NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

January 11, 1991

Martin Zook
United Communications Group
11300 Rockville Pike
Suite 1100
Rockville MD 20852-3030

Re: Permissibility of a Raffle for a Personal Computer (Your December 17, 1990, Letter)

Dear Mr. Zook:

You have asked whether it is permissible for federal credit union (FCU) directors at a Director Conference held by your organization to participate in a raffle for a personal computer supplied by a vendor. Neither the FCU Act nor NCUA's Rules and Regulations prohibit this activity.

BACKGROUND

The Credit Union Information Service (CUIS) is sponsoring its 14th Annual Directors Conference. FCU directors will be participating in the conference. CUIS plans to raffle off a personal computer donated by a vendor. The raffle is open to all conference participants. There will be no vendor booths at the conference. No information was provided demonstrating any connection between the vendor and any FCUs or FCU directors.

ANALYSIS

FCU's must comply with both the Bank Bribery Act (18 U.S.C. §215) and Part 721 of NCUA's Rules and Regulations (12 C.F.R. 721) addressing conflict of interest of FCU officials.

FOIA
Vol V H.6 Bank Bribery

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-
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> (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
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> (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 you provided in your letter, there does not appear to be a problem with the raffle under the Bank Bribery Act. However, the Department of Justice, rather than 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

Part 721 only applies when an FCU makes "insurance and group purchasing plans involving outside vendors available to the membership." (See Section 721.1, 12 C.F.R. §721.1.) Benefits to FCU officials, either direct or indirect are prohibited when offered "in conjunction with any activity under

this part." From the information you provided in your letter, there does not appear that any director will receive any direct or indirect benefit in conjunction with any group purchasing plan.

While it is the opinion of this Office that FCU director participation in the raffle is not prohibited by the FCU Act or NCUA Regulations, you must consider state and/or other federal laws that may be applicable to such activity.

Sincerely,

Hattie M Ulan

HATTIE M. ULAN
Associate General Counsel

Enclosure

GC/MM:sg
SSIC 3248
90-1222

NCUA INTERPRETIVE RULINGS AND POLICY STATEMENTS

October 15, 1987

NATIONAL CREDIT UNION ADMINISTRATION

INTERPRETIVE RULING AND POLICY STATEMENT NO. 87-1

Guidelines For Compliance With Federal Bank Bribery Law

AGENCY: National Credit Union Administration (NCUA)

ACTION: Interpretive Ruling and Policy Statement Number 87-1

SUMMARY: The Bank Bribery Amendments Act of 1985 requires that Federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institution officials in complying with this law. The guidelines were developed by the Interagency Bank Fraud Working Group. The guidelines adopted by the National Credit Union Administration Board (the "Board") encourage federally-insured credit unions to adopt codes of conduct that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the Board, do not constitute violations of the bribery law. These guidelines do not impose new requirements on federally-insured credit unions. They are designed to help credit unions comply with the bank bribery law.

EFFECTIVE DATE: October 16, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456. Telephone number (202) 357-1030.

SUPPLEMENTARY INFORMATION: The Board issued a proposed Interpretive Ruling and Policy Statement (IRPS) containing

guidelines for compliance with the Bank Bribery Law on June 10, 1987, and solicited comments during a thirty-day period.

Only ten comment letters were received concerning the proposed IRPS. Nine were favorable, one opposed to the issuance of guidance on this subject. Of the nine favorable letters, four did not recommend any change to the proposal.

One letter asked whether Credit and Supervisory Committee members are intended to be included within the scope of the guidelines. Yes, NCUA interprets the Bank Bribery Amendments Act as applying to committee members and the guidelines should include all officers and committee members of the credit union. The IRPS has been modified to clarify its scope. Also, it should be noted that these guidelines are intended to assist credit union officials, not credit union service organization officials. Of course, NCUA Rules and Regulations do set forth certain requirements concerning a credit union's investment in a CUSO. The proposed guidelines relate only to the Federal Bank Bribery Law; however, credit unions are encouraged to consider other possible conflicts of interest in developing internal codes of conduct.

Another letter recommended that the term "member" rather than "customer" be utilized where appropriate. This change has been made. One proposed that the appropriateness of accepting promotional materials be left to the discretion of the individual employee. The employee would make an individual determination regarding whether something was of nominal value and therefore acceptable. NCUA disagrees and believes that the need for consistency within the institution and the possibility of abuse make it preferable that the code of conduct provide what is nominal or acceptable. Another writer urged absolute prohibition on acceptance of holiday gifts. While a credit union may choose to prohibit receipt of such gifts in its code of conduct, NCUA continues to believe that receipt of a holiday season gift from a member, under appropriate circumstances, would not violate the bank bribery statute.

One writer inquired about treatment of raffle prizes paid for by a particular vendor. Because each sweepstakes scenario is somewhat different, NCUA does not believe it would be effective to include an example in the IRPS. Generally, if the prize is available to all equally through some random selection process, there would not, in NCUA's view, be any danger of violating the bank bribery statute. Of course, credit unions may elect to restrict or require reporting of this type of activity in any code they adopt. Another writer expressed concern that NCUA is attempting to mandate adoption of a code of conduct. These guidelines are not regulatory and encourage, rather than require, credit unions to act.

A letter expressed a concern that the guidelines, in prohibiting officials from accepting anything of value in

connection with credit union business, either before or after a transaction is discussed, were in conflict with previous NCUA opinions and the FCU Standard Bylaws. The commenter was specifically concerned with a 1986 NCUA opinion that stated an official who owns a loan collection agency may accept business from the credit union he serves, provided he is not involved in discussions involving his pecuniary interest. That situation would not conflict with the guidelines, which refer to discussion or consummation of a transaction by the official. However, it would now violate section 701.21(c)(8), prohibited fees, which was amended in April, 1987.

Finally, one writer objected to the issuance of guidelines as unnecessary and not required by law. In NCUA's view, these guidelines are appropriate and necessary to assist credit unions in complying with the bank bribery statute. The writer suggested that any exceptions set forth in the guidelines should not emphasize value, because the statute proscribes corrupt conduct. NCUA recognizes that the issue of whether conduct is corrupt, within the meaning of the bank bribery statute, does not necessarily depend on the value of something offered or received. Nevertheless, certain of the exceptions set forth properly recognize that the risk of corruption or breach of trust is not present in circumstances involving receipt of an item of reasonable value.

We have inserted language stating that any code should be consistent with the intent of the bank bribery statute to proscribe corrupt activity within financial institutions. We have also suggested that management review disclosures to determine that they are reasonable and do not threaten the integrity of the credit union.

INTERPRETIVE RULING AND POLICY STATEMENT NO. 87-1

GUIDELINES FOR COMPLIANCE WITH FEDERAL BANK BRIBERY LAW

Background

The Comprehensive Crime Control Act of 1984 (P.L. 98-473, Title I, October 12, 1984) amended the Federal bank bribery law, 18 U.S.C. Section 215, to prohibit employees, officers, directors, agents, and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. The amended law also prohibited anyone from offering or giving anything of value to employees, officers, directors, agents, or attorneys of financial institutions in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under Section 215, and indicated that cases to be considered for prosecution under the new bribery law entail breaches of fiduciary duty or dishonest efforts to undermine financial institution transactions. Because the statute was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift-giving or entertaining that did not involve a breach of fiduciary duty or dishonesty.

Congress decided that the broad scope of the statute provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (P.L. 99-370, August 4, 1986) to narrow the scope of 18 U.S.C. Section 215 by adding a new element, namely, an intent to corruptly influence or reward an officer in connection with financial institution business. As amended, Section 215 provides in pertinent part:

> Whoever-
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> "(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
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> (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;
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> shall be [guilty of an offense]."

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.* This exception is set forth in subsection 215(c).

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* Thus, if such payments were made to a credit union official by a sponsoring organization in the usual course of business, they would be excepted from coverage under the law.

The penalty for a violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds $100, the offense is a felony punishable by up to five years imprisonment and a fine of $5,000 or three times the value of the bribe or gratuity. If value does not exceed $100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of $1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents, and attorneys of financial institutions to comply with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to but not dispositive of any prosecutive decision the Department of Justice may make in any particular case. 132 Cong. Rec. 5944 (daily ed. Feb. 4, 1986). Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standards set forth in the statute. Nonetheless, in adopting its own prosecution policy under the bank bribery statute, the Department of Justice can be expected to take into account the financial institution regulatory agency's expertise and judgment in defining those activities or practices that the agency believes do not undermine the duty of an employee, officer, director, agent, or attorney to the financial institution. United States Attorneys' Manual Section 9-40.439.

Proposed Guidelines

The proposed guidelines encourage all federally-insured credit unions to adopt internal codes of conduct or written policies or amend their present codes of conduct or policies to include provisions that explain the general prohibitions of the bank bribery law. The proposed guidelines relate only to the bribery law and do not address other areas of conduct that a federally-insured credit union would find advisable to cover in its code of ethics. However, in developing its code of conduct, a federally-insured credit union should be mindful not only of the provisions of the Bank Bribery Act discussed herein, but also of other provisions of state or Federal law concerning conflicts of interest or ethical considerations. Moreover, regardless of whether a conflict of interest [illegible] criminal violation of the bank bribery statute, [illegible] NCUA's Rules and Regulations. These regulations [illegible] provisions which prohibit officials, [illegible] members from receiving personal gain [illegible] transactions of the credit union. [illegible] 703.4(e), 12 C.F.R. §703.4(e), [illegible] 701.21(c)(8), 12 C.F.R. §701.21(c)(8), [illegible] 701.21(d)(5), 12 C.F.R. §701.21(d)(5), [illegible] lending; Section 721.2(c), 12 C.F.R. §721.2(c), [illegible] purchasing activities; and Section 701.27(d)(6), 12 C.F.R. §701.27(d)(6), concerning CUSO's.

In connection with the Bank Bribery Amendments Act, consistent with the intent of the statute to proscribe corrupt activity within financial institutions, the code should prohibit any employee, officer, director, committee member, agent, or attorney (hereinafter "Credit Union Official") of a federally-insured credit union (hereinafter "credit union") from (1) soliciting for themselves or for a third party (other than the credit union itself) anything of value from anyone in return for any business, service or confidential information of the credit union, and from (2) accepting anything of value (other than bona fide salary and fees referred to in 18 U.S.C. §215(c)) from anyone in connection with the business of the credit union either before or after a transaction is discussed or consummated.

The credit union's codes or policies should be designed to alert Credit Union Officials about the bank bribery statute, as well as to establish and enforce written policies on acceptable business practices.

In its code of conduct, the credit union may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with credit union business. There are a number of instances where a Credit Union Official, without risk of corruption or breach of trust, may accept something of value from one doing or seeking to do business with the credit union. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the Credit Union Official; or if the benefit would be paid for by the credit union as a reasonable business expense if not paid for by another party. By adopting a code of conduct with appropriate allowances for such circumstances, a credit union recognizes that acceptance of certain benefits by its Credit Union Officials does not amount to a corrupting influence on the credit union's transactions.

In issuing guidance under the statute in the areas of business purpose entertainment or gifts, it is not advisable for the Board to establish rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. A credit union should seek to embody the highest ethical standards in its code of conduct. In doing this, a credit union may establish in its own code of conduct a range of dollar values which cover the various benefits that its Credit Union Officials may receive from those doing or seeking to do business with the credit union.

The code of conduct should provide that, if a Credit Union Official is offered or receives something of value beyond what is authorized in the credit union's code of conduct or written policy, the Credit Union Official must disclose that fact to an

appropriately designated official of the credit union. The credit union should keep written reports of such disclosures. An effective reporting and review mechanism should prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the credit union to better protect itself from self-dealing. However, a Credit Union Official's full disclosure evidences good faith when such disclosure is made in the context of properly exercised supervision and control. Management should review the disclosures and determine that what is accepted is reasonable and does not pose a threat to the integrity of the credit union. Thus, the prohibitions of the bank bribery statute cannot be avoided by simply reporting to management the acceptance of various gifts.

The Board recognizes that a serious threat to the integrity of a credit union occurs when its Credit Union Officials become involved in outside business interests or employment that give rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, credit unions are encouraged to prohibit, in their codes of conduct or policies, their Credit Union Officials from self-dealing or otherwise trading on their positions with credit unions or accepting from one doing or seeking to do business with the credit union a business opportunity not available to other persons or made available because of such officials' positions with the credit union. In this regard, a credit union's code of conduct or policy should require that its Credit Union Officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed due to either business or personal relationships with members, suppliers, business associates, or competitors of the credit union.

Exceptions

In its code of conduct or written policy, a credit union may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with credit union business. These exceptions may include those that:

(a) permit the acceptance of gifts, gratuities, amenities, or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a Credit Union Official) where the circumstances make it clear that it is those relationships rather than the business of the credit union concerned which are the motivating factor;

(b) permit acceptance of meals, refreshments or entertainment, all of reasonable value and in the course of a meeting or other occasion the purpose of which is to hold bona fide business discussions, provided these expenses would be paid for by the credit union if not

paid for by the other party as a reasonable business expense (the credit union may establish a specific dollar limit for such an occasion);

(c) permit acceptance of loans from banks or financial institutions on customary terms to finance proper and usual activities of Credit Union Officials, such as home mortgage loans, except where prohibited by law;

(d) permit acceptance of advertising or promotional material of reasonable value, such as pens, pencils, note pads, key chains, calendars, and similar items;

(e) permit acceptance of discounts or rebates on merchandise or services that do not exceed those available to other members;

(f) permit acceptance of gifts of reasonable value that are related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas, or bar or bat mitzvah (the credit union may establish a specific dollar limit for such an occasion); or

(g) permit the acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the credit union may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case-by-case basis, a credit union may approve of other circumstances, not identified above, in which a Credit Union Official accepts something of value in connection with credit union business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

Disclosures and Reports

To make effective use of these guidelines, the Board recommends the following additional procedures:

(a) The credit union should maintain a copy of any code of conduct or written policy it establishes for its Credit Union Officials, including any modifications thereof.

(b) The credit union should require an initial written acknowledgment from its Credit Union Officials of its code or policy and written acknowledgement of any subsequent material changes and the officials' agreement to comply therewith.

(c) The credit union should maintain written reports of any disclosures made by its Credit Union Officials in connection with a code of conduct or written policy.

By the National Credit Union Administration Board on the 8th day of October 1987.

BECKY BAKER
Secretary of the Board