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July 2, 2008

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

Re: National Credit Union Administration; The Low-Income Definition; 12 CFR Parts 701 and 705; 73 Federal Register 22836, April 28, 2008

Dear Ms. Rupp:

The American Bankers Association (ABA) is responding to the proposed rule published by the National Credit Union Administration (NCUA) that would amend the definition of low-income. Specifically, NCUA proposes changing the income standard for designating low-income credit unions (LICUs), from median household income (MHI) to median family income (MFI). The proposed rule also includes a five-year grandfather provision to allow existing LICUs to qualify under the new MFI standard or adequate transition time if they no longer qualify for the low-income designation.

ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $12.7 trillion in assets and employ over 2 million men and women.

The new definition will align the criteria for a low-income designation with the criteria for adding an underserved area to a credit union's field of membership, thereby enabling NCUA to potentially expand the number of credit union receiving a low-income designation. This would in turn allow credit unions to circumvent the statutory aggregate business loan cap of 12.25 percent of assets and to raise secondary capital from nonmembers. Rather than changing the income standard for being designated as a LICU, NCUA should assure that those credit unions currently qualifying as LICUs actually meet the objective of the low-income designation. To do less is simply window dressing to give the illusion that credit unions are serving low-income members while enhancing their ability to depart from that central mission and purpose of the credit union charter.

Available evidence indicates that credit unions receiving low-income designations are not predominately serving low-income members. NCUA in 2006 found that only 21 percent of membership at LICUs earned less than 80 percent of the median family income as a percent of the Metropolitan Statistical Area's MFI.[1] Changing the income standard for low-income designation from median household income to median family income does nothing to improve the likelihood that credit unions will serve low-income members.

**Background**

Under current regulation, a credit union can achieve a low-income designation if it predominately[2] serves low-income members. Section 701.34 of NCUA's Rules and Regulations identifies three standards to determine if a federal credit union qualifies for a low-income designation. The standards are that the credit union predominantly serves—

- members who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics; or
- members whose annual household income falls at or below 80 percent of the MHI for the nation as established by the Census Bureau; or
- members otherwise defined as low-income as determined by order of the NCUA Board, such as full-time or part-time students in a college, university, high school, or vocational school.

In documenting its low-income membership, a credit union that serves ***a geographic area*** where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members.

Once a credit union receives low-income designation, it is provided significant statutory and regulatory relief. A low-income credit union—

- Is eligible to accept non-member deposits in excess of the regulatory cap,[3]
- May issue secondary capital,
- Is granted a waiver from the aggregate member business loan cap of 12.25 percent of assets, and
- May receive financial assistance from the Community Development Revolving Loan Fund (CDRLF) administered by NCUA.

The number of credit unions receiving a low-income designation has grown considerably in recent years. At the end of 2000, there were 632 LICUs. By the end of 2007, there were 1,088 – an increase of more than 72 percent.

**ABA's Position**

The proposal aligns the income standards for low-income designation with those of credit unions adding underserved areas to their fields of membership. This potential would expand the availability of the low-income designation to more credit unions

[1] *Report to the NCUA Board on the Member Service Assessment Pilot Program*, November 3, 2006.
[2] Section 701.34(3) defined the term "predominantly" as a simple majority.
[3] Section 701.32(b) (1) states that "the maximum amount of all public unit and nonmember shares shall not, at any given time, exceed 20% of the total shares of the federal credit union or $1.5 million, whichever is greater."

without verifiable measures that credit unions receiving a low-income designation are in truth serving low-income persons.

NCUA's proposed change would define a low-income member to mean "those members … living in a geographic area within a Metropolitan Area, where the median income is at or below 80% of the greater of the Metropolitan Area income standard or the national Metropolitan Area income standard; or living in a geographic area outside a Metropolitan Area, where the median income is at or below 80% of the greater of the statewide, non-Metropolitan Area income standard or the national non-Metropolitan Area income standard." This proposed change in income standards, however, will do nothing to ensure that the institutions under NCUA's supervision are actually doing more than paying lip service to the goal of serving low-income members.

For some in the credit union industry, the "low-income" designation is about exploiting the NCUA's willingness to allow the institutions that it regulates to expand beyond the legal limitations. If the NCUA is truly serious about administering the "low-income" designation in a manner that actually assists low-income persons, it will require credit unions to demonstrate, with verifiable measures, that they are in truth serving these persons as credit union members.

The requirement that a simple majority of the members living in a geographic area meet the income standard in order to receive low-income designation does nothing to assure that those served in the area are in fact low-income individuals. Instead, it is an avenue to expand the geographic and membership base of credit unions in order to serve wealthier individuals and businesses. A 2006 study by NCUA found that only 21 percent of low-income federal credit unions' membership earned less than 80 percent of the median family income as a percent of the Metropolitan Statistical Area's MFI. This is a far cry from being predominantly engaged in serving low-income members. To achieve a low-income designation, a majority of members should be at or below the 80 percent standard, and the majority of loans and deposits should be from low-income members.

If you have any questions about this letter, please do not hesitate to contact the undersigned.

Sincerely,

Keith Leggett