June 21, 2005

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

Re: Member Business Loans
70 FR 20487 (April 20, 2005)

Dear Ms. Rupp:

America's Community Bankers (ACB)[1] is pleased to comment on the National Credit Union Administration's (NCUA) request for comment on how to best enable credit unions to participate more fully in government guaranteed loan programs. [2] Although characterized as regulatory relief, liberalizing the collateral requirements for government guaranteed loan programs will effectively allow credit unions to circumvent commercial lending limits established by Congress.

The NCUA Should Not Disregard the Statutory Intent of the Credit Union Membership Access Act.

In 1998, Congress limited a credit union's outstanding member business loans to the lesser of 1.75 times the credit union's net worth or 12.25 percent of its total assets. The Report prepared by the Senate Committee on Banking, Housing, and Urban Affairs explained that these restrictions are imposed to "ensure that credit unions continue to fulfill their specified mission of meeting the credit and savings needs of consumers, especially persons of modest means, through an emphasis on consumer rather than business loans."[3]

Over the years, the NCUA has interpreted this report language in such a way as to render the statutory requirements meaningless. NCUA regulations provide that commercial loans that are fully guaranteed by a federal agency are excluded from the definition of a member business loan. Loans that are exempt from this definition are not counted toward the aggregate loan limit. Moreover, the NCUA amended its business lending regulations in 2003 to exclude purchased

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[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. 20487.
[3] S. REP. No. 105-193 at 9-10 (1998).

participation loans from the loan limit calculation and in 2004, the NCUA amended its business lending rule to make Small Business Administration (SBA) guaranteed loans under the SBA's less restrictive lending requirements instead of under the more restrictive member business lending rule.

The implications of the proposed rule go far beyond simply alleviating regulatory burden. Easing the collateral requirements for additional guaranteed loan programs will effectively allow credit unions to make more loans that do not count toward the aggregate business loan limit. It would also result in fewer credit union assets being devoted to consumer lending.

If the NCUA proceeds with its intent to broaden its member business loan rule, the agency will continue to show blatant disregard for the intent of Congress in establishing the 12.25 percent limit. We reiterate our belief that any business loan on the books of a credit union must be counted toward the aggregate loan limitation.

The Proposed Rule Would Strengthen the Argument for Credit Union Taxation.

Credit unions must be subject to a meaningful business lending limit, otherwise, their tax-exempt status should be one step closer to revocation. We remind the NCUA that in 1952 Congress revoked the tax exemption of mutual savings banks and other cooperatively organized depository financial institutions because they were deemed to be in active competition with commercial banks. At that time, mutuals could operate only within a 50 mile radius and could not even offer checking accounts, much less offer commercial loans or serve markets with over ten million residents.

The NCUA's contemplated expansion of its member business lending rule continues down the path of making credit unions substantially similar to tax paying commercial banks and mutual savings banks. In order for credit unions to remain tax-exempt and in order for the NCUA to maintain its credibility as a regulator, the agency should not encourage and enable credit unions to circumvent the statutory cap established by Congress. Otherwise, the distinction between community banks and credit unions will be further blurred until the rationale for exempting credit unions from federal taxation will cease to exist.

Conclusion

ACB appreciates the opportunity to comment on this matter. If you have any questions, please contact the undersigned at (202) 857-3121 or via email at cbahin@acbankers.org or Krista Shonk at (202) 857-3187 or via email at kshonk@acbankers.org.

Sincerely,

Charlotte M. Bahin
Senior Vice President
Regulatory Affairs