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February 15, 2002

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

Re: National Credit Union Administration; Organization and Operation of Federal Credit Unions; 12 CFR part 701; 66 Federal Register 65625, December 20, 2001

Dear Ms. Baker:

On December 20, 2001, the National Credit Union Administration Board ("Board") published for public comment the above interim final rule which repeals the previously adopted rule imposing a community action plan (" CAP") requirement on community chartered Federal credit unions. The American Bankers Association 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 the American Bankers Association the largest banking trade association in the country.

Background

In June 2000, the Board issued for public comment a proposed revision of its then current chartering and field of membership manual ("IRPS 99-1"). The proposal addressed various modifications to IRPS 99-1 to include the requirement that "any type of application related to expanding, converting or chartering a community credit union include not only the required business and marketing plan, but a community action plan (CAP) that will be periodically updated by the board of directors of the credit union and reviewed periodically by NCUA."

In August, 2000, the American Bankers Association ("ABA") filed a comment letter responding to this proposal. In this letter, the ABA urged adoption of NCUA's proposed CAP with modifications that would extend it to all Federal credit unions regardless of their common bonds or community structures.

In October 2000, the Board adopted a final rule that included the imposition of a CAP for community chartered Federal credit unions. The Board provided Federal credit unions with a transition period to comply with this requirement by postponing its implementation for existing Federal credit unions until December 31, 2001. At its December 2001 pubic meeting, the Board negated its prior decision by repealing the CAP effective December 20, 2001. The Board justified this revocation by stating

that "requiring only certain credit unions to adopt specific written policies addressing services to the entire community, where there is no evidence credit unions are not attempting to serve their entire communities, is not a reasonable regulatory practice, particularly when this regulatory requirement raises little, if any safety and soundness concerns."

ABA Position

The ABA strongly urges the Board to withdraw this interim final rule and as soon as possible reinstate the CAP. The concerns raised by the ABA in its August 2000 comment letter remain unresolved by the Board's decision to repeal the CAP required for all community chartered Federal credit unions. Only the Board's reinstatement of this requirement will ensure the effective implementation of Federal credit unions' obligation under Federal law to serve people of "small means."

Because the ABA's arguments in its August 2000 comment letter remain as valid today as they were 18 months ago, they deserve reemphasis in response to the Board's interim final rule. As previously stated in ABA's August 2000 letter, "the NCUA acknowledges that one of the primary goals of the Federal Credit Union Act ("FCUA") is to make credit available to people of small means.[1] Further, all Federal credit unions are required to have Federal insurance for member accounts, and the NCUA is charged with considering "the convenience and needs of the members to be served" before granting member account insurance.[2] Further, the NCUA is charged under the FCUA with determining that any application to form a credit union "conforms to the provisions" of FCUA.[3] It follows, then, that the NCUA is by law obligated to determine whether an application will, if approved, in fact meet the convenience and needs of people of small means before approving the application. While the NCUA currently requires that applicants for expanding, chartering or converting a credit union include a marketing plan and a business plan, NCUA has observed that marketing plans are not required to address any specific segment of the proposed membership, such as low-income persons or residents of underserved areas (people of small means). The NCUA had finalized its proposal to require that applications to expand, charter or convert to a community credit union (not single common bond or multiple common bond credit unions) include a CAP, which would "supplement the marketing plan by specifically addressing the credit union's plan to market its services to the entire community, including underserved or low-income areas (if applicable)."

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[1] According to the Preamble of the 1934 Federal Credit Union Act.

[2] 12 USC 1781(c).

[3] 12 USC 1754 - Approval of organization certificate

The organization certificate shall be presented to the Board for approval. Before any organization certificate is approved, an appropriate investigation shall be made for the purpose of determining (1) whether the organization certificate conforms to the provisions of this chapter; (2) the general character and fitness of the subscribers thereto; and (3) the economic advisability of establishing the proposed Federal credit union.

"The NCUA by its own statement does not require that marketing plans for common bond credit unions demonstrate how such a credit union will market to members to be served who are of small means, apparently in the belief that such marketing is inherent in the idea of a "credit union." As a result, the NCUA only applied its CAP requirement to community credit unions. Further, the NCUA states that "there is no evidence to support that community credit unions have failed to fulfill their responsibility to serve the entire community." In fact there is evidence that credit unions do not see as their primary purpose the making of credit more available to people of small means."

"The Filene Research Institute and the Center for Credit Union Research has published a study showing that credit union CEOs rank "offering services to low and moderate income people by expanding our field of membership" 26th out of 28 value statements in importance.[4] These same CEOs ranked such a value as next to last in a listing of values practiced by their credit unions. As the study reported, only ten percent of the 454 respondents said that they practice this value to an extreme extent and an additional 20 percent said that they did so to a considerable extent.[5] This suggests that 70 percent of credit union CEOs consider in their business plans the purpose of service to low- and moderate-income individuals and underserved areas to some extent or less". This is not a credit union practice that demonstrates a credit union's responsibility to make credit available to people of small means.

"Unlike these credit union CEOs, ABA believes that the FCUA imposes an affirmative duty on the NCUA to ensure that Federal credit unions do in fact meet the primary purposes of their chartering and account insuring, which includes making credit more available to people of small means. The NCUA does not meet this affirmative duty by saying that there is no evidence of failure: affirmative duties are met by gathering evidence of performance," something which the Board has decided is unnecessary.

The importance of imposing a CAP for all Federal credit unions to ensure service to people of small means is further demonstrated by a recent analysis of home lending trends in 1999 and 2000 for credit unions as compared to banks and saving associations covered by the Community Reinvestment Act. This analysis by the National Community Reinvestment Coalition ("NCRC") found that CRA lenders (banks and savings associations) made a significantly higher

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[4] The Federal Credit Union Act specifically provides in 12 USC 1759 (Membership) that multiple common bond credit unions may expand their fields of membership to include:
"any person or organization within a local community, neighborhood, or rural district if—
(A) the Board determines that the local community, neighborhood, or rural district—
(i) is an 'investment area', as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(16)), and meets such additional requirements as the Board may impose; and
(ii) is underserved, based on data of the Board and the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), by other depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act); and
(B) the credit union establishes and maintains an office or facility in the local community, neighborhood, or rural district at which credit union services are available."

[5] Pp. 25-30, Aldag, Ramon J., and Antonioni, David, Mission Values and Leadership Styles in Credit Unions, Filene Research Institute & The Center for Credit Union Research (Madison, WI, 2000)

percentage of their home loans to low-and moderate-income borrowers and within low-and moderate-income and minority census tracts than credit unions. As an example, the NCRC study demonstrated that CRA lenders made twice as many loans, in percentage terms, than credit unions in minority census tracts. Also CRA lenders had lower denial ratios between black and white applicants as compared with credit unions.

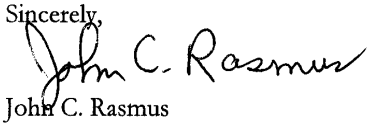
Thus, the NCRC study demonstrates that more work needs to be done by credit unions to generate increased lending to low-and moderate-income individuals and within minority census tracts. An important oversight authority to encourage credit unions to meet this goal is the CAP regulation. Its reinstatement is essential to better ensure service to these individuals.

Conclusion

The ABA believes the reimposition of the CAP will better enable Federal credit unions to meet their statutory mandate of service to people of "small means." The ABA urges the Board to withdraw this interim final rule and reinstate the CAP as soon as possible.

If you need further information please contact the undersigned at 202-663-5333.

Sincerely,



John C. Rasmus