

TITLE 12 - BANKS AND BANKING CHAPTER VII - NATIONAL CREDIT UNION ADMINISTRATION

PART 721 - INCIDENTAL POWERS

STATEMENT OF INTERPRETATION - INSURANCE ACTIVITIES

AGENCY: National Credit Union Administration

ACTION: Interpretation of General Applicability

SUMMARY: The purpose of this action is to clarify the policy of the National Credit Union Administration concerning the scope of Federal credit union authority in the area of insurance activity. Pursuant to 12 C.F.R. Part 721.1, Federal credit unions are authorized to undertake to facilitate their members' voluntary purchase of types of insurance incidental to promotion of thrift or the borrowing of money for provident and productive purposes.

EFFECTIVE DATE: Immediately upon publication.

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SUPPLEMENTAL INFORMATION: The Insurance Activities regulation was promulgated in 1972 and was designed to delineate the parameters of Federal credit union activity in the insurance field. The regulation was based upon section 107(15) of the Federal Credit Union Act(12 U.S.C. §1757(15)), which provides Federal credit unions with the authority to exercise such incidental powers as shall be necessary or requisite to enable them to carry out effectively the business for which they are incorporated. Consistent with the limitations inherent in this "necessary or requisite" language, the underlying theme throughout the regulation is that the credit union, if it is to perform any agency function, may act as the agent of its members, educating them and assisting them in their acquisition of beneficial insurance coverage. However, credit unions are expressly forbidden from assuming an agency role on behalf of an insurer. Section 721.1(j) of the regulation directs that the credit union ". . . may not, directly or indirectly, act as agent for an insurer. . . in processing of claims or in any other agency capacity for such insurer. . . ." (Emphasis supplied.) Quite clearly, the v regulation does not interpret the incidental powers clause of the Federal Credit Union Act as permitting an agency relationship on behalf of an insurer.

In November of 1972, shortly after the regulation itself became final, an exception to §721.1(j) was created in the area of. loan protection and life savings insurance. The exception took the form of an addendum to a Legal Opinion, and was neither published for-comment nor widely circulated. Despite the clear intent of the regulation as a whole, the exception indicated that with respect to these two types of insurance, participation by the credit union in the claims adjustment process would be permitted.

On the strength of this exception, credit unions made arrangements with insurers to participate in what became known as "draft payment systems. Although the mechanics of the various plans differed in certain respects, all were characterized by active credit union participation in the claims adjustment process. Typically, the insurer in the group policy situation would authorize the credit union to draw drafts against the insurer's own bank account to satisfy claims presented to the credit union by members under their certificates of insurance. Thus, instead of forwarding the claims to the insurer as an agent of the member, the credit union was now settling claims as an agent of the insurer. Generally, the claims paid were subject either to approval or review by the insurer, although the credit union itself would not be held liable for a wrongful payment. This system was utilized mainly in cases where the claim of the insured was easily proved. For example, claims predicated on death of the insured would be payable by the credit union upon presentment of a death certificate by a representative of the insured. In cases where a doubt or question as to coverage arose, the credit union would be instructed to forward the claim to the insurer for handling.

Implementation of these types of plans generally resulted in a relatively quicker settlement of insurance claims. However, notions of convenience are, without more, insufficient to justify an exception to the clear mandate of the insurance regulation and the clear implication of the incidental powers clause of the Federal Credit Union Act. Activity that places the credit union into an agency relationship with an insurer is not an activity that is "necessary or requisite" to the business for which the credit union is incorporated.

Accordingly, the following represents the National Credit Union Administration's interpretation of the scope of permissible activity under 12 C.F.R. Part 721.1(j). It is expected that Federal credit unions will take the action necessary to bring their relationships with insurers into conformance with this interpretation.

IRPS NO. 79 -5

INTERPRETIVE RULING ON PERMISSIBLE INSURANCE ACTIVITY UNDER 12 C.F.R. 721.1(j)

Section 721.1(j) of 12 C.F.R. reads in pertinent part as follows:

[T]he credit union may not, directly or indirectly, act as agent for an insurer or trust or association described in subsection (e) of this section in processing of claims or in any other agency capacity for such insurer or trust or association described in subsection (e) of this section. . . .

The National Credit Union Administration interprets this language as precluding active Credit Union participation on behalf of an insurer in the insurance claims settlement process. Specifically precluded by this interpretation is credit union participation in a draft payment system that involves the presentation and settlement of claims by the credit union, with subsequent reimbursement of the credit union by the insurer. Under the above quoted regulatory language and the statutory language from which it derives (found in the incidental powers clause of the Federal Credit Union Act (12 U.S.C. §1757(15)), any arrangement with an insurer exhibiting these characteristics is no longer permissible. Previously issued opinions and rulings to

the contrary are withdrawn. Activity deemed permissible is that which is limited to the forwarding of claim forms to the insurer for processing. It is fully expected that Federal credit unions and their insurers will voluntarily make the adjustments necessary to bring their relationship into conformance with this interpretation.

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LAWRENCE CONNEL
Chairman

July 10, 1979

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