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Credit Union Common Bond Ruling: NCUA v. First National Bank & Trust Co. __ U. S. __ (No. 96- 843)

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Summary

On February 25, 1998, the Supreme Court ruled that federal credit unions may not consist of more than one occupational group having a single common bond. On April 1, the House passed H.R. 1151 (H.Rept. 105-472), which grandfathers existing credit unions and sets standards for future multi-group credit unions. On July 28, the Senate passed an amended version (S.Rept. 105-193), which became P. L. 105-219, having been passed by the House on August 4. It preserves existing multiple group, occupational common bond credit unions and restricts the initial size of a group having that may be added to a credit union that has a different common bond. It includes Senate Banking Committee amendments limiting credit union commercial loans and establishing standards for prompt corrective action.

It makes no changes in the tax-exempt status of credit unions. Although the House Banking Committee version contained provisions similar to the Community Reinvestment Act requirements imposed on other federally insured depository institutions, these were deleted in the Senate by a floor amendment sponsored by Senator Gramm.

In *National Credit Union Administration v. First National Bank & Trust Co.*, __ U.S. __ (No. 96-843, decided February 25, 1998), the Supreme Court ruled that the same single common bond must unite members of a federal credit union organized on the basis of an occupational common bond and rejected the National Credit Union Administration's (NCUA's) multiple group common bond policy as conflicting with the express language of the National Credit Union Act. The case involves the Federal Credit Union Act, 12 U.S.C. §§ 1751 -1759k, which limits federal credit union membership to "groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community or rural district." 12 U.S.C. § 1759. NCUA, defines three permitted types of common bonds: occupational, associational, and community. Until 1982, federal credit unions formed along occupational lines consisted of the employees of one employer. In 1982, NCUA announced a multiple group occupational credit union

policy that resulted in large, interstate, credit unions that offer banks competition for consumer products and services.

The Court affirmed *First National Bank and Trust Company v. National Credit Union Administration*, 90 F. 3d 525 (D.C. Cir. 1996), which had remanded the case to the district court. This meant that, without legislation changing the language of the statute, a broad order could have been issued enjoining the admission of members to any federal occupational credit union who did not share the original single common bond of occupation. All parties to the suit, however, asked the court to delay acting while Congress considered legislation. Without legislation, it was feared that many of the large credit unions already in existence would face the likelihood that their stream of new members would slow to a trickle and, thus, their long term viability prospects diminish.

Because of their mutual form of ownership, credit unions are not subject to corporate taxes. Not having to pay taxes, often receiving free office space and volunteer employees, credit unions may offer consumer banking products at prices lower than banks and thrifts. Credit unions do not come under the requirements of the Community Reinvestment Act, 12 U.S. C. §§ 2901 -2906, and, thus, are not required to meet the credit needs of their entire community as are banks and thrifts.

P.L. 105-219 contains clauses to preserve all existing multiple bond arrangements and permit new members to be added to all current groups. It includes provisions to curb future growth of multiple-group credit unions—instructions to NCUA with respect to chartering single groups where possible and providing geographic components to affiliations. Groups of more than 3,000 would generally not be permitted to affiliate with an existing credit union. Multiple group credit unions could extend their membership to persons and organizations located within areas underserved by other depository institutions. From the Senate-reported version (S.Rept. 105-193), capital standards are prescribed—7% of net worth for a well-capitalized credit union--and a cap is placed on commercial loans—1.75% of net worth. This limits the total amount of member business loans over $50,000 that a well-capitalized credit union may carry to 12.25% of net worth. Also from the version reported by the Senate Banking Committee, a sequence of prompt corrective actions is prescribed for implementation as a federally insured credit union's net worth declines below prescribed levels. There are also new auditing procedures and voting requirements for a credit union to convert to a bank or thrift charter.

The legislation mandates studies on the differences between the regulatory and tax treatment accorded credit unions and other federally insured financial institutions. It requires the federal banking agencies to detail their progress in efforts to streamline regulatory burdens. It also imposes a requirement that the Secretary of the Treasury recommend, within one year, legislative and administrative action to reduce and simplify the tax burden on small banking institutions: insured depository institutions having less than $1 billion in assets and banks having total assets between $1 and $10 billion.

Publications

CRS Report 97-548. *Should Credit Unions Be Taxed*?, by James M. Bickley.

CRS Report 96-997. *Multiple Group Credit Unions,* by M. Maureen Murphy.

CRS Report 97-267. *Multiple-Group Federal Credit Unions,* by Pauline Smale.