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NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

February 3, 1989

Office of General Counsel

Mr. Greg Miller  
President and Chief Executive Officer  
American Federal Savings Federal Credit Union  
3048 Harvester Lane  
Memphis, TN 38127

Re: Payment of Expenses by Third Party Vendor  
(Your November 7, 1988, Letter)

Dear Mr. Miller:

A third party vendor that is providing a group purchasing plan to Federal credit union ("FCU") members may pay for an FCU official's reasonable expenses to attend a business meeting sponsored by the vendor. It is recommended that when an FCU chooses to send an official to such a meeting, it should pay for the trip and receive reimbursement from the vendor for its expense. The key issue is whether the vendor is providing a personal benefit or inducement to the officials or merely covering what would otherwise be reasonable and legitimate expenses of the FCU.

BACKGROUND

Your credit card processor has invited an official from your FCU to attend a meeting in Tampa, Florida, the processor's headquarters, to discuss continuation of credit card processing and related services after your present contract with the vendor expires. The vendor has agreed to pay all hotel and travel expenses for the official. You have asked whether such payment is proper under both the Bank Bribery Act and NCUA conflict of interest regulations.

ANALYSIS

FCU's must comply with both the Bank Bribery Act (18 U.S.C. §215) and NCUA Regulations addressing conflict of interest of FCU officials.

## Bank Bribery Act

In order to be found in violation of the Bank Bribery Act, there must be an element of corrupt intent. The Act provides, in part:

Whoever-

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution;

shall be [guilty of an offense].  
(18 U.S.C. 215)

From the information given in your letters, there does not appear to be a problem under the Bank Bribery Act. However, as you may know, the Department of Justice, rather than the NCUA, has prosecutorial authority under the Bank Bribery Act. The NCUA has issued guidelines for credit union compliance with the Bank Bribery Act (IRPS 87-1), a copy of which is enclosed.

### Part 721

Section 721.1 of the NCUA Regulations (12 C.F.R. §721.1) provides as follows:

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. (Emphasis added.)

It is not clear from the information you submitted that the vendor services provided to your FCU and its members

is a group purchasing plan. If the vendor's service involves a purchasing plan offered to the FCU members, it is subject to Part 721. If it involves services only to the FCU itself, e.g. credit card processing only, it is not subject to Part 721.

Section 721.2(c) prohibits all compensation or benefit to FCU management and officials for plans offered under Part 721. Therefore, the official cannot receive personal benefits, including extravagant meals and entertainment, from the vendor.

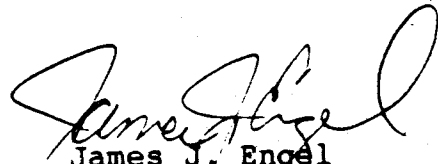
The reimbursement limitations in Section 721.2(b) would not apply to reimbursement to the FCU for the travel expenses of its officials. That section addresses reimbursement for the FCU's activities in providing a vendor's services, not the situation you describe. However, an FCU cannot accept reimbursement for official travel as a method of circumventing section 721.2(b).

Reimbursement to the FCU for its expenses in sending an official or employee to a vendor meeting is the preferable method for monitoring this type of activity. Alternatively, if the vendor is to pay the expenses itself, the FCU should obtain a statement of those expenses.

If you elect to accept reimbursement, you should establish guidelines which describe those expenses your credit union will pay on behalf of an employee on a business trip. These should be consistently applied regardless of the nature of the trip. You should limit acceptance if any reimbursement to only those expenses.

Your credit union should establish a code of conduct which addresses receipt of anything of value by an employee from anyone seeking to do business with the credit union. This code should address situations involving employees travelling on credit union business. Employees should be reminded of their fiduciary obligation to the credit union's members to procure the best product at the lowest possible cost.

Sincerely,



James J. Engel  
Deputy General Counsel

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