

May 21, 1997

Christopher Turner, Corporate Counsel  
Southwest Corporate Federal Credit Union  
7920 Belt Line, LB-109  
Dallas, TX 75240

Re: Loan Referral Fees  
(Your Letter of January 30, 1997)

Dear Mr. Turner:

You have asked whether Southwest Corporate Federal Credit Union (SCFCU) and its member credit unions (Members) can receive loan referral fees under a proposed automobile loan referral program (the Program). Both SCFCU and its federally chartered Members can receive loan referral fees meeting the requirements of NCUA's group purchasing rules. 12 C.F.R. Part 721. State-chartered Members are subject to relevant state laws and are not addressed in this opinion. For a response covering state-chartered members, you should contact the appropriate state supervisory authority.

#### Background

The purpose of the Program is to provide affordable automobile financing to natural person members of Members (Borrowers) who have a low credit rating or, for some reason, cannot qualify under the Members' credit policies. In addition, the Program will provide the Borrower with an opportunity to obtain desired loans, display good credit habits, improve his or her credit rating, and borrow from a responsible subprime lender.

SCFCU proposes to establish a relationship with an automobile financing lender (the Lender). SCFCU would introduce some of its Members to the Lender. The Member would continue to accept automobile loan applications from its Borrowers. If the Borrower's loan request is rejected because the Borrower does not meet the Member's credit standards, the Member can refer the Borrower to the Lender. If the Lender makes the loan, a referral fee will be paid to the SCFCU and the Member. The Lender will make monthly reports to the Member of the Borrower's payment history. After 10 or 12 months of regular payments, the Member can determine that the Borrower has good payment habits and purchase the loan. The loan could be purchased by the Member as an eligible obligation under 12 C.F.R. §701.23(b)(1)(i)(B) if could be refinanced within 60 days. Such a refinancing would result in a lower interest rate that would be advantageous to the Borrower. As part of the Program, the Lender would agree not to charge either the Borrower or the Member a prepayment penalty.

#### Discussion

Part 721 of NCUA's Rules and Regulations limits the amount of compensation that an FCU can receive for making vendor services, including loan referral services, available to its members. 12 C.F.R. Part 721. I am enclosing two letters that will provide some additional discussion of these limitations. Letter from Richard S. Schulman to Flandus McClinton, Jr., dated August 27, 1996; and Letter from Richard S. Schulman to Laurie M. Judd, dated August 1, 1995.

An FCU may make the services of a third-party vendor, in this case, the Lender, available to its members, may endorse the vendor, and may perform administrative services on behalf of the vendor. 12 C.F.R. §721.1. An FCU offering vendors access to its members under the group purchasing rules can only be

compensated for the "cost amount" incurred in performing such services. 12 C.F.R. §721.2(b)(3). "Cost amount" means the total of direct and indirect costs to the FCU for providing administrative services to the vendor, and must be justified using standard accounting procedures. 12 C.F.R. §721.2(a)(2); see also Accounting Manual for FCUs, §5200.

Part 721 applies to corporate credit unions, except when the sale of investment products is involved. Letter from Robert M. Fenner to Francois G. Henriquez, II, dated April 29, 1994 (enclosed). Since loan referral fees do not involve the sale of investment products, Part 721 applies to SCFCU and its involvement with the Program. Other than group purchasing authority, SCFCU and its FCU members have no incidental or express authority to accept loan referral fees. Letter from Richard S. Schulman to Ronald S. Eliason, dated August 10, 1995 (enclosed).

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/MS:sg  
SSIC 6080  
97-0203

Enclosures

cc: Robert Schafer, Director, OCCU