

March 22, 2006

Ms. Mary F. Rupp  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

*Sent via email*

***Re: Comments on Proposed Rule Part 701.1  
Notice of Proposed Rulemaking***

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) appreciates this opportunity to provide comments on the proposed rule related to service to underserved areas. As noted in the proposed rule, the National Credit Union Administration (NCUA) is proposing this rule as a result of the uncertainty from recent litigation challenging NCUA's existing chartering policy. The proposal is intended to ensure continued reliable and efficient service to federal credit union members located in underserved areas.

The PCUA is a statewide trade association that represents over eighty-five percent (85%) of the approximately six-hundred-forty-two (642) credit unions located within the Commonwealth of Pennsylvania. To respond to this request for comments, the PCUA consulted with its Regulatory Review Committee and State Advisory Committee (the Committee(s)). These Committees consists of twenty-one (21) credit union CEOs who lead the management teams of Pennsylvania federal and state-chartered credit unions. Members of the Committees also represent credit unions of all asset sizes. The comments contained in this letter reflect the comments of the Committees and the PCUA staff.

***Limiting the Addition of New Underserved Areas to Only Multiple Common-Bond Credit Unions:***

While we recognize that NCUA's current chartering policy of allowing federal credit unions, regardless of charter type, to include low-income communities and associations in their field of membership has come under recent fire from bankers group, we respectfully submit that now is not the time for NCUA to back down on a policy that supports credit unions' mission of serving persons of modest means, who may not otherwise have access to affordable financial services.

NCUA should defend its current policy. If the courts determine that NCUA's current policy is inconsistent with federal law and Congressional intent, then the issue would be ripe to present to Congress for clarification. As Senator Robb of Virginia stated during the Congressional hearings on H.R. 1151: "[g]iven the Supreme Court ruling limiting membership, it is both appropriate and necessary for Congress to pass this legislation to ensure that the requirements for membership in a specific credit union reflect current practices. As my colleagues know, since 1982, credit unions have been able to take new groups of members outside their original common bond provided the additional groups brought in shared a common bond."<sup>1</sup> The outcome of the litigation made the passage of H.R. 1151 "appropriate and necessary" in order that the law reflect current credit union practices.

Likewise, Senator Murray,<sup>2</sup> Senator McCain,<sup>3</sup> Senator Kerry,<sup>4</sup> and Senator Sarbanes<sup>5</sup> all remarked that the Supreme Court's holding caused Congress to take action to clarify the membership issues addressed in H.R. 1151.

As noted in the proposed rule, NCUA believes that the statutory language in question reflected Congress' intent to make clear that the new multiple common-bond charter was authorized to add underserved areas, not as the bankers argue to prohibit the other two federal charter types from doing so. As acknowledged by NCUA, this conclusion is supported by the legislative history and Congress' knowledge of NCUA's long-standing policy to allow underserved area expansion to all charter types at the time H.R. 1151 was passed. If NCUA's policy is held invalid by the courts, Congress will have certainty that legislative action is required to correct this problem. It will be politically difficult for any group, especially the banker groups, to object to legislation that would grant the authority for credit unions of all charter types to fulfill its mission to serve persons of modest means.

The litigation provides the perfect forum for NCUA and the intervening credit union groups to point out the hypocrisy of the banking groups that argue, on one hand, that credit unions, particularly community charter credit unions, are not fulfilling their mission of serving persons of modest mean, and, on the other hand, arguing that Congress did not provide legislative authorization for community charters, and other single common-bond credit unions, from expanding into underserved areas.

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<sup>1</sup> 144 *Cong. Rec.* S9093 (1998)(Statement of Sen. Robb)(Proceedings and Debates of the 105<sup>th</sup> Congress, Second Session).

<sup>2</sup> Senator Murray emphasized the importance of expeditiously getting H.R. 1151 to the President "so that [Congress] may address the field of membership situation created by last February's Supreme Court decision." *Id.* at S9095.

<sup>3</sup> Senator McCain acknowledged that the membership issue "came to the forefront when the Supreme Court agreed to hear the Credit Union's arguments for increasing the size of their base membership." *Id.*

<sup>4</sup> Senator Kerry stated: "...the Supreme Court earlier this year decided a case pertaining to how widely credit unions may reach for membership. These factors have created a necessity for the Congress to consider carefully the role credit unions should play in the mix of financial institutions in our nation." *Id.*

<sup>5</sup> Senator Sarbanes stated: "But I say to the credit union movement: We worked very hard in the aftermath of the Supreme Court decision which, of course, cast a pall over the credit union movement." *Id.* at S9098.

We respectfully submit that NCUA should not back down from the banker groups on this issue, especially during a time when Congress is asking NCUA and the credit unions to provide data and reports on credit unions' service to persons of modest means. Rather, we submit that NCUA should lift the moratorium and allow credit unions of all types to expand into underserved areas, thereby, fulfilling their legislative purpose of providing services to the underserved. If the courts disagree with NCUA's long-standing policy, which advances Congress' mission, then it will be necessary for Congress to act swiftly to clarify the authority of credit unions to serve the underserved.

***Revision to the Definition and Location of the Service Facility When Adding Underserved Areas:***

The NCUA Board states in the proposed rule that it believes a physical presence in the underserved areas is likely to assure better service to members in these locations. Accordingly, the Board proposes to amend the definition of "service facility" to include "a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, or an office operated on a regularly scheduled weekly basis. This definition does not include an ATM or the credit union's Internet Web site." 71 FR 4532 (January 27, 2006).

Our committee members feel strongly that the type of facility established to serve an underserved area is a business decision, which should be left to the credit union. Credit union executives need flexibility in determining what type of facility can best be employed to serve the underserved area after analyzing the economic impact and viability of the different options. To limit credit unions to a physical location in the underserved area would dissuade credit unions from applying to serve underserved areas.

Under the Community Reinvestment Act's (CRA) service test federal banking regulators analyze both the availability and effectiveness of a banking institution's system for delivering retail banking services. 12 C.F.R. § 228.24(a). In the service test evaluation, alternative systems for delivering service in low- and moderate-income areas, such as ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail, are considered. 12 C.F.R. § 228.24(d)(3). Banking institutions receive CRA credit for services offered via both non physical and physical locations.

Our group suggests that the focus should not be on the type of facility used to serve the underserved area but rather the level of service provided to members of the underserved area. For example, full service ATMs can be placed in more convenient locations than physical offices and can do most of the functions of a teller. Some of our members indicated that individuals located in underserved areas often travel to destination points where credit unions have established offices and that the establishment of a credit union office in the underserved area would not eliminate the need to travel for shopping, entertainment, or other types of services.

Ms. Mary F. Rupp  
Secretary of the Board

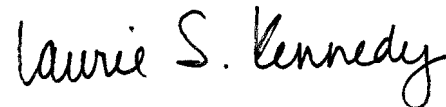
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March 22, 2006

Clarification is also sought regarding whether credit unions could meet the service facility requirement by offering credit union services in community centers on a regular weekly basis either personally or via computers, provided that the credit union places the computer in the community center and administers in-person training.

Thank you again for this opportunity to comment on behalf of Pennsylvania credit unions. Please feel free to contact me or any of the PCUA staff at 1-800-932-0611 if you have any questions or if you would like to discuss our comments.

Sincerely,

A handwritten signature in cursive script that reads "Laurie S. Kennedy".

Laurie S. Kennedy  
Associate Counsel

LSK:llb

cc: Association Board  
Regulatory Review Committee  
State Advisory Committee  
J. McCormack  
R. Wargo  
M. Dunn, CUNA