

38

SEP28'05 AM 7:41 BOARD

OHIO CREDIT
UNION LEAGUE

September 27, 2005

VIA FACSIMILE (703) 518-6319

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

Re: Ohio Credit Union League -- Comments On Proposed Rule Part 741.8

Dear Ms. Rupp:

The Ohio Credit Union League ("the League"), the trade association advocating on behalf of 495 credit unions in Ohio, both federal and state chartered, and their 2.8 million members, appreciates the opportunity to comment on the National Credit Union Administration's ("NCUA") proposed Rule Part 741.8 regarding the purchase and assumption and assumption of liabilities and nonconforming investments. In its proposal, the NCUA has requested comments on the following three issues.

First, the rule clarifies that transactions involving the sale or purchase of loans or other assets between federally insured credit unions do not require NCUA approval. Furthermore, for those transactions that do require approval, the requirement must be submitted to the appropriate NCUA office.

Second, comments are requested on revisions to the rules involving special reserves for nonconforming and credit union service organizations ("CUSOs") investments by federally insured state chartered credit unions ("FISCUs"). NCUA is considering removing the requirement for FISCUs to establish special reserves for nonconforming investments and, instead, requiring these nonconforming investments to be of "investment grade," which means a security that at the time of purchase is rated in one of four highest rating categories by at least one nationally recognized statistical rating organization.

Third, NCUA is also considering extending some of the limits in the CUSO rule to FISCUs, which are currently not subject to these requirements and limitations. For example, under these rules, federal credit unions can invest and lend to a CUSO only if it is structured as a corporation, limited liability company, or limited partnership and primarily serves credit unions or their membership. In addition, NCUA requires corporate separateness between the federal credit union and a CUSO. NCUA is considering whether these rules should also require FISCUs investing in CUSOs to comply with the limits on the structure, accounting, audits, NCUA access, and corporate separateness that are outlined in the CUSO rules for federal credit unions.

AMERICA'S
CREDIT
UNIONS™*an affiliate of the Ohio Credit Union System*

5815 Wall Street, Dublin, Ohio 43017

614-336-2894 ■ 800-486-2917 ■ fax 614-336-2895 ■ www.OhioCreditUnions.org

39

In reviewing the first proposal to clarify that transactions involving the sale or purchase of loans or other assets between federally insured credit union do not require approval, the League agrees with the NCUA proposal and supports the NCUA belief that transfers between federally insured credit unions "should not unduly affect the safety and soundness of federally insured credit unions" nor do the transactions between federally insurance credit unions "materially impose risk to the NCUSIF."

The second proposal requests comments on the provisions governing nonconforming investments by federally insured state chartered credit unions including investments in CUSOs and whether the investments should be limited to investment grade. The reason given for this proposal "is that some state chartered credit unions may make investments beyond those authorized in the Act or NCUA regulations for FCU [federally chartered credit unions] and these investments raise safety and soundness concerns".

In reviewing this second proposal, the League does not support NCUA's proposed changes to this rule. Under the current rule, state chartered federally insured credit unions are currently required to "establish special reserves for those investments if their market value is less than book value". More importantly, NCUA's regulations specifically state that, "State chartered credit unions are required to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the ACT or the NCUA Rules and Regulations". This proposal would not only undermine and preempt the authority of the respective state credit union regulators but could preempt other provisions in state law.

While NCUA uses safety and soundness concerns as its basis to preempt state law it falls short in supporting this determination. Furthermore, state chartered credit unions are regulated by their respective state regulators. That respective state regulator is empowered to determine the safety and soundness of the investments pursuant to state law and the status of the credit union. It is the League's position that this proposal does not maintain the separation of the authority of the state regulator as the chartering authority under statute and regulations, and NCUA's authority pursuant to its insurance regulations.

The third proposal presented by NCUA is to extend some of the limits in the CUSO rule to federally insured state chartered credit unions. Currently, state chartered credit unions are not subject to the limitations and requirements of Part 712 of NCUA's regulations. State chartered credit unions are regulated by their respective state credit union regulators. In addition, CUSOs are usually organized, chartered, or incorporated pursuant to state law and fall under the requirements of state law as they pertain to structure, governance, securities, and other appropriate regulatory authority. They may also be subject to federal laws, regulations, and other authorities if applicable.

Extending some of the limits in the CUSO rule to state chartered credit unions would go beyond the foundation of the dual chartering system, and relegate state law and state regulations as secondary to federal credit union regulations. In addition, credit unions, when forming a CUSO or investing in an entity that provides non exclusive services to members as well as nonmembers, should use its best efforts to determine if it is in the best interest of the credit union. The credit union, whether federal or state chartered, should be able to make an informed decision. If the investment does not meet the criteria of the respective credit union act or regulations, the respective regulator should provide for an alternate approval process to determine if the credit union should be permitted to invest in the entity. The respective federal or state credit union laws or regulations should not preempt the laws or regulations under which a credit union is chartered and regulated.

40

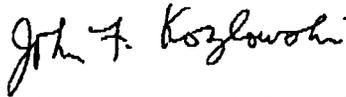
Credit unions, when offering products and services to their members consider many factors when determining how best to provide services to their members. This can include offering these services by the credit union itself, or through a subsidiary such as a CUSO. In choosing a CUSO as a means to offer services, the credit union would consider many factors including limiting its liability through separate entities. If the concern is about "potential liability for state chartered credit unions" and "for the NCUSIF" it is the responsibility of the respective state credit union regulators to regulate and examine the credit union to maintain their viability and operation in a safe and sound manner. The issue of oversight of the share insurance provider must be that of insurer and not as the regulator.

Credit unions in Ohio enjoy the dual chartering option and are fortunate to have strong and fair regulatory authority on both a state and federal level. To create a system that would favor one over the other would not be in the best interests of the credit union movement. While it may appear that preemption of one law or regulation over another may provide a consistent approach to regulation of the credit union movement, it fails to consider the intent of the respective legislative bodies in enacting the laws that govern credit unions.

The Ohio Credit Union League appreciates the opportunity to provide comments and input on NCUA's proposed regulations as well as other issues under consideration.

If you have any questions, comments, or if I can be of further assistance please do not hesitate to contact me at (800) 486-2917.

Sincerely,



John F. Kozlowski, General Counsel

cc: Doug Fecher
Paul L. Mercer
Advocacy Staff
Mary Dunn
Jeff Bloch