

July 28, 2008

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

Sent via email

Re: Comments on Notice of Proposed Rulemaking (Incidental Powers)

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) and its member credit unions appreciate this opportunity to provide comments to the National Credit Union Administration (NCUA) regarding its proposed rule on credit union incidental powers.

The PCUA is a statewide trade association that represents over eighty percent (80%) of the approximate 589 credit unions located within the Commonwealth of Pennsylvania. To respond to this request for comments, the PCUA consulted with its Regulatory Review Committee (the Committee). This Committee consists of 12 credit union CEOs who lead the management teams of Pennsylvania federal and state-chartered credit unions. Members of the Committees represent credit unions of all asset sizes.

PCUA commends NCUA for initiating a review of the incidental powers regulation and encourages NCUA to use this opportunity to respond to the marketplace needs of the credit union community it regulates. Under the Pennsylvania Credit Union Code, state-chartered credit unions (SCUs) are granted parity with federally-chartered credit unions in the area of activities and investments. *See*, 17 Pa. C.S.A. § 501(e)(3). Accordingly, this proposal is of interest to all of our member credit unions.

PCUA staff and members support the amendments to Part 721 as proposed by NCUA. In addition, we strongly urge NCUA to include and/or expand the following powers/activities as permissible incidental powers in its final rule:

1. Excess Capacity:

The incidental powers regulation in subpart 721.3(d) enables credit unions to sell or lease any excess capacity in facilities, equipment or services (such as office space, employees and data processing) provided that the credit union properly invested in or established the

facility, equipment, or service in good faith with the intent of serving the credit union's members. *See* 12 C.F.R. § 721.3(d). There must also be a reasonable expectation that the excess capacity will eventually be taken up by the future expansion of services to the credit union's members. Under the rule, NCUA requires credit union to use the excess capacity within three to five years.

First, we ask that NCUA extend the three to five year period to accommodate the implementation of a credit union's expansion policy, which is often phased in over a ten year, or greater, period of time. In many cases, five years is too short of a time period to expect a credit union to fully implement a facility investment or service expansion plan. This limitation does not allow the credit union to minimize its losses during the expansion period.

Second, we encourage NCUA to expand the ability of a credit union to sell or lease excess capacity by allowing it to acquire a facility, even though the credit union does not, in good faith, reasonably believe that the excess capacity will eventually be used to serve members.

Credit unions from time to time are presented with opportunities to buy a facility in a premium location, but the terms of the purchase agreement require the buyer to purchase more capacity than the credit union could, in good faith, reasonably believe it would need for future expansion. At least one committee member identified a valuable lost opportunity due to the restrictions and limitations included in the current excess capacity rule.

We recognize that credit unions should not be involved in real estate speculation. However, we submit that credit unions should not be unduly restricted from investing in a non speculative real estate purchase, which, in good faith, reasonably believes will benefit the credit union, its members, and the overall community.

A specific example is the purchase of an anchor facility in a strip mall that is a premium location to serve the credit union's members. In some cases, the terms of the sale require the purchasers to also acquire other locations in the mall, which the credit union could sell or lease (or which may already be under a lease contract). We request that NCUA liberalize the excess capacity authority in the incidental power regulation so that credit unions are not disadvantaged in acquiring facilities that best meet the needs of their members and the communities they serve.

2. Purchase and Sale of Credit Union Loan Portfolios as Investments:

The Federal Credit Union Act gives broad authority to federal credit unions to sell or purchase loan participations as well as other obligations and assets in whole or part. *See* 12 U.S.C. § 1757(5)(E), (13), (14).

We urge NCUA, consistent with the provisions of the Federal Credit Union Act, to adopt an amendment to the incidental powers regulation, Part 721, or to the investment regulation, Part 703, (or both) that recognizes the ability of federal credit unions to buy and sell loan portfolios of other credit unions as investments, regardless of the membership status of the borrowers, included in the portfolio.

During recent years, we have seen a proliferation of credit union credit card portfolios being sold to financial institutions outside of the credit union movement. PCUA staff and our member credit unions strongly believe that credit union assets should be retained within the credit union system.

It is our position that the safety and soundness of the overall credit union system would benefit from the ability of credit unions to invest in assets that are generated within the movement. Furthermore, credit union members would stand to benefit from the fact that their loans would remain within the credit union movement so that the terms and conditions of their loans are not adjusted to accommodate the corporate objectives of other types of financial institutions.

3. Establishment of IOLTA Accounts:

IOLTA Accounts (Interest on Lawyer Trust Accounts) are defined in Pennsylvania as “an unsegregated Trust Account with an approved financial institution for the deposit of Qualified Funds by a lawyer.” *See* 204 Pa. Code § 81.101. The Pennsylvania regulations list credit unions as approved financial institutions authorized to establish and maintain IOLTA Accounts. *Id.*

However, the Pennsylvania regulations also state that IOLTA Accounts maintained in credit unions may not be insured because the funds of the owners may not be eligible for membership in the credit union. *See* 204 Pa. Code § 81.105(f).

We ask that NCUA amend the incidental powers regulations to clarify that credit unions may establish IOLTA Accounts for lawyers and law firms within their respective fields of membership, and that the funds deposited in the account are insured regardless of whether the lawyer or firm’s client is also eligible for membership in that credit union. In summary, the funds in IOLTA Accounts should be insured by NCUA if the lawyer or law firm establishing the account is eligible for membership in the credit union.

4. Services to Non Members:

Consistent with the provisions of the Financial Services Regulatory Relief Act of 2006, we encourage NCUA to amend the incidental powers provision, under the authority in Section 107(12) of the Federal Credit Union Act, 12 U.S.C. § 1757(12), to expand the services permissible to non members within a particular credit union’s field of

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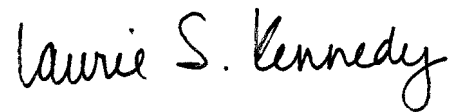
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membership. The permissible services should include the sale of gift cards and travelers checks for a fee.

The additional activities are analogous to those activities specifically listed section in 107(12) of the Federal Credit Union Act, which include: selling money orders and other similar money transfer instruments.

Thank you again for this opportunity to comment on behalf of Pennsylvania credit unions and for your consideration of the above noted activities. Please feel free to contact me or any of the PCUA staff at 1-800-932-0661 if you have any questions or if you would like to discuss our comments.

Sincerely,

A handwritten signature in black ink that reads "Laurie S. Kennedy". The signature is written in a cursive, flowing style.

Laurie S. Kennedy
Associate Counsel

LSK:llb

cc: Association Board
Regulatory Review Committee
J. McCormack
R. Wargo
M. Dunn, CUNA