



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 19, 1990

Office of General Counsel

Mr. Frank E. McCarthy
National Automobile Dealers Association
8400 Westpark Drive
McLean, Virginia 22102

Re: Federal Credit Union Involvement in the Sale of
New Automobiles (Your February 6, 1990, Letter)

Dear Mr. McCarthy:

You asked several questions regarding federal credit union ("FCU") involvement in the sale of automobiles. FCU's have been involved in special sales of automobiles to their members for many years pursuant to Part 721 and Section 701.27 of NCUA's Regulations (12 C.F.R. Part 721 and Section 701.27). In addition to responding to your specific questions, we are enclosing several opinions from this Office on this issue.

ANALYSIS

You are concerned that FCU's may be improperly engaging in the business of selling or arranging for the sale of new automobiles. In that regard, you asked the following questions:

1. Can an FCU or credit union service organization ("CUSO") engage in the business of selling or arranging for the sale of new motor vehicles?

Neither an FCU nor a CUSO can directly sell new automobiles. However, an FCU can, pursuant to Part 721 of NCUA's Regulations, provide an automobile marketing service to its members. A CUSO can provide the same service pursuant to Section 701.27 of NCUA's Regulations. The enclosed opinions more fully discuss these activities.

FOIA

Vol. II AD Group Purchasing

Mr. Frank E. McCarthy
April 19, 1990
Page 2

2. Can an FCU condition a discount over its existing interest rate on a member purchasing his or her vehicle from a dealer identified by the FCU? Can an FCU refuse to make a loan to an otherwise qualified individual solely on the basis that he or she does not care to purchase a vehicle from a dealer recommended by an FCU?

Neither the FCU Act nor NCUA's Regulations would prohibit an FCU from implementing this type of loan policy.

3. Can an FCU or CUSO enter into a contract with a dealer whereby the dealer agrees to sell new vehicles at a specific amount, i.e., \$50 over dealer invoice? Can an FCU require that its members use this dealer in order to receive financing?

The financing issue is addressed in response to question 2. The attached February 11, 1987, opinion permits an FCU to contract with a dealer for special price agreements.

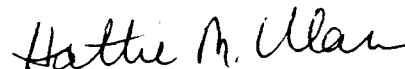
4. Is it permitted for an FCU or CUSO to advertise to its members that it operates a "buying service" program for new vehicles?

Yes. However, an FCU would have to clarify that the buying service is being made available through a third party pursuant to Part 721 of NCUA's Regulations.

5. If an FCU or CUSO were required under state law to be licensed as a new vehicle dealer in order to carry out its sales-related activities, would an FCU be authorized to obtain a license under the FCU Act and NCUA Regulations?

Neither the FCU Act nor NCUA's Regulations would prohibit an FCU from obtaining the required license.

Sincerely,



Hattie M. Ulan
Associate General Counsel

Enclosures
GC/JT:sg
SSIC 3500
90-0215



1317,1318

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

February 11, 1987

Office of General Counsel

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

GC/RD:sg
4675

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.

Mr. T. J. Ryan

Page Two

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.

Mr. T. J. Ryan

Page Three

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

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

RD:sg

1317,1318



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

1317, 1318

Peter A. Buck, Esq.

Page Two

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.

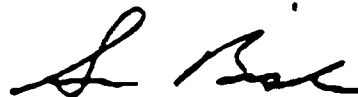
Credit unions have been involved in special sales of automobiles to their members pursuant to Part 721 of the NCUA Regulations for the last fifteen years. The Auto Club CUSO will provide a similar marketing service to the credit union member that the special automobile sales have provided and continue 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

1317,1318



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

October 23, 1987

GC/RD:rd
4675

Office of General Counsel

Peter Buck, Esq.
Downey, Brand, Seymour & Rohwer
555 Capitol Mall, 10th Floor
Sacramento, CA 95814-4686

Dear Mr. Buck:

This is in response to your September 9, 1987, letter concerning permissible credit union service organization (CUSO) activities.

Based on the description in your letter, the CU Auto Club (Auto Club) is presently engaged in permissible CUSO activities. The Auto Club is currently providing marketing services to the members of several credit unions by arranging an appointment by and between the credit union member and the Fleet Purchasing Manager of the auto dealer most conveniently located to the credit union member.

The proposed new activity would have the Auto Club solicit area automobile dealers for the best possible price on the vehicle selected by the credit union member. Once located, the Auto Club will then act on behalf of the credit union member and the auto dealer and will arrange the delivery of the vehicle to the Auto Club site. Once the dealer has been paid the purchase price for the car, title is transferred directly from the dealer to the credit union member. The Auto Club will not take title to the vehicle at any time in the transaction. Payment to the Auto Club for its services will be rendered by the member under a separate transaction. The financing credit union will include the CUSO fee in the amount financed.

It is our opinion that the new service activity described above would fall within the activity of "marketing services" listed in

ENID 111 - D-L N CUSO Auto Club

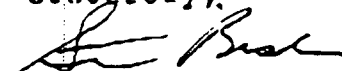
1317, 1318

Peter Buck, Esq.
Two Page

Section 701.27(d)(5)(i) of the regulation. Therefore, it would be permissible for Federal credit unions to invest in or make loans to the Auto Club.

I hope that we have been of assistance.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

RD:rd