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FFIEC, Program Coordinator  
3501 Fairfax Drive  
Room 3086  
Arlington, VA 22226

Re: Advisory on the Limitation of Liability Provisions in Audit Engagement Letters

To Whom it May Concern:

The Georgia Credit Union League (GCUL) appreciates the opportunity to comment on the Federal Financial Institutions Examination Council's (FFIEC) proposal that advises financial institutions' boards of directors, audit committees, and management to ensure the institution does not enter into any agreement that limits the liability of external auditors in preparation of financial statement audits.

GCUL is the state trade association and one member of the network of state leagues that make up the Credit Union National Association (CUNA). GCUL serves approximately 200 credit unions that have over 1.7 million members. This letter reflects the views of our Regulatory Response Committee, which has been appointed by the GCUL Board to provide input into proposed regulations such as this.

Background:

Typically, a financial institution will sign a written engagement letter with a CPA firm regarding the services to be performed in connection with the external audit of the institution. The engagement letter normally covers: the objective of the external audit; the reports to be prepared; the responsibilities of management and the external auditor; and fees/billing.

The language in external audit agreements seeking to exempt accountants from liability with their work on financial statement audits for their client financial institutions may take a number of forms. However, limited liability provisions can be categorized into the following 3 general categories: (1) statements that would indemnify the external auditor against claims made by third parties; (2) agreements to hold harmless or release the external auditor from liability for claims by the client financial institution; and (3) limitations on remedies sought by the client financial institution.

In Appendix A of the Advisory, the FFIEC highlights many types of provisions as being problematic in engagement letters. The Advisory also includes certain alternative dispute

resolution (ADR) provisions in engagement letters as presenting safety and soundness concerns. According to the advisory, NCUA may take appropriate supervisory action if limitation of liability provisions are included in external audit engagement letters or related agreement that are executed (accepted or agreed to by the financial institution) after the date of the Advisory (May 10, 2005). For any such letter or related agreement already accepted for a fiscal 2005 or subsequent financial statement audit (that is, fiscal years ending on or after January 1, 2005), it is strongly recommended that that boards of directors, audit committees, and management consult with legal counsel and the external auditor and take appropriate action to have any limitation of liability provision nullified.

Summary of GCUL's Position:

The GCUL agrees with the Advisory, as written, that the limitation of liability provisions are inappropriate for all financial institution external audits. We believe there is no valid business purpose for financial institutions to agree to any limitation of liability provision. We believe the three general categories of limitation of liability provisions are complete and accurate. Additionally, we agree with the examples listed in Appendix A of the advisory that those provisions are considered to be inappropriate. We also believe that the Advisory should extend to supervisory committee audits, if a compensated third party performs such audits.

With regard to negotiating the terms of audit engagements, we believe that the issuance of the Advisory might reduce the number of public accountants willing to perform audits for credit unions, but should not reduce negotiating power.

Some question if the advisory on limitation of liability provisions might result in an increase in external audit fees. We disagree with this notion. Public accountants have been exposed to these liabilities for years. Since the Sarbanes-Oxley Act does not cover credit unions, compensated accountants should not have to raise fees to mitigate audit liability. However, as noted earlier, it may decrease in the number of audit firms willing to provide external audit services to financial institutions.

While we understand the reasoning behind the advisory recommending that financial institutions take appropriate action to nullify limitation of liability provisions in 2005 audit engagement letter that have already been accepted, we don't believe this is a necessary action.

We appreciate the opportunity to provide these reactions to the proposal and will be happy to discuss any of the related issues at your convenience.

Respectfully submitted,



Richard Ellis  
Vice President/Credit Union Development  
Georgia Credit Union League