

December 9, 1997

Michele M. Notaro, Vice President/Lending  
Alcoa Tenn Federal Credit Union  
P.O. Box 9001  
Alcoa, TN 37701-9001

Re: Vehicle Financing  
Your letter dated August 13, 1997

Dear Ms. Notaro:

You have asked whether a federal credit union (FCU) can engage in a proposed loan referral program and, if so, whether there are restrictions or guidelines the FCU must follow. As you have described the program, it is not permissible because it would require an FCU to make impermissible loans. If an FCU participates in a permissible loan referral program, any loan referral fees are subject to the requirements of NCUA's group purchasing rules. 12 C.F.R. Part 721.

#### Background

The proposed loan referral program you described involves an FCU referring a member's rejected loan application for vehicle financing to a third-party vendor. The vendor would underwrite the proposed loan according to its own policies. If the vendor approves the loan, the FCU would close the loan using its own promissory note but using the vendor's interest rate and terms. The vendor would wire or send a payoff for the loan and the FCU would forward the promissory note and vehicle title to the vendor. The vendor would then notify the member about where to send payments. The vendor would pay the FCU a flat fee per loan and any interim interest if there is a delay in receiving the payoff.

#### Discussion

An FCU is authorized to make loans in compliance with the lending policies of its board of directors, which must be consistent with the relevant provisions of the FCU Act, NCUA's regulations, and other applicable laws and regulations. 12 U.S.C. §1757(5)(A); 12 C.F.R. §701.21(c)(2). If a member's loan application does not meet the FCU's lending policies, then the FCU cannot make the loan.

The proposed referral program would require the FCU to lend to a member who does not qualify under the FCU's lending policies. Even though the loan would be paid off and sold to the Vendor quickly after the loan closing, this program requires an FCU to make impermissible loans.

We also believe that it is improper for an FCU to allow a third-party vendor to use FCU loan forms in these circumstances. Although you indicate that the member would not be misled into thinking it is the FCU that is making the loan, we think that the fact that FCU personnel are closing the loan using FCU loan forms certainly would lead a member to think that the loan is between the member and the FCU.

An FCU can participate in a loan referral program and accept fee income from the other lender subject to certain limitations on the amount of the compensation as provided in Part 721 of NCUA's Rules and Regulations. 12 C.F.R. §721. I am enclosing two letters that will provide some additional discussion of these limitations. Letter from me to Christopher Turner, dated August 27, 1996; and Letter from Richard S. Schulman to Laurie M. Judd, dated August 1, 1995.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/SAA/MSC:sg  
SSIC 3501  
97-0842

Enclosures

cc: Region III