

July 30, 2009

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Mortgage Acts and Practices Rulemaking, Rule No. R911004

Submitted via: <http://secure.commentworks.com/ftc-mortgageactsandpractices>

Dear Commission Secretary:

The Boeing Employees' Credit Union (BECU) appreciates the opportunity to submit the following comments in response to the Federal Trade Commission (Commission) Advanced Notice of Proposed Rulemaking (ANPR), Mortgage Acts and Practices, 74 Federal Register 103 (June 1, 2009), pp.26118-26130.

BECU is a Washington State-chartered credit union with assets of \$8.6 billion representing over 600,000 members, the majority of whom reside in Washington State. BECU is the second largest state-chartered credit union in the country. Deposits at BECU are insured by the National Credit Union Share Insurance Fund, administered by the National Credit Union Administration (NCUA). Consequently, BECU, like all other federally-insured, state-chartered credit unions, is subject to extensive rules and regulations promulgated by the NCUA.

Overview

BECU supports the Commission's rulemaking with regard to mortgage lending. Certainly, abuses have occurred in recent years in mortgage lending, severely disrupting the financial lives of many consumers and contributing significantly to the current recession. However, for reasons outlined below, we believe very strongly that the Commission should exercise its permitted discretion to exclude state-chartered credit unions from the application of any rules that come out of this rulemaking.

The ANPR

The Commission was directed to initiate rulemaking on this subject matter by Section 626 of the Omnibus Appropriations Act of 2009.¹ The Commission seeks to determine "whether certain acts and practices of non-bank financial companies related to mortgage loans are unfair and deceptive...and should be incorporated into a proposed rule." *Id.*, p. 26119. In addition, the Commission also expressly asks for comments on potential effects on competition and on consumers of a proposed rule. The Commission also invites comments on any issue of fact, law, or policy that may bear upon the subject of this rulemaking.

Significantly, Section 626, while directing the Commission to address mortgage loans, did not specify either the types of conduct that rules should address or the types of entities that would be

¹ Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, § 626, 123 Stat. 524 (Mar. 11, 2009).

subject to the rules. See 74 Federal Register 103 (June 1, 2009), p. 26119. In its discretion, the Commission chose to look to its organic statute to define the parameters of both the conduct and the entities to be covered in this rulemaking. The Federal Trade Commission Act (FTC Act) excludes banks, thrifts, and federally-chartered credit unions from Commission rulemaking.² Based on the breadth of the FTC Act, the Commission has indicated that it intends for these rules to apply to state-chartered credit unions.

The inequitable result is that state credit unions would be the only depository institutions covered by the rules.

Exclusion of state credit unions

We believe there are strong policy and competitive reasons to exclude state chartered credit unions from application of the rules, as discussed below.

1. No demonstration of abuse by credit unions. We are not aware that credit unions, whether state- or federally-chartered, contributed measurably to the consumer abuse the nation has recently witnessed in mortgage lending. There is no demonstrated need for Commission rules on mortgage acts and practices to apply to state credit unions.

Credit unions do not have a profit motive that may drive stockholder-owned institutions to engage in practices for the purpose of enhancing profit. The Washington State Credit Union Act, Chapter 31.12 of the Revised Code of Washington (RCW), provides, similar to many other state credit union acts across the country:

“Declaration of policy.

A credit union is a cooperative society organized under this chapter as a nonprofit corporation for the purposes of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest.

The director is the state's credit union regulatory authority whose purpose is to protect members' financial interests, the integrity of credit unions as cooperative institutions, and the interests of the general public, and to ensure that credit unions remain viable and competitive in this state.”

RCW 31.12.015.

2. State credit unions are already highly regulated. The mortgage lending process at state credit unions is highly regulated by the NCUA and state regulators. State credit unions are subject to examination and enforcement by these agencies for compliance with existing mortgage lending rules. Our state and federal regulators also handle informal complaints from consumers (“members” in the credit union world) about our practices, including any complaints about our mortgage lending practices.

² 15 U.S.C. 45(a)(2).

The following is an incomplete list of existing federal statutes and regulations regarding mortgage lending that state credit unions must comply with:

1. NCUA rules restricting incentive-based compensation based on loan production, 12 C.F.R. 741.203(a) (cross-referencing the applicability of 12 C.F.R. 701.21(c)(8) to state credit unions)
2. NCUA rules on real estate appraisals, 12 C.F.R. 741.203(b) (cross-referencing the applicability of 12 C.F.R. Part 722 to state credit unions)
3. NCUA rules on advertising, 12 C.F.R. 741.211 (cross-referencing the applicability of 12 C.F.R. Part 740 to state credit unions)
4. Truth in Lending Act and Reg Z. In its proposed rulemaking, the Commission extensively cites Federal Reserve Board rules promulgated under Regulation Z as a benchmark for the Commission's proposed rule.
5. Real Estate Settlement Procedures Act (RESPA)
6. Home Mortgage Disclosure Act (HMDA) and Reg C
7. Fair Housing Act
8. Flood Disaster Protection Act
9. Homeowners Protection Act (HOPA)
10. Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

3. Commission rules will create an inequitable and unnecessary burden on state credit unions. Application of Commission rules to state credit unions will create an inequitable and unnecessary regulatory burden on state credit unions, putting them at a competitive disadvantage to all other types of depository institutions.

Normally, the Commission promulgates rules pursuant to Section 18 of the FTC Act which requires the federal banking agencies (FBAs) to promulgate similar rules. However, this rulemaking is being promulgated pursuant to the Administrative Procedure Act and therefore no similar rulemaking by the FBAs is required.³ The end result would be that state-chartered credit unions would be required to follow Commission rules while their depository institution counterparts would not.

On page 26119 of its proposal, the Commission expressly states that its rulemaking is intended to cover “non-bank” financial companies. The term “bank” is used in its broadest sense to encompass all types of depository institutions, rather than in a narrow sense to include only commercial banks.⁴ By any measure, state credit unions are viewed as depository institutions and, consistent with the Commission's statement, the rules should not apply to them.

We urge the Commission to exercise its discretion to exclude state credit unions from any rules it

³ See footnote 3 of the proposed rule where the Commission refers to NCUA as one of the “federal banking agencies.” 74 Federal Register 103 (June 1, 2009) p. 26118

⁴ Id.

ultimately adopts on mortgage acts and practices.

Thank you for your consideration.

Sincerely,

J. Parker Cann
Senior Vice President and General Counsel