



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

September 6, 1989

Office of General Counsel

GC\RRD
SSIC 4062
89-0815

Jim Harris, President
ORCO State Employees Federal Credit Union
P.O. Box 11971
Santa Ana, CA 92711

Re: Commissions to CUSO and FCU Board Member (Your
July 24, 1989, Letter)

Dear Mr. Harris:

You have inquired whether it is permissible for an individual, who serves on the board of a Federal credit union (FCU) and a credit union service organization ("CUSO") owned by the FCU, to receive real estate and/or insurance commissions for work performed for the CUSO. It is not permitted under the NCUA Regulations.

Applicable Regulations

Section 701.27 of the NCUA's Rules and Regulations (12 C.F.R. §701.27) addresses FCU investments in and loans to CUSO's. Section 701.27(d)(6)(i) provides:

Individuals who serve as officials of, or senior management employees of, an affiliated Federal credit union (as defined in (c)(1)), and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service

FOIA UOI. III Part A (4) Commission to CUSO and
FCU Board Members

Jim Harris, President
September 6, 1989
Page 2

organization either directly or indirectly, or from any person being served through the credit union service organization. This provision does not prohibit an official or senior management employee of a Federal credit union from assisting in the operation of a credit union service organization, provided the individual is not compensated by the credit union service organization. Further, the credit union service organization may reimburse the Federal credit union for the services provided by the individual.

Section 701.27(c)(1) defines "affiliated credit unions" as "those credit unions that have either invested in or made loans to a credit union service organization." Section 701.27(c)(2) defines "official" as "any director or committee member."

Analysis

The regulation is very clear. An FCU board member who also serves on the board of an affiliated CUSO may not receive any type of income or compensation, directly or indirectly, from the CUSO or from individuals being served by the CUSO. There are no exceptions or waivers applicable to this section of the Regulations.

For your information, enclosed is a copy of our opinion letter concerning real estate listing agents to which you referred in your letter.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel

Enclosure



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

May 31, 1989

Office of General Counsel

Mr. Alfred L. Strawn
General Manager
Mantanuska Valley Federal Credit Union
1020 S. Bailey St.
Palmer, Alaska 99645

Re: Permissibility of Employing FCU Director to Act as
the Listing Agent for the FCU (Your May 3, 1989,
Letter)

Dear Mr. Strawn:

You have asked whether a Federal credit union ("FCU") may compensate a director of the FCU, for his services as a listing agent for the foreclosed real estate that the FCU has obtained and is trying to sell. The proposed compensation outlined in your letter does not violate the FCU Act or NCUA Rules and Regulations.

BACKGROUND

The FCU has obtained real estate through mortgage foreclosures that they are attempting to sell. The FCU wants to employ one of its directors to be the listing agent for the real estate. The FCU will be involved in financing the sale due to the depressed real estate market. Section 5110.1.4 of the Accounting Manual for FCU's addresses the sale of collateral property. An FCU may extend credit to a nonmember in order to dispose of collateral property. Under these limited circumstances, the extension of credit would not be considered an impermissible loan to a nonmember. The employed director will recuse himself on any board decisions regarding the sale of these properties.

Mr. Alfred L. Strawn
May 31, 1989
Page 2

ANALYSIS

Section 111(c) of the FCU Act (12 U.S.C. 1761(c)) states:

No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

The FCU Act and NCUA's Rules and Regulations clearly prohibit board members from being compensated for their services as board members. However, the prohibition does not prevent a board member from serving in another function for the FCU, such as an employee of the FCU, and from being compensated for this position. Acting as a real estate listing agent is not a function typically performed by a board member, but is usually performed by a third party. However, because the FCU will be financing the sale of the foreclosed properties, the issue of prohibited fees is relevant to your situation.

Section 701.21(c)(8) of the NCUA Rules and Regulations (12 C.F.R. 701.21(c)(8)) provides:

A Federal credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. . . .

This provision prohibits the involvement of a director where remuneration is received by the director for activities related to the initiation, processing, documenting, approving, closing, servicing, or collecting of FCU loans. In previous opinions, we have addressed the issue of whether a credit union director or employee who was also engaged in real estate sales was in violation of Section 701.21(c)(8). We concluded that, in general, listing and/or selling properties to FCU members does not come within the underwriting, insuring, servicing, or collecting a loan. The fact that the FCU owns the real estate does not change our opinion.

Mr. Alfred L. Strawn
May 31, 1989
Page 3

Although a director acting as the listing agent for the FCU is not in violation of the FCU Act or NCUA Regulations, we suggest that you look to state corporate law to conclusively determine whether or not a director's fiduciary obligations would prevent a director from acting as the listing agent of the FCU. One additional cautionary note. As you are well aware, Article XIX, §4 of the Standard Bylaws prohibits a director from taking part in board decisions in which they have a direct or indirect pecuniary interest. The director, therefore, should not participate in the FCU's determination on his selection as the listing agent or whether to sell and/or finance the foreclosed real estate.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

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