

September 22, 1992

Joseph P. Bauer, Esq.
Bauer & Gravel
The Carriage House
362 Main Street
Burlington, VT 05402-0607

Re: Denial of Request for Approval of Other Services (Your Letter Received on August 31, 1992)

Dear Mr. Bauer:

On behalf of your client, New England IBM Employees Federal Credit Union (the "FCU"), you requested approval for the FCU's wholly owned credit union service organization ("CUSO") to operate a state "licensed lender." For the reasons stated in this letter, NCUA denies this request. If the program were restructured to provide only consumer mortgage lending and otherwise complied with the CUSO and other NCUA Rules and Regulations it may be permitted. Safety and soundness issues remain the concern of the NCUA Regional Office. If you wish, you may appeal this denial determination to the NCUA Board.

BACKGROUND

The FCU incorporated a wholly-owned CUSO, NEFSCO, Inc. ("NEFSCO"), on March 4, 1983. Since July 1, 1984, NEFSCO has been providing financial and tax advice predominantly to the members of the FCU in the State of Vermont. Financial planning and counseling and income tax preparation are preapproved CUSO activities. 12 C.F.R. ~701.27(d)(5)(ii). Due to a shrinking member base as a result of sponsor layoffs and a declining loan to deposit ratio, the FCU proposes to increase loan volume by registering NEFSCO as a "Licensed Lender" in the State of Vermont. The FCU plans to purchase 90% of all NEFSCO-originated loans, except first mortgage loans. As a licensed lender, NEFSCO proposes to originate consumer mortgage loans (first and second mortgages and home equity loans), automobile loans, credit card loans, and other consumer loans.

The "Licensed Lenders" chapter of the Vermont statutes permits any "person, partnership, association, or corporation" to make loans (mortgage, consumer and most commercial loans) to any party in Vermont upon such prospective lender making application, filing a bond, receiving approval and a license and following certain provisions regarding recordkeeping, annual reporting, advertising, examination by the state commissioner, and using certain provisions in its loan contracts. Vt. Stat. Ann. tit. 73, ~2201 - 2235 (1991 Supp.). Essentially, NEFSCO would be a state-chartered consumer finance company providing loans to the general public. The NEFSCO Statement of Convenience and Advantage states: "[t]he 74,000 people who work in [Chittenden] County [of Vermont] are potential borrowers to NEFSCO, as they may require the three forms of consumer finance which we will offer." NEFSCO Application for a Licensed Lender License, Statement of Convenience and Advantage, Attachment D. The FCU's field of membership does not encompass all residents of Chittenden County, Vermont. The consumer finance activity proposed is not a preapproved activity for CUSOs. 12 C.F.R. ~701.27(d)(5)(i) and (ii).

ANALYSIS

Your request is made under the authority of Section 701.27(d)(5)(iii) of the NCUA Rules and Regulations, which states:

(iii) NCUA approval of other services. Any service or activity which is not authorized in paragraph

(d)(5)(i) or (ii) of this Section must receive NCUA Board approval before an FCU may invest in and/or loan to the CUSO that offers the service or activity. Any request for NCUA Board approval of a new service or activity should include a full explanation and complete documentation of the service or activity and how that service or activity is associated with routine credit union operations. The request should be submitted to the appropriate NCUA Regional Office. The request will be treated as a petition to amend paragraph (d)(5)(i) or (d)(5)(ii) of this Section and NCUA will request public comment or otherwise act on the petition within 60 days after receipt. 12 C.F.R. ~701.27(d)(5)(iii).

The request for "licensed lender" activity to be approved for CUSOs is defective in several respects. First, an FCU may invest in or loan to a CUSO only if the CUSO "primarily serves credit unions and/or the membership of affiliated credit unions...." 12 C.F.R. ~701.27(d)(4). Under the proposal, NEFSCO would serve members of the general public, which is impermissible for CUSOs. Second, the FCU would be prohibited from participating in the loans made by a licensed lender, as is proposed, unless the loans were those which it is empowered to grant itself and were loans to the FCU's members or members of another participating credit union. 12 C.F.R. ~701.22(d)(1). An FCU can only purchase eligible obligations. Generally, eligible obligations are member loans. 12 C.F.R. ~701.23. All other provisions of Sections 701.22 and 701.23 of the NCUA Rules and Regulations must be followed. Third, consumer finance lending is not analogous to consumer mortgage lending, the latter of which is a preapproved CUSO activity. Consumer loans are already offered by the FCU to its members. NCUA permitted mortgage lending for CUSOs because doing so "enables several credit unions to join together to offer their members consumer mortgage loans. Such an arrangement promotes the economies of scale which are essential to provide such service in a cost effective and professional manner." Final Rule, 51 Fed.Reg. 10353, 10356 (March 26, 1986). If NEFSCO limits its lending to consumer mortgage activities and its customer base as provided in Section 701.27(d)(4), NCUA approval is not necessary. Of course, the FCU must comply with all other provisions of the NCUA regulations. Lastly, NCUA has safety and soundness concerns with the proposal, which you may discuss with Michael Wheeler, Director of Supervision, Region I (ph. 518-464-4180).

As a result of these findings, NCUA has determined that it would be futile to publish your request for comment. For, even if it did so, both the regulatory prohibitions and policy considerations to your proposal would not be overcome. Therefore, NCUA denies your request for the CUSO, NEFSCO, pursuant to 12 C.F.R. ~701.27(d)(5)(iii), to become chartered as a "Licensed Lender" under Vermont law.

Sincerely,

Hattie M. Ulan
Associate General Counsel

GC/MEC:sg
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