



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

December 4, 1987

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3600

Office of General Counsel

Mr. Lawrence C. Williams  
Administrator  
Alabama Credit Union Administration  
State of Alabama  
304 Dexter Ave., Suite 1-C  
Montgomery, Alabama 36130-0901

Dear Mr. Williams:

NCUA's Office of Examination and Insurance referred your letter dated August 5, 1987, regarding Bankers Systems Brokerage Services (Bankers Systems) to this Office for a response. You enclosed a copy of a letter you had received from Bankers Systems which raised several questions regarding the ability of Alabama-chartered credit unions to offer discount brokerage services, and asked that we provide you with a response to these questions. You stated that Alabama-chartered credit unions operate within the scope of the NCUA Rules and Regulations.

Part 721 of the NCUA Rules and Regulations describes permissible Federal credit union (FCU) insurance and group purchasing activities. In responding to questions similar in nature to those presented by Bankers Systems, we have stated that, pursuant to Section 721.1 of the NCUA Rules and Regulations, FCU's may make discount brokerage services available to their members through an outside vendor. The FCU's involvement with the outside vendor is limited by this section to the performance of administrative functions. Pursuant to Section 721.2, FCU's can only be reimbursed for the direct and indirect costs incurred in performing administrative functions on behalf of the vendor.

This Office has generally taken the position that, initially, it is the responsibility of the FCU or vendor to determine whether the group purchasing activity under consideration is permissible for FCU's under Part 721 of the NCUA Rules and Regulations. The FCU or vendor should provide this Office with an opinion on this issue that we will review and then either concur with the opinion or state the reason for nonconcurrency. We have provided some general guidelines to assist in this determination, particularly on the issue of what constitutes an administrative function, and have also commented on the programs submitted to us for review.

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Pursuant to its authority to perform administrative functions, an FCU can supply discount brokerage materials (applications, literature, etc.) to its members. The FCU is also authorized to transfer funds to the broker for the purchase of securities pursuant to instructions from members. An FCU is not authorized to take orders from its members. The FCU generally should not have the responsibility of reviewing account applications for completeness and accuracy as this may have the potential effect of creating a contractual liability for errors between the FCU and vendor.

Under Bankers Systems' Level I and II arrangements, a contact person will be designated at a financial institution to provide the brokerage services to the members. The duties of the contact person will vary depending on whether Bankers Systems and the financial institution have entered into a Level I or Level II arrangement. In a Level II arrangement, the contact person may be a joint employee of the financial institution and Bankers Systems, and an "associated person" of Bankers Systems within the meaning of Section 3(a)(18) of the Securities Exchange Act of 1934. Bankers Systems will have the obligation to supervise the contact person in the performance of brokerage service activities. The FCU will compensate the employee. Level II activities will be conducted only in an area identified as being a Bankers Systems service location.

As an employee of Bankers Systems, the contact person would not be limited by Part 721 to the performance of administrative functions on behalf of the vendor. For example, in his capacity as a Bankers Systems employee, he could take orders from members, a function that the FCU employee could not perform. The issue that must be resolved with respect to this arrangement is whether the contact person can properly be characterized as a joint employee of the FCU and Bankers Systems where the employee's salary is paid solely by the FCU. The arrangement is probably structured in this manner to comply with Section 721.2(c), which prohibits the employee from receiving any compensation from the vendor. We suggest that you look further into the issue of whether the contact person can be considered a joint employee. If the contact person is viewed solely as an employee of the FCU, his activities are regulated by Part 721.

The NCUA Board has issued a final rule that narrows the scope of Section 721.2 and may resolve the joint employee issue raised herein. This section currently prohibits officials and employees of FCU's and their immediate family members from receiving any compensation or benefit in conjunction with an activity under Part 721. Under the final rule, which is effective on December 16, 1987, the term "senior management employees" is substituted

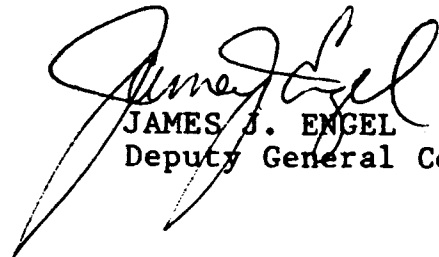
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for the term "employees," and the definition of "immediate family member" is revised to include only a spouse and other relatives living in the same household. "Senior management employees" is defined as an FCU's chief executive officer, any assistant chief executive officers, and the chief financial officer. Under the final rule, the contact person may be compensated by Bankers Systems provided that he is not a director, committee member, or senior management employee of the FCU, or an immediate family member of such individual, and the board of directors of the FCU determines that the employee's involvement does not present a conflict of interest. (See Section 721.2(d)). If the employee is compensated by Bankers Systems and the FCU, it would then seem appropriate to characterize the contact person as a joint employee.

As stated above, in no instance may an FCU receive a share of commissions charged on transactions of members effected through Bankers Systems. However, if the brokerage services are offered through a CUSO, the CUSO is not limited by Part 721.

We trust this has been of assistance.

Sincerely,



JAMES J. ENGEL  
Deputy General Counsel

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