

December 21, 1999

Mr. Alexander T. Hunt
Office of Management and Budget
Room 10226
New Executive Office Building
Washington, DC 20503

Dear Mr. Hunt:

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, in response to the National Credit Union Administration's (NCUA) request for comment on its intention to subject federal credit unions to a survey on the status of their service to people of modest means.

Section 3508 of the Paperwork Reduction Act of 1995 sets forth the following standard for the determination of the necessity of an information collection:

Before approving a proposed collection of information, the Director [of the Office of Management and Budget] shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have *practical utility*. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.¹

For the reasons set forth in detail below, NAFCU believes that NCUA's proposed information collection is without "practical utility" as that term is defined by the Paperwork Reduction Act. In light of this, NAFCU urges OMB to find that the information collection is unnecessary and exercise its statutory authority to prohibit NCUA from distributing the survey to federal credit unions.

¹ 44 U.S.C. § 3508 (emphasis added).

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Practical Utility

According to the Paperwork Reduction Act, the term “practical utility” means, “the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion[.]”² Based on the NCUA Board Chairman’s own reaction to the survey and the survey questions³ themselves, NAFCU believes that the agency will not be able to process the information obtained from the survey in either a timely or useful fashion in furtherance of its stated goal of determining the extent of federally-insured credit unions’ efforts to serve their low-income members.

Even without reaching the merits of the survey itself, NAFCU believes that OMB must find that the survey will not provide NCUA with useful information. At the November 18 NCUA Open Board Meeting, Chairman Norman E. D’Amours provided the public with a “Board Action Memorandum”⁴ (BAM) concerning a survey of credit unions’ service to low-income members. The BAM indicated that Chairman D’Amours desired for the survey to be mandatory for *all* federally-insured credit unions – both those chartered by the federal government as well as those chartered by state governments.⁵ This proposal, however, died for lack of a second.

At the same meeting, Board Member Yolanda Wheat proposed an alternative survey that would be distributed to federal credit unions (but not state-chartered federally-insured credit unions) and would be voluntary in nature. Wheat’s alternative proposal was approved by the Board by a vote of two to one, with Chairman D’Amours casting the dissenting vote. As discussed in the BAM, D’Amours believed that Wheat’s alternative would produce results that would not meet the practical utility standard set forth in the Paperwork Reduction Act. D’Amours stated in the BAM:

Based on information gathered in a voluntary survey, NCUA could not make any reliable projections of the efforts of the credit union community in serving low-income people. One of the first rules of survey research is that a voluntary self-selecting sample does not reliably indicate what is happening in the broader community. Therefore, NCUA could not reasonably conclude anything about the overall efforts of credit unions to serve low-income people. There is also the

² 44 U.S.C. § 3502(11).

³ See Appendix A.

⁴ See Appendix B.

⁵ The difference in the population sizes between the two categories of credit unions is notable. As of June 1999, the total number of federal credit unions was 6,707 with 44.1 million members. The total number of federally insured credit unions was 10,841 with 74.6 million members.

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danger, in using a voluntary self-selecting data gathering approach, that the results will be improperly interpreted.⁶

While NAFCU is adamantly opposed to the Chairman's insistence that the survey should be a mandatory one, we agree with his conclusion that any information derived from the proposed Wheat survey, which is now pending OMB approval, will fail to meet the "practical utility" standard set forth in the Paperwork Reduction Act. NAFCU also reminds OMB that, as the Chairman of NCUA, D'Amours holds special weight in the OMB information collection process. Section 3506 of Title 44 states that, "[t]he *head* of each agency shall be responsible for – (A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and (B) complying with the requirements of this chapter and related policies established by the Director."⁷

Assuming that the Chairman's doubts as to the practical utility of the survey alone are unconvincing, when added to the abundance of flaws incorporated into the survey itself, NAFCU is confident that OMB will agree that the survey does not meet the practical utility requirement.

Survey Question Flaws

The first question in the survey asks, "[d]oes your credit union make special efforts (including marketing) to reach out to *lower income* members." As an initial matter, the question does not solicit information relating to the underlying purpose of the survey – which is to determine credit unions efforts to serve their *low-income* members. "Lower income" is a foreign concept to credit union vernacular appearing nowhere in prior agency publications. Precisely what group NCUA is soliciting information about is completely unclear from the question and leaves credit unions with no choice but to apply their own, subjective definition to, what is essentially, the purpose of the survey.

Even assuming that NCUA merely submitted to OMB a survey with an unfortunate typographical error, the problem would not be rectified were the agency simply to substitute "low-income" for "lower income." The term "low-income member" is not clearly defined in NCUA regulations. Chapter 3 of NCUA's Chartering and Field of Membership Manual includes full-time or part-time students in a college, university,

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⁶ See Appendix B (emphasis supplied).

⁷ 44 U.S.C. § 3506(a)(1) (emphasis added).

high school or vocational school within the term “low-income”⁸ – despite the fact that one’s status as either a full-time or part-time student is not necessarily an indicator of one’s income. Unfortunately, all other references to low-income in the Chartering and Field of Membership Manual are in the context of the credit union’s ability to obtain a low-income designation rather than a true definition of a low-income member.

Part 705 of NCUA’s Rules and Regulations also provides a definition of “low-income member.” Unfortunately, this definition does not provide a bright-line test for determining which individuals will be considered low-income. Section 705.3 states that:

The term “low-income members” shall mean those members who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics or those members whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau or those members otherwise defined as low-income members as determined by order of the NCUA Board.⁹

Using the definition from Part 705, credit unions would need to do one of two things in order to answer question number one properly. First, they could submit their field of membership to NCUA in order to have the agency determine, by order, whether the group or groups being served by the credit union meet[s] the low-income definition (which is ultimately a determination that NCUA has insufficient data to make). This, of course, would take a great deal of time and would put an unanticipated strain on NCUA resources. Second, the credit union could attempt to identify those members that meet the eligibility test for low-income by the data provided by the Bureau of Labor Statistics or the Census Bureau. This, of course, assumes that credit unions capture the type of information necessary to accomplish this task. In reality, data related to members’ income is not collected as a matter of course. Such information is usually only captured by credit unions when it is needed to make lending decisions.

Once the credit union has accomplished the initial task of identifying its “low-income” members, it must undergo the Herculean feat of determining whether it made “special efforts” to reach out to such individuals. The problems associated with this aspect of the question are numerous.

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⁸ *National Credit Union Administration Chartering and Field of Membership Manual 3-1* (1999).

⁹ 12 C.F.R. § 705.3

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Low-income designated credit unions will be particularly challenged when answering this question. By definition, a majority of their members fall into the definition of low-income. It would, however, be unlikely that the credit union would undertake any type of “special efforts” to serve what is fundamentally its principle field of membership. Does this mean that credit unions that are known to offer low-income designated services must answer “no” to question number one? Ironically, because of the structure of the question, it appears that such a result would be required. This, no doubt is an obviously serious flaw in the construction of the survey, which will elicit poor and possibly misleading responses to this threshold question.

The above example is not, however, the only apparent flaw in the survey question. It is unclear whether credit unions should answer the question based on their members’ actual status as low-income members or on their perceived status as low-income members. Consider the following hypothetical: Earlier in the year hypothetical “XYZ” Federal Credit Union had conducted a mass mailing to an area of its membership thought to be a low-income area. In an effort to fill out the “Wheat” survey, XYZ FCU goes through the trouble (and has access to the documents necessary) to determine what members would fall into the category of low-income. XYZ FCU finds that none of its members qualify. Does XYZ FCU answer “yes” or “no” to question number one?

XYZ FCU would answer “yes” to question number one if the credit union is responding in the spirit of the survey. XYZ FCU would answer “no” to question number one if the credit union is responding to the plain language of the question. Either way, NAFCU believes that the fact that the survey could potentially elicit such vastly different answers based on the subjective reading of individual credit unions can lead to no other conclusion than that the survey has no practical utility.

While the determination of whether an information collection has “practical utility” is clearly under OMB’s jurisdiction, this finding is based, in large part, on the representation that the federal agency seeking approval has complied with Section 3506(c)(1) of the Paperwork Reduction Act. NAFCU believes that NCUA’s assurance that it has complied with this section is based on a misrepresentation of the nature of the survey and the true burden to credit unions associated with the survey.

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Section 3506 Responsibilities

Section 3507 of the Paperwork Reduction Act prohibits agencies from conducting or sponsoring the collection of information unless the agency has conducted the review set forth under Section 3506(c)(1).¹⁰ Section 3506(c)(1) requires that a designated NCUA representative review the following:

- i. an evaluation of the need for the collection of information;
- ii. a functional description of the information to be collected;
- iii. a plan for the collection of the information;
- iv. a specific, objectively supported estimate of burden;
- v. a test of the collection of information through a pilot program, if appropriate, and
- vi. a plan for the efficient and effective management and use of the information to be collected, including necessary resources¹¹

While NAFCU does not have access to all of the documents that NCUA has submitted to OMB in support of its proposed information collection, we believe that the public request for comment published in the Federal Register on November 26 provides enough information to conclude that NCUA has misrepresented the nature and burden associated with this survey to both OMB and the public.

The first requirement of agencies seeking to have an information collection approved by OMB is to “review an evaluation of the need for the collection of information.” NCUA has informed the public that this information collection is necessary to “guide NCUA in the policy making process.”¹² This statement, however, misrepresents the nature of the survey. NCUA has informed the public that it “is considering policy changes which could result in substantial impact on credit unions.”¹³ This would lead the public to believe that the purpose of the survey is to define the nature and scope of policy changes that are already under consideration at the agency. The actual survey, however, elicits information on a much more basic level. As it is currently constructed, it is designed to determine whether there exists a need for a policy change. NAFCU believes that OMB

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¹⁰ 44 U.S.C. § 3507(a)(1)(A).

¹¹ *Id.* at § 3506(c)(1)(A).

¹² 64 Fed. Reg. 66,507 (1999).

¹³ *Id.*

cannot ignore NCUA's apparent disregard for either its statutory obligation to review the need for the survey or its apparent misrepresentation to the public as to the purpose of the survey. In either case, NAFCU believes that NCUA has not met its burden under the statute and should not be permitted to go forward with this information collection.

Further evidence that NCUA has not properly conducted the review that it is statutorily required to perform prior to submitting an information collection for OMB's approval can be found in the agency's representation of the burden that credit unions will be expected to shoulder in connection with answering the survey. NCUA estimates that the survey will place a one-time burden of .5 hours on each credit union that chooses to respond. Based on this estimate, NAFCU can only assume that the agency did not anticipate the research that credit unions would need to do in order to provide the agency with meaningful responses.

As NAFCU has already pointed out (in detail), credit unions can provide easy answers to the survey only if those answers are based on purely subjective definitions of "lower income" and "special efforts." NAFCU fears that the agency will take these subjective, and therefore unreliable, responses and craft sweeping policy changes that are likely to have adverse effects on the operation of federal credit unions for years to come.

In addition to underestimating the actual time that will be required to answer the survey questions properly, NCUA is operating under the incorrect assumption that long-standing policies should be based on information gathered at one "snapshot" point in time (the Federal Register indicates that this survey is meant to be a "one-time" collection).¹⁴ NAFCU believes that this means that NCUA's future policies with respect to the provision of services to the underserved will remain unchanged in the years to come despite changes in the economy, industry and the marketplace. While NCUA may have been looking for a way to ease the current burden it places on federal credit unions, this decision has the potential to place immutable future responsibilities regardless of any changes that may occur.

¹⁴ *Id.*

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NAFCU respectfully requests that, after reviewing this letter, OMB will advise the National Credit Union Administration that, in accordance with the plain language of the Paperwork Reduction Act of 1995, the agency may not engage in the collection of information proposed in its survey of federal credit unions on the subject of their provision of services to lower-income individuals. Should you have any questions or require additional information, please call me or Suzanne Garwood, NAFCU's Director of Regulatory Affairs at (703) 522-4770 or (800) 336-4644 ext. 266.

Sincerely,

Kenneth L. Robinson
President

Enclosures

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