



October 20, 2023

The Honorable Jack Reed
Chairman
Senate Committee on Armed Forces
Washington, DC 20510-6050

Re: Department of Defense Overseas Military Banking Program (OMBP) and Navy Federal Credit Union

Dear Chairman Reed:

I am writing regarding Navy Federal Credit Union's (Navy FCU) involvement in the Department of Defense (DoD) Overseas Military Banking Program (OMBP). By way of background, the Cooperative Credit Union Association represents approximately 200 state and federally-chartered credit unions located in the states of Rhode Island, Delaware, Massachusetts, and New Hampshire, which further serve over 3.6 million consumer members. We appreciate the opportunity to share out concerns about Navy FCU's effort to become the OMBP "community bank" and provide services to non-member foreign nationals as part of a DoD cost-plus-fixed-fee contract, which is clearly unlawful under both the plain language of DoD's Part 231 regulations as well as under the Federal Credit Union Act and National Credit Union Administration (NCUA) rules.

Currently, DoD facilities already have one bank branch and one credit union branch and the Association's members include credit unions with a long history of serving these DoD facilities, which were often founded by the DoD personnel stationed there. Section 231.10 of DoD regulations provides that "[e]xcept where they already may exist as of May 1, 2000, no more than one banking institution and one credit union shall be permitted to operate on a DoD installation", and this rule defines "credit union" separately from the term "banking institution" as well as requires "banking institutions" to have insurance provided by the Federal Deposit Insurance Corporation (FDIC), which Navy FCU is not eligible to receive. 32 C.F.R. § 231.10. DoD interpreting this regulation to define a "credit union" as eligible to act as the OMBP "community bank" is therefore plainly erroneous and unlawful based on U.S. Supreme Court precedent because it is inconsistent with the plain language of the DoD regulation.

Even if Navy FCU were legally authorized under DoD rules to act as the "community bank", the Federal Credit Union Act and NCUA regulations also prohibit Navy FCU from performing this scope of work for DoD because the "community bank" must serve foreign nationals who are not eligible to become members of Navy FCU. Section 107 of the Federal Credit Union Act generally prohibits federal credit unions from doing business with non-members except for a narrow exception involving individuals who are eligible to join the credit union that is inapplicable here, 12 U.S.C. § 1757, or unless the credit union has a "low-income-designation" which Navy FCU does not have. *Cf.* 12 C.F.R. 701.34. Section 201 of the Federal Credit Union Act also specifically prohibits federally-insured credit unions from serving the "customers" of any government-sponsored enterprise. 12 U.S.C. § 1781(e)(1).

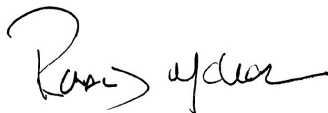
While NCUA rules do allow federal credit unions to act as depositories for federal taxes and to act as “fiscal agents” of the U.S. Treasury’s Bureau of Fiscal Service handling “deposits of public funds” on behalf of the U.S. Treasury, this rule only allows the federal credit union to hold the federal government’s own money in the following types of accounts: “Treasury Tax and Loan (TT&L) Remittance Account”, a “TT&L Note Account”, a “Treasury General Account”, or a “U.S. Treasury Time Deposit” account. 12 C.F.R 701.37. In addition, federal credit unions acting as “fiscal agents” of the U.S. Treasury may also only do so within a narrowly defined Treasury Fiscal Service program which does not authorize federal credit unions to provide retail depository accounts to non-members.

We respectfully ask your office to inquire why DoD awarded this contract to Navy FCU when DoD regulations clearly prohibit Navy FCU from acting as the OMBP “community bank” in addition to the fact that the Federal Credit Union Act and NCUA rules also prohibit Navy FCU from providing retail accounts to the non-member foreign nationals the OMBP community bank is required to serve.

Meanwhile, other credit unions, including the Association’s members, will face one more competitive disadvantage since they must provide financial services at their own expense while competing for members on the same DoD installation. Additionally, Navy FCU will likely price their products and services below what other credit unions could sustain. Since this is a cost-plus-fixed-fee contract, Navy FCU does not have to worry about losing any money since all costs are reimbursed while a guaranteed profit is paid each year.

Thank you for the opportunity to bring these matters to your attention. Should you have any questions or desire additional information, please do not hesitate to contact me or Chief Advocacy Officer Adrian Velazquez by phone at 508-229-5605 or by email at avelazquez@ccua.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald McLean". The signature is fluid and cursive, with a large initial "R" and "M".

Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.
rmclean@ccua.org