

October 30, 1991

Richard P. Kessler, Jr., Esq.
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Suite 700 Carnegie Building
133 Carnegie Way, Northwest
Atlanta, Georgia 30303

Re: Powerco Federal Credit Union - Georgia Power Company Employee Personal Computer Loan Program
(Your October 2, 1991, Letter)

Dear Mr. Kessler:

You asked whether a loan program proposed by the Powerco Federal Credit Union ("Powerco") is allowable under the Federal Credit Union Act ("the Act") and NCUA's Rules and Regulations (the "Regulations"). In our opinion, the loan program is permissible.

Background

Georgia Power Company is a sponsor of Powerco. Georgia Power has proposed a loan plan to enable Georgia Power employees who are members of Powerco to purchase personal computer hardware. Only Powerco members who are employed by Georgia Power would be eligible for the loan program.

Under the program, a Georgia Power employee will select a personal computer to purchase. Georgia Power will approve the computer, and indicate its willingness to guarantee a loan for its purchase. The employee will then apply to Powerco for a loan. Assuming that Powerco finds the employee/member creditworthy, it will grant a loan on the following terms.

1. The interest rate charged to the employees/members will be 3% of the outstanding loan balance each month.
2. The loan amount will be not less than \$200.00 or more than \$5,000.00.
3. The maximum loan term will be 36 months.
4. The loans will be repaid by payroll deduction.
5. Georgia Power will guarantee the loans.
6. Loan balances will be due and payable immediately if the employee leaves Georgia Power for any reason other than a transfer to an affiliated company.
7. Each month, Georgia Power will pay Powerco a variable rate administrative fee on the outstanding portfolio of loans made under the program. The interest rate on the fee will be equal to the prime rate listed in the Wall Street Journal, minus 4%.
8. Georgia Power will purchase the loan of any member who is more than 120 days delinquent, upon receipt of an invoice from Powerco.

You enclosed copies of a proposed "computer loans program agreement" and an "unconditional guarantee of payment and performance" with your letter. However, as I explained to you in our telephone conversation, this Office does not re- view contracts, which are governed by state law. Conse- quently, our opinion is based solely upon the information contained in the body of your letter.

Analysis

Section 107(5) of the Act, 12 U.S.C. ~1757(5), authorizes a federal credit union ("FCU") to make loans to its members. Section 701.21 of the Regulations, 12 C.F.R. 701.21, contains additional standards and restrictions on loans to members. Neither the Act nor the Regulations prohibits any aspect of the proposed loan program. Although FCUs are limited with regard to the fees they may receive as a result of group pur- chasing activities (see, 12 C.F.R. Part 721), there is no limitation in the Act or Regulations on FCU compensation re- ceived in connection with activities, such as the making of loans, that are expressly authorized by the Act. It is our opinion that the proposed loan program is permissible under the Act and the Regulations. We offer no opinion as to the effect, if any, of state law on the proposed program.

We caution you that the Equal Credit Opportunity Act ("ECOA") may have an impact on the proposed program. ECOA and its implementing regulation, Regulation B, 12 C.F.R. Part 202, are intended, in part, to promote the availability of credit to all creditworthy applicants, regardless of race, color, religion, national origin, sex, marital status or age. The proposed program does not appear, on its face, to violate ECOA or Regulation B. However, policies that are facially neutral may be prohibited under the "effects test." Under the "effects test," a policy is discriminatory if it has a negative impact on a protected class of persons, even if there is no intent to discriminate. We suggest that you re- view the proposed program to determine the applicability of ECOA and whether the program would have a discriminatory effect if implemented.

Lastly, we wish to point out that although the proposed loan program is legally permissible, it may raise safety and soundness concerns with NCUA's Regional Office. Powerco may wish to consult its NCUA examiner before implementing the program.

Sincerely,

Hattie M. Ulan
Associate General Counsel

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