 marketing fee so as to avoid any problems with Part 721. The corporation will apply profits generated from its operations to liquidate the credit union's investments.

TO: Mr. T. J. Ryan, D. V. Kunkel, P. J. ...

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The corporation employee assisting the credit union member will be paid a salary rather than a commission. The money to purchase the vehicle will be transferred from the credit union or member directly to the dealer. The corporation will not become involved with the transfer of funds. The dealer will file the credit union's lien and charge the appropriate sales taxes. The document preparation required by the Motor Vehicle Department could be prepared by the corporation or the dealer.

It is our opinion that the service provided by the corporation, as described above, is a permissible "marketing service" as described in Section 701.27(d)(5)(i). Additionally, we believe that the corporation will provide a service associated with routine credit union operations and will meet credit union needs as required by Sections 107(5)(D) and 107(7)(I) of the FCU Act and Section 701.27(b) of the Rules and Regulations.

Credit unions have been involved in special sales of automobiles to their members under the authority of Part 721 of the NCUA Rules and Regulations for the last fifteen years. The corporation will provide a similar marketing service to the credit union member that the special automobile sales have provided and continue to provide to credit union members. Automobiles will be offered to credit union members at preferred prices. In conjunction with the purchase of the automobiles, it is anticipated that many of the purchases will be financed through credit union loans.

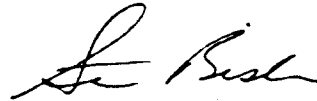
You state that directors of the corporation will not be compensated but will be reimbursed for out-of-pocket expenses by either their credit union or the corporation. As you know, directors who are also employees or officials of affiliated FCU's may not be compensated by the credit union service organization ("CUSO"). (See Section 701.27(d)(6).) The issue of reimbursement for out-of-pocket expenses is not addressed in the regulation or the preamble thereto. However, it is our opinion that CUSO directors can be reimbursed for out-of-pocket expenses by the CUSO to the same extent that they can be reimbursed by an FCU for expenses incurred as FCU directors.

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I hope that we have been of assistance. Please let me know if further questions arise.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. Bisker".

STEVEN R. BISKER
Assistant General Counsel

RD:sg



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

August 5, 1986

Office of General Counsel

GC/HMU:jrm
4693

Peter A. Buck, Esq.
General Counsel
S.A.F.E. Federal Credit Union
P.O. Box 1057
North Highlands, CA 95660-1057

Dear Mr. Buck:

This is in response to your letter concerning the legality of an Auto Club credit union service organization (CUSO) under the new regulation entitled "Investments in and Loans to CUSO's." (Section 701.27 of NCUA Regulations, 12 C.F.R. 701.27; new rule effective May 27, 1986; see 51 F.R. 10353, 3/26/86.)

It is our understanding that the CUSO will work as follows. Several credit unions in California (both federally- and state-chartered) will invest in the Auto Club CUSO, a corporation chartered under the laws of California. The Auto Club CUSO will be governed by a board of directors elected by the credit union stockholders. The directors will not be compensated, but will be reimbursed for out-of-pocket expenses. A manager, who is not an employee or official of any investing credit union, will be hired by the board of directors of the Auto Club CUSO to handle its day-to-day operations. The Auto Club CUSO will serve members of all credit unions within a five county area in and around Sacramento, California. The Auto Club CUSO and automobile dealers will agree upon preferred prices for automobiles for credit union members using the Auto Club CUSO. Once a credit union member contacts the Auto Club CUSO for its services in purchasing an automobile, an appointment for the member with the Fleet Purchasing Manager of an automobile dealer will be set up. The credit union member will then be afforded the opportunity to purchase an automobile from the dealer at the preferred price. The automobile dealer will remit a \$50.00 referral fee to the Auto Club CUSO for each automobile sale. Each credit union (both investing and noninvesting in the Auto Club CUSO) will remit a \$10.00 fee to the Auto Club CUSO upon the CUSO's scheduling of an appointment for its member with an automobile dealer.

It is our opinion that the service provided by the Auto Club CUSO is a permissible CUSO activity under the new regulation. The service provided by the Auto Club CUSO falls within the activity of "marketing services" listed in Section 701.27(d)(5)(i) of the

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regulation. Additionally, we believe that the Auto Club CUSO will provide a service associated with routine credit union operations and will meet credit union needs as required by Sections 107(5)(D) and 107(7)(I) of the FCU Act and Section 701.27(b) of the new regulation.

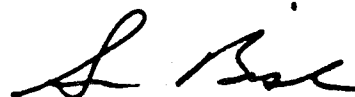
Credit unions have been involved in special sales of automobiles to their members pursuant to Part 721 of the NCUA Regulations for the last fifteen years. The Auto Club CUSO will provide a similar marketing service to the credit union member that the special automobile sales have provided and continue to provide to credit union members. Automobiles will be offered to credit union members at preferred prices. In conjunction with the purchase of the automobiles, it is anticipated that many of the purchases will be financed through credit union loans.

There are two final issues that must be addressed before a definitive opinion can be rendered by this office with respect to the CUSO. First, you state that the Auto Club CUSO will serve the members of all credit unions headquartered in a five county area, not only members of credit unions that have invested in or made a loan to the Auto Club CUSO. The new regulation provides that a CUSO in which an FCU invests or loans funds to must primarily serve credit unions and/or the membership of affiliated credit unions. Affiliated is defined as those FCU's that have invested in or made loans to the CUSO. (See Sections 701.27(d)(4) and 701.27(c)(1) of the new regulation.) There is insufficient information in your letter for us to determine whether the "primarily" requirement will be satisfied.

Second, you state that directors of the Auto Club CUSO will not be compensated but will be reimbursed for out-of-pocket expenses by either their credit union or the Auto Club CUSO. As you know, directors who are also employees or officials of affiliated FCU's may not be compensated by the CUSO. (See Section 701.27(d)(6).) The issue of reimbursement for out-of-pocket expenses is not addressed in the regulation or the preamble thereto. However, it is our opinion that CUSO directors can be reimbursed for out-of-pocket expenses by the CUSO to the same extent that they can be reimbursed by an FCU for expenses incurred as FCU directors.

We hope that we have been of assistance. Please contact me or Hattie Ulan if further questions arise.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel