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July 24, 2003

Becky Baker
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: National Credit Union Administration; Proposed Rule; Organization and Operations of Federal Credit Unions; 12 CFR Part 701; 68 Federal Register 39866, July 3, 2003

Dear Ms. Baker:

The National Credit Union Administration (“NCUA”) proposes to update and clarify the definitions of certain terms used in NCUA’s loan participation rule. Specifically, the definition of “credit union organization” is being amended to conform to the terms of the credit union service organizations (“CUSOs”) rule. Also, the definition of “financial organization” is being broadened.

In general, the American Bankers Association (“ABA”) is troubled by NCUA’s use of the regulatory rulemaking process to circumvent statutory limitations placed on federal credit unions (“FCUs”). The intent of the proposed definitional changes is to facilitate credit unions’ circumvention of Congressional limitations on business lending. The ABA believes that the appropriate venue to address such changes is legislation, not regulation.

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country. For further information regarding the ABA, please consult the ABA on the Internet at <http://www.aba.com>.

Background

The Federal Credit Union Act (“FCUA”) allows federal credit unions “to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members.”¹ The NCUA Board proposes to broaden the ability of federal credit unions to engage in loan participations by changing the definition of a credit union organization and a financial organization.

¹ 12 U.S.C. Section 1757(5).

ABA's Position

Definition of Credit Union Organization

Prior to 1998, NCUA's CUSO rule distinguished between CUSOs providing operational services to FCUs and those providing financial services to FCU members. However, in a 1998 final rule, NCUA eliminated that distinction.² Therefore, NCUA proposes to amend the definition of "credit union organization" in the loan participation rule to conform to NCUA's interpretation of that term in the CUSO rule.³

However, by eliminating the distinction between CUSOs providing operational services to FCUs and those providing financial services to FCU members, NCUA violates the express intent of the FCUA. The FCUA specifically defines a credit union organization as one "which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve."⁴

It is obvious that the intent of the FCUA is to limit credit union organizations engaged in loan participations to those CUSOs focused on serving the daily operational needs of the FCU, not providing services to the members of the FCU. Therefore, ABA urges the NCUA to retain its existing definition for "credit union organization" under Section 701.22(a)(4).

Definition of Financial Organization

Section 701.22(a)(5) currently defines a financial organization as "any federally chartered or federally insured financial institution." However, the NCUA Board believes it is appropriate to expand the regulatory definition of "financial organization" to include state and federal government agencies. According to the NCUA Board, state and federal government agencies operate programs "ideally suited to the mission of Federal credit unions." Furthermore, the NCUA goes on to state that many of these programs operated by state and federal government agencies are focused on agricultural and small business lending.

While the Federal Credit Union Act is silent on the definition of a financial organization, the ABA believes that state and federal government agencies are not financial organizations. To include state and federal government agencies in the definition **simply defies common sense**. For example, according to the *North American Industry Classification System – United States, 2002*, there is a clear distinction between financial institutions and state and federal government agencies.⁵ State and federal government agencies and financial institutions do not possess the same or

² 63 *Federal Register* 10743 (March 5, 1998).

³ 12 CFR Section 712.3, 12 CFR Section 712.5.

⁴ 12 U.S.C. Section 1757(5)(D).

⁵ North American Industry Classification System ("NAICS") is a system for classifying establishments by type of economic activity. NAICS is erected on a production-oriented or supply-based conceptual framework. This means that producing units that use the same or similar production processes are grouped together in NAICS.

similar production processes or functions and therefore should not be treated as equivalent entities.

NCUA's intentions are quite transparent. NCUA specifically identifies agricultural and small business lending as targeted activities to benefit from the change in the definition of financial organization. By expanding the definition of financial organization to include state and federal government agencies, NCUA will make it easier for credit unions to divert financial resources to business lending purposes, contrary to the intent of the Credit Union Membership Access Act.

As the ABA states in its May 6, 2003 comment letter regarding proposed changes by NCUA to its Member Business Loan rule:

“the clear intent of Congress in enacting Section 203 was to establish limitations on the member business loan activities of federally insured credit unions, based upon the belief that (1) credit unions should maintain their focus on consumer lending – especially to persons of modest means; and (2) continued credit union safety and soundness required restrictions in this area.”

Therefore, ABA strongly urges NCUA not to change the definition of “financial organization.”

Conclusion

ABA believes that the NCUA should retain its existing definitions of credit union organization and financial organization. If NCUA believes that there is a need to change the definitions, the proper channel for making these changes is the legislative process, not through the regulatory rulemaking process. If you have any questions, please contact the undersigned.

Sincerely,

Keith Leggett
Senior Economist