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September 27, 2005

Mary Rapp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: National Credit Union Administration; Regulatory Flexibility Program; 12 CFR Part 742

Dear Ms. Rapp:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to offer comments on the National Credit Union Administration's (NCUA) proposal to lower the capital requirement for federal credit unions to participate in the NCUA's Regulatory Flexibility Program or RegFlex.

Summary of ICBA's Position

ICBA opposes the proposal because it is an attempt by the NCUA to lower capital requirements generally for credit unions and expand their powers. Furthermore, the proposal increases the risk exposure of the National Credit Union Share Insurance Fund. ICBA believes that credit unions that participate in RegFlex should be subject to a higher capital requirement than the 7% minimum capital standard for well-capitalized credit unions.

¹*The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 17,000 locations nationwide and employing over 260,000 Americans, ICBA members hold more than \$631 billion in insured deposits, \$778 billion in assets and more than \$493 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

Background

In 2002, the NCUA Board established a Regulatory Flexibility Program (RegFlex) that exempts qualifying credit unions from certain regulatory restrictions and grants them additional powers. A credit union may qualify for RegFlex automatically or by application to the appropriate Regional Director.

To qualify automatically, a credit union must meet two criteria. First, it must have a composite CAMEL rating of “1” or “2” for two consecutive examination cycles. Second, it also must achieve a net worth ratio of 9% (200 basis points above the net worth ratio to be classified “well capitalized”) for a single Call Reporting period, unless it is subject to a risk-based net worth (“RBNW”) requirement.² In that case, the credit union’s net worth must surpass its RBNW requirement by 200 basis points.

RegFlex gives qualifying credit unions relief from a number of regulatory restrictions including limits on fixed assets (5% of shares and retained earnings), limits on non-member deposits (20% of total shares or \$1.5 million, whichever is greater), the maximum limit on investments over which discretionary control can be delegated (100% of credit union’s net worth), the requirement that principals personally guarantee and assume liability for member business loans, and the restrictions on the purchase of eligible obligations (5% of capital and surplus).

As of December 31, 2004, 3457 credit unions automatically qualified for RegFlex. RegFlex authority can be revoked from failure to meet the above criteria; however in 2004, only one credit union’s RegFlex authority was revoked.

Proposed Rule

The NCUA is proposing to lower the capital requirement to qualify for the program from 9% to 7% net worth, bringing the criterion into alignment with the “well-capitalized” net worth category under the NCUA’s system of prompt corrective action.³ However, the agency is proposing that a credit union must maintain a 7% net worth for a six-quarter period, rather than 9% net worth for one quarter as is currently required. If the new rules were in effect as of December 31, 2004, approximately 13% more credit unions would qualify for the RegFlex Program.

ICBA Position

This proposal is part of NCUA’s overall policy to lower capital requirements for all credit unions and expand credit union powers. NCUA has recommended to Congress in its Prompt Corrective Action Reform package that the net worth for a well-capitalized credit union be reduced from 7% to 5%. Since Congress has not yet acted on its proposal, NCUA is trying to do by regulatory action what Congress has not done legislatively—that is, since in NCUA’s opinion, 7% is too high a capital requirement

² Only certain credit unions are subject to risk-based net worth ratios. See 12C.F.R. 742.1

³ 12 U.S.C. 1790d(c)(1)(A)

generally for well capitalized credit unions, those approximately 3,400 well capitalized credit unions that have additional powers and can engage in riskier activities under the RegFlex Program should be subject to the 7% capital requirement that applies to all well capitalized credit unions and not a 9% requirement.

When Congress passed the Credit Union Membership Act of 1998 (CUMAA), it mandated a 7% requirement as a minimum for a credit union to be well capitalized. NCUA should not be trying to circumvent the intention of Congress by taking regulatory action to reduce the capital requirements for 3,400 credit unions that participate in the RegFlex Program and that are not subject to the restrictions that other credit unions are subject to.

Furthermore, the RegFlex Program is an attempt by the NCUA to expand the powers of credit unions. Even though it is described by the NCUA as a regulatory relief program for well-capitalized credit unions, the real purpose of the program is to give well-capitalized credit unions additional powers so they can compete more effectively against banks. Under RegFlex, there is no limit to the amount of fixed assets that a credit union can invest in. A RegFlex credit union can exceed the regulatory limit on the amount of non-member deposits that it can take or the amount of eligible loans (e.g., auto loans, member business loans, etc.) that it can purchase. The true purpose of the program is to expand credit union powers. By reducing the eligibility requirements for the program, the NCUA has making these additional powers available to approximately 460 more credit unions.

ICBA opposes any expansion of powers by credit unions as contrary to the intent of CUMAA. Expanding the powers of credit unions only diverts them from their central mission of serving the credit needs of low-and-moderate income consumers. As tax-exempt entities, credit unions should focus on that central mission.

ICBA also believes the proposal poses a potential risk for the National Credit Union Share Insurance Fund. Typically, credit unions with a high net worth and a high CAMEL rating pose less risk to the NCUSIF. Lowering the eligibility criteria for the RegFlex program would increase the risk exposure to the NCUSIF.

ICBA believes that in order to receive the expanded powers under RegFlex, i.e. relief from regulatory limits on purchasing fixed assets, taking nonmember deposits, etc., well capitalized credit unions should have to maintain a net worth ratio 200 basis points above the 7% minimum standard. To enjoy all the regulatory benefits, credit unions should be held to superior standards, not just the bare minimum.

ICBA does agree with the NCUA that imposing a longer net worth duration standard is important. Because the information is currently collected only for one quarter, this “snapshot” is too fleeting to determine sustained superior performance. ICBA encourages the Board to adopt the proposed standard that credit unions must maintain the capital benchmarks for six consecutive quarters.

Conclusion

ICBA opposes NCUA's proposal to lower capital requirements for its RegFlex Program because it is an attempt by the NCUA generally to lower capital requirements for credit unions and expand their powers. Furthermore, the proposal increases the risk exposure of the National Credit Union Share Insurance Fund. ICBA believes that credit unions that participate in RegFlex should be subject to a higher capital requirement than the 7% minimum capital standard for well-capitalized credit unions.

ICBA appreciates the opportunity to comment on the NCUA proposal. If you have questions or need any additional information, please do not hesitate to contact me at 202-659-8111 or at Chris.Cole@icba.org.

Sincerely,



Christopher Cole
Regulatory Counsel