

July 9, 2004

Harold E. Feeney, Commissioner
Texas Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

Re: Texas Member Business Loan (MBL) Regulation.

Dear Mr. Feeney:

The purpose of this letter is to clarify NCUA's position about a state supervisory authority (SSA) applying a general lending rule to waive requirements found in the state's MBL rule approved by the NCUA Board. We believe an SSA may only grant waivers from MBL requirements if the NCUA Board approved the type of waivers permitted and the procedure for authorizing waivers when it granted the state rule exemption. An SSA in a state that has received an exemption from NCUA's MBL rule cannot use a general waiver provision to grant MBL waivers without approval from the NCUA Board.

The NCUA Board granted an exemption from NCUA's MBL rule to Texas on November 18, 1999, and approved amendments to Texas' MBL rule (Texas rule) on January 23, 2003. 7 TEX. ADMIN. CODE §91.709. We note that neither of the proposals presented to the NCUA Board for review addressed types of waivers permitted or a procedure for waivers similar to those in NCUA's MBL rule. 12 C.F.R. §§723.10-.11.

There is a general lending regulation in the Texas Administrative Code that, by its terms, grants you discretion to permit waivers of lending requirements. 7 TEX. ADMIN. CODE §91.701(e). Waivers, if any, granted under this provision for any requirements in the Texas MBL rule approved by the NCUA Board are impermissible. The potential application of this waiver provision in the general lending regulation was not presented to the NCUA Board as part of its approval of the Texas MBL rule. NCUA Board did not analyze the impact of waived requirements when reviewing the Texas rule and did not authorize your office to grant waivers from the requirements in the Texas rule.

NCUA must approve the scope of waivers permitted for federally insured state-chartered credit unions (FISCU) operating under an exempt state rule. Otherwise, an FISCU could seek a waiver from many conditions imposed in the rule that may not be waived in NCUA's rule or under the Federal Credit Union Act. 12 C.F.R. §723.10. Furthermore, a state's waiver process must adequately

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address NCUA's role for waiver approvals. See 12 C.F.R. §723.11. "Being part of the process allows NCUA, as the insurer of credit unions, to ensure that all waiver requests are properly reviewed." 64 Fed. Reg. 28721, 28725 (May 27, 1999). NCUA's responsibilities remain the same regardless of whether a state operates under NCUA's MBL rule or receives an exemption for its own rule.

When the NCUA Board exempts a state rule, it does so with the understanding that FISCUs in that state will be subject to the entire rule as presented to and reviewed by the Board. This is discussed in the attached legal opinion, OGC Opinion 04-0507, dated July 2, 2004. An SSA cannot authorize additional lending authority outside of the four corners of the state's exempted rule approved by the NCUA Board.

We understand that your office may want to accommodate Texas FISCUs that seek relief from some of the Texas rule's requirements and, in our view, your office has two options to achieve this goal. You can seek approval from the NCUA Board to amend the Texas rule by placing waiver guidelines and a waiver process in the Texas rule. Alternatively, you can rescind the current Texas rule so that Texas FISCUs can use the NCUA MBL rule that went into effect in October 2003 and obtain waivers as provided in NCUA's MBL rule. Please let us know if you have any questions.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

OGC:CJL/bhs
04-0702
Enclosure