



September 28, 2005

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Regulatory Flexibility Program
70 FR 43796 (July 29, 2005)

Dear Ms. Rupp:

America's Community Bankers (ACB)¹ appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposed amendments to the eligibility criteria for the Regulatory Flexibility Program (RegFlex).² Federally insured credit unions that qualify for the RegFlex Program are exempt in whole or in part from certain NCUA regulations.

ACB Position

ACB urges the NCUA not to adopt RegFlex eligibility requirements that establish that credit unions that are "well-capitalized" are eligible for the RegFlex program. We believe this is inconsistent with the basic tenets of safety and soundness. ACB believes that any efforts to reduce or eliminate regulatory burden must not be to the detriment of safety and soundness of the regulated institution. We do not believe the NCUA's proposed amendments to the RegFlex eligibility criteria meet this standard, particularly in light of the expanded powers and reduced regulatory requirements that RegFlex credit unions enjoy.

Background

Under existing NCUA regulations, federally insured credit unions that meet the following requirements automatically qualify for a RegFlex designation:

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

² 70 Fed. Reg. 43796 (July 29, 2005).

1. Received a composite CAMEL rating of 1 or 2 for two consecutive examinations; and
2. Have a net worth ratio of nine percent or greater and are well-capitalized under NCUA's prompt corrective action regulations.³

Qualifying for a RegFlex designation has many regulatory benefits. Among other things, RegFlex credit unions can exceed fixed asset requirements, are exempt from certain quarterly stress testing requirements, are exempt from limits on zero coupon securities, and enjoy an expanded range of loans that credit unions can purchase (including loans outside the field of membership). RegFlex credit unions also are exempt from certain business lending rules.

The proposed amendment would reduce the net worth ratio a credit union must have to automatically qualify for a RegFlex designation from the current nine percent level to "well-capitalized", as defined in the statute (currently seven percent). However, a bill that has been introduced in Congress would decrease the net worth ratio required for a credit union to be considered "well-capitalized." The Credit Union Regulatory Improvements Act of 2005 (CURIA) would reduce the threshold over which a credit union is deemed to be well-capitalized to five percent. We believe the standard for "well-capitalized" as established by the FDIC Improvement Act of ten percent is a more appropriate standard for purposes of determining safety and soundness.

General

ACB understands that certain segments of the credit union industry that do not currently qualify for the NCUA's RegFlex program have requested that the agency develop a more lenient standard for certain credit unions to partake in the special regulatory treatment enjoyed by RegFlex credit unions. While we agree that well-performing and well-capitalized institutions of all charter types should be subject to less burdensome requirements, ACB strongly believes that any efforts to reduce or eliminate regulatory burden must not be to the detriment of safety and soundness of the institution. We do not believe the NCUA's proposed amendments to the RegFlex eligibility criteria meet this standard.

Given a credit union's limited ability to raise capital, we believe that it would be imprudent to eliminate the current 200 basis point capital cushion for RegFlex credit unions. The existing 200 basis point cushion minimizes the risks associated with granting RegFlex credit unions expanded powers while relieving them from a myriad of regulatory obligations. Importantly, the 200 basis point margin reduces the risk to the National Credit Union Share Insurance Fund and provides an important buffer for RegFlex credit unions to withstand unexpected events and business fluctuations.

³ A credit union that is unable to qualify for RegFlex automatically may be eligible to apply to the appropriate Regional Director for a RegFlex designation. To be eligible to apply, a credit union must have either a CAMEL rating of 3 or better or meet the nine percent net worth criterion, but not both.

Further, if the proposed amendments are adopted, ACB is concerned that the possible passage of CURIA would permit a credit union that is undercapitalized today to become a RegFlex credit union tomorrow. The preamble to the proposed amendments confirms that if the statute is amended to provide that the minimum net worth required to be classified as “well-capitalized” is lowered the minimum net worth amount required to qualify for RegFlex also would be lowered.⁴ In the event that the NCUA issues this proposal as a final rule and the CURIA is enacted into law, the net worth ratio that a credit union would need to automatically qualify for RegFlex would be reduced by over 40 percent. We do not believe the safety and soundness objectives of the agency will be served if such a dramatic decrease in the net worth ratio for RegFlex credit unions were to be permitted. Credit unions are financial cooperatives and may only build capital through retained earnings. As a result, Congress has recognized that during periods of economic stress credit unions may encounter difficulties in building capital at the very moment they need to raise it. That is why credit unions are - and should continue to be - subject to higher minimum capital requirements than banks and savings associations.

Not only are the proposed amendments inconsistent with safety and soundness, ACB strongly believes this is the wrong time for the NCUA to be relaxing regulatory standards. The NCUA is struggling to address perpetual staff vacancies. As of June 2005, the agency was short 35 employees and was running 7,500 hours behind in completing credit union examinations. Furthermore, there are 281 credit unions with a CAMEL rating of 4 or 5, which represent a record 1.04 percent of insured credit union shares. NCUA Director Matz expressed her concerns about the status of supervision at a recent open board meeting.

In light of these facts, we believe the NCUA should focus its energies on fulfilling its primary obligation of ensuring the safety and soundness of credit unions and administering the National Credit Union Share Insurance Fund. Therefore, we request the NCUA not to adopt RegFlex eligibility criteria that parallels the threshold for being “well-capitalized.”

Conclusion

ACB appreciates the opportunity to comment on this matter. If you have any questions, please contact Krista Shonk at (202) 857-3187 or via email at kshonk@acbankers.org.

Sincerely,



Diane Casey-Landry
President and CEO

⁴ 70 Fed. Reg. 43797