



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

March 24, 1992

*Member Bus. Loan*

Gary D. Preszler  
Commissioner  
Department of Banking and  
Financial Institutions  
State of North Dakota  
State Capitol  
600 East Boulevard Avenue, 13th Floor  
Bismarck, ND 58505-0080

Re: **Substantial Equivalency Application**  
(Your Letter of February 14, 1992)

Dear Mr. Preszler:

The State of North Dakota has applied to the NCUA Board for a determination that the North Dakota Chapter 13-03-16, North Dakota Administrative Code, Member Business Loan Limits ("North Dakota Rules"), is substantially equivalent to Section 701.21(h) of the NCUA Rules and Regulations ("NCUA Member Business Lending Rule"). 12 C.F.R. §701.21(h). State-chartered federally insured credit unions are subject to the Member Business Lending Rule unless the NCUA Board grants an exemption to a state based upon a finding that the state's rule is substantially equivalent. See 12 C.F.R. §741.3. For the reasons outlined in this letter, NCUA staff believes that the North Dakota Rules are not substantially equivalent to the NCUA Member Business Lending Rule. Although we can proceed with submitting your application to the NCUA Board for a determination on the North Dakota Rules as presently written, we wish to advise you that submission will carry an NCUA staff recommendation against favorable action. Instead, we recommend that North Dakota repeal the 10% additional agricultural operating line provision of its proposed rules, and then resubmit an application for a substantial equivalency determination.

In the preamble of the revised business lending rule, effective January 1, 1992, the NCUA Board states:

State regulatory authorities and federally insured state-chartered credit unions are advised, however, that exemptions previously obtained by states under

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the existing regulations are no longer valid to the extent that existing state regulations are not substantially equivalent to these final regulations. Such states must reapply for exemption as provided in this section. 56 Fed. Reg. 48421, 48425 (September 25, 1991).

NCUA approved the last North Dakota application for a substantial equivalency determination on January 13, 1988, upon the following conditions:

- a. North Dakota providing the Regional Office with acceptable documentation to show that the rules have been combined regarding maximum dollar amount to any one borrower that is exempted from the rules.
- b. North Dakota providing the Regional Office with acceptable documentation to show that the business loan rule has been changed to reflect the change to \$25,000 and over before the loans come under the regulation.
- c. North Dakota providing the Regional Office with acceptable documentation to show that any requests for waiver of their rules also be reviewed by the Regional Director, Region V.
- d. North Dakota's 10 percent additional funds for agricultural operating loans and \$40,000 exclusion limit expires in 3 years subject for re-review by the NCUA Board for continuing substantial compliance.
- e. North Dakota provides Regional Office with acceptable documentation to show that the Rule has been changed to state that a credit union cannot make business or agriculture loans to any member of the board who is compensated as such. Compensation does not include reimbursement of directors for the actual loss of wages or leave incurred while attending board of directors' meetings. NCUA Board Order, January 13, 1988.

It should be noted that North Dakota did not apply to NCUA for a re-review of the substantial equivalency compliance of the North Dakota rule permitting additional funds for agricultural operating loans. Therefore, that North Dakota rule has been in noncompliance with the NCUA Board Order since January 14, 1991.

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North Dakota reapplied for a new substantial equivalency determination from the NCUA Board in November 1991.

The North Dakota Rules vary in the following three areas from the NCUA Member Business Lending Rule: 1) an expanded timeframe for exemption requests; 2) exemptions granted under the North Dakota Rules are made by the state credit union board; and 3) additional authority for agricultural loans. NCUA staff does not have any reservations concerning the extended 90 day timeframe for action on exemption requests. Nor does staff have reservations regarding the North Dakota Rules which would require that the state credit union board grant exemptions to North Dakota-chartered credit unions, but specify that the quarterly monitoring reports must be sent to the NCUA Regional Director. Recently, the NCUA Board permitted North Carolina, in a substantial equivalency determination, to grant such exemptions, "provided that North Carolina establish a system to furnish the quarterly monitoring reports to the NCUA Regional Director." Essentially, the North Dakota Rules would also require this.

However, **NCUA staff does have serious reservations about allowing North Dakota-chartered credit unions to lend an additional 10 percent of the credit union's reserves to any one member or group of associated members if such credit is extended for seasonal advances associated with operating purposes for the production of farm products, and repayment of which is required to be made within a normal business cycle not to exceed twelve months.** The NCUA Board determination that this provision was substantially equivalent expired on January 14, 1991. NCUA staff believes that this provision is not substantially equivalent based upon the Region's experience and the new NCUA Member Business Lending Rule. Staff disagrees with your assertion that agricultural operating lines are less risky; rather, staff believes that North Dakota's provision simply allows credit unions to assume a higher overall risk level without an evaluation of their ability to assume such risk. A central purpose of the NCUA Member Business Lending Rule is to establish minimum standards for underwriting and monitoring member business loans while imposing a risk containment factor through an individual loan limitation. The original regulation as well as the recent revision foresaw the need for individual as well as state-wide exemptions from the regulation, and a waiver process was included which required an evaluation of the credit union's program and capabilities. The preamble to

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the current regulation clearly states that there will be no fundamental distinction between business and agricultural lending and that they both fall under the same general category.

Fifty-five commenters requested a separate rule for agricultural lending. At this time, the Board is convinced that agricultural and other types of business lending share common characteristics and behavioral patterns and accordingly, fall into the same general category. A separate rule has not been incorporated. 56 Fed. Reg. 48421, 48422 (September 25, 1991).

If you have any questions regarding the foregoing or wish to have the NCUA Board rules, proceed on the existing please contact either me or Martin Conrey, Staff Attorney (ph. 202/682-9630).

Sincerely,



Hattie M. Ulan  
Associate General Counsel

cc: Timothy P. Hornbrook  
Department of Supervision Director  
Office of Examination and Insurance

John S. Ruffin  
Region V Director

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