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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

October 21, 1988

Office of General Counsel

Joy A. Cristell, President
The Bank Travel Group
P.O. Box 36
Cranford, NJ 07016

RE: Credit Union Involvement in the Travel
Industry (Your July 22, 1988, letter)

Dear Ms. Cristell:

You asked us several questions about credit unions' involvement in travel services. Federal credit unions ("FCU's") can make travel services available to their members in two ways -- through a credit union service organization ("CUSO") pursuant Section 701.27 of the NCUA Rules and Regulations [12 C.F.R. 701.27] or through the use of a third-party vendor pursuant to Part 721 of the NCUA Rules and Regulations [12 C.F.R. Part 721].

Enclosed with your letter was one we wrote in June, 1985. Since that time, NCUA has issued a new CUSO regulation (see 51 Fed. Reg. 10353, March 26, 1986). Under the new regulation, some of the information given in the 1985 letter is outdated.

As you know, NCUA supervises and regulates FCU's and, to a lesser extent, federally-insured, state-chartered credit unions. Our answers only apply to FCU's. You must contact the state credit union regulatory agencies in order to get the answers to your questions for state-chartered credit unions.

1. "If a credit union wanted to own or operate a travel service, would they need permission from the NCUA, and if so how should they go about obtaining such approval?" Congress has not empowered an FCU to own or operate a travel service directly [12 U.S.C. §1757], but it has enabled an FCU to make these services available to its members through a CUSO. An FCU does not need NCUA approval for this.

Section 701.27(d)(1) of the NCUA Rules and Regulations [12 C.F.R. §701.27(d)(1)] permits an FCU to invest in or loan to a CUSO:

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

(1) Limits on funding. A Federal credit union by itself, with other credit unions and/or with non-credit union parties, may invest in and/or loan to a credit union service organization. A Federal credit union's investments in credit union service organizations may not exceed, in the aggregate, 1% of the Federal credit union's paid-in and unimpaired capital and surplus as of its last calendar year-end financial report. A Federal credit union's loans to credit union service organizations may not exceed, in the aggregate, 1% of the Federal credit union's paid-in and unimpaired capital and surplus as of its last calendar year-end financial report.

Section 701.27(d)(5) of the regulation [12 C.F.R. §701.27(d)(5)] sets forth an exclusive list of services and activities that a CUSO may provide. Included among those services is "travel agency services."

Section 701.27(d)(4) of the regulation [12 C.F.R. §701.27(d)(4)] limits whom a CUSO may serve:

Customer base. A Federal credit union may invest in or loan to a credit union service organization only if the organization primarily serves credit unions and/or the membership of affiliated credit unions ... [affiliated is defined in the regulations as those credit unions that have either invested in or made loans to a CUSO].

An FCU may invest in or loan to a CUSO that provides travel agency services primarily to members of affiliated credit unions. Although not specifically set forth in Section 701.27, we believe a CUSO may contract with a third party provider of services rather than provide the services itself. A CUSO does not need permission from NCUA to provide travel agency services or any other permitted service.

The second way that an FCU can offer travel agency services to its members is pursuant to Part 721 of the NCUA Rules and Regulations [12 C.F.R. Part 721]. Section 721.1 provides:

A Federal credit union may make insurance and group purchasing plans involving outside vendors available to the

membership (including endorsement), and may perform administrative functions on behalf of the vendors.

Section 721.2 provides for reimbursement to FCU's for administrative services that they provide to vendors. Section 721.2(b)(3) provides:

For group purchasing plans other than insurance, a Federal credit union may receive an amount not exceeding the cost amount.

Cost amount is defined in Section 721.2(b)(2) as:

the total of the direct and indirect costs to the Federal credit union of any administrative functions performed on behalf of the vendor. The Federal credit union must be able to justify this amount using standard accounting procedures.

An FCU may be reimbursed for performing administrative functions needed to make travel services available, but only for the "direct and indirect costs" to the FCU.

2. "Can a credit union board member or spouse of a board member have a financial partnership or ownership of a travel agency?" A credit union board member or spouse thereof cannot have a financial partnership or ownership interest in a travel agency providing services to FCU members.

NCUA's CUSO regulation [12 C.F.R. §701.27(d)(6)] provides:

(6) Conflict of interest. (i) Individuals who serve as officials of, or senior management employees of, an ... Federal credit union [that has invested in or made loans to a CUSO] ... and immediate family members of such individuals [defined as a spouse or other family members living in the same household], may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization either directly or indirectly, or from any person being

served through the credit union service organization....

NCUA's group purchasing activities regulation [12 C.F.R. §721.2(c)] provides:

(c) No director, committee member, or senior management employee of a Federal credit union or any immediate family

member of any such individual may receive any compensation or benefit, directly or indirectly, in conjunction with any activity under this Part. For purposes of this Section, "immediate family member" means a spouse or other family member living in the same household

3. "Can a credit union lease space within credit union owned premises to a travel agency?" Section 107(4) of the FCU Act [12 U.S.C. §1757(4)] provides an FCU with the authority to "purchase, hold, and dispose of property necessary or incidental to its operations." FCU's have only limited authority to lease space to third parties. Sections 701.36(b) and (c) of NCUA's Rules and Regulations [12 C.F.R. §701.36(b), (c)] only permit FCU investment in real property "which is being used or is intended to be used as [an office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business]." (Emphasis added.) The FCU Act and NCUA Rules and Regulations therefore do not permit an FCU to engage in the business of leasing property. They do permit leasing of property "acquired for future expansion" [12 C.F.R. §701.36(d)(1)], but "all transactions with business associates or family members . . . must be conducted at arm's length and in the interest of the credit union." [12 C.F.R. §701.36(e)(3)]. Moreover, we generally emphasize to the FCU the need to maintain an identity separate from the lessee lest the FCU become exposed for the lessor's liabilities.

4. "Can a credit union arrange for a shared lease agreement with a travel agency? If so, what percentage of profit is the minimum/maximum that may be obtained by the credit union from the travel agency leasing space?"

Neither the FCU Act nor NCUA's Rules and Regulations regulates the amount an FCU may charge for temporarily leasing a portion of its premises. Whether a particular arrangement constituted an unsafe or unsound practice would have to be determined after a review of that

arrangement's particular circumstances.

5. "Can a credit union enter into a joint promotional program such as an investors savings club that includes travel services offerings and discounts?" FCU's may participate in certain promotional programs pursuant to one of their express powers and to the incidental powers clause of the FCU Act [Section 107(16), 12 U.S.C. §1757(16)]. The incidental powers clause authorizes an FCU to:

exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

For example, under this power we have previously stated that an FCU may enter into an investors savings club promotional program with a third party as an incident to its express power to "receive from its members ... shares, ... share certificates, ... and share draft accounts ..." 12 U.S.C. §1757(6). Whether another kind of promotional program is permissible will depend on the program and the surrounding circumstances.

6. "Can a credit union enter into a joint advertising campaign with a travel agency as long as the travel agency name is shown as travel provider?" Pursuant to Section 721.1, an FCU may endorse group purchasing plans involving outside vendors. If the FCU is making the travel services available through a CUSO, the membership can be made aware of the services in an advertising campaign. It should be made clear that a third party vendor or a CUSO, and not the FCU, is providing the travel services.

Sincerely,



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