California Credit Union League
Serving Credit Unions in California and Nevada

March 27, 2006

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

Re: Comments on Proposed Rule Part 701.1

Dear Ms. Rupp:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on the National Credit Union Administration's (NCUA) proposed revisions to its Chartering and Field of Membership Manual regarding service to underserved areas. Together, the California and Nevada Leagues (Leagues) are the largest state trade association for credit unions in the United States, serving 452 member credit unions in California and Nevada with 8.9 million members.

Background

Prompted by the recent litigation challenging NCUA's policy related to adding underserved areas, NCUA has proposed to make the following two changes to its field of membership policy for federal credit unions:

- Underserved expansions outside a credit union's field of membership (FOM) would be limited to multiple common-bond credit unions only.

- The list of examples of what constitutes a "service facility" in an underserved area will no longer include a credit union owned electronic facility (e.g., a non-staffed electronic service kiosk). In addition, credit unions will no longer be permitted to serve an underserved area with a preexisting office that's already within close proximity to the underserved area. In other words, NCUA wants a physical presence in the underserved area. (Under the proposed revisions, the requirement that a service facility be established within two years of adding an underserved area to a credit union's FOM remains unchanged.)

These changes would apply prospectively, so that federal credit unions could continue serving underserved areas already approved and continue to bring in new members from those areas. However, a credit union that does not have a multiple group charter would not be able to add new underserved areas.

Our Position on Underserved Expansions

While the Leagues understand NCUA's concern that the ongoing litigation creates a degree of uncertainty about the continued authority of non-multiple common-bond credit unions to serve underserved areas, we are concerned that the agency appears to be beating a retreat on the critical issue of service to low and modest means consumers. By choosing to abandon a long-standing priority of the NCUA Board which allows all federal credit unions—regardless of charter type—to serve low-income communities, NCUA will be contributing to the severe restriction (if not outright denial) of credit union services to underserved consumers. Needless to say, this restriction will be a helpful contribution towards bankers' ongoing efforts to limit consumer choice, while simultaneously providing them with grist for the mill that credit unions are not engaging in adequate efforts to serve those of modest means.

NCUA's primary argument for proposing such a radical departure from policy appears to be based on an issue of fairness which, upon closer examination, we believe to be more unfair than its alternative. The following is from page four of NCUA's Notice of Proposed Rulemaking (NPR):

> "We also believe that it is unfair to provide persons of limited means with needed financial services where the *possibility* exists that they could suddenly be deprived of those services." (Emphasis added.)

In effect, the implementation of NCUA's proposed changes would serve to turn the mere future possibility of restricted credit union access into a current, cold reality for many people of limited means.

Finally, as NCUA correctly notes, statutory language is susceptible to different interpretations. Going beyond the "letter" of the law and examining the legislative history leading to the passage of CUMAA, it is evident that the "spirit" of the legislation—the intent of Congress—was to clarify (not restrict or prohibit) existing credit union membership requirements and practices. (See: 144 *Cong. Rec.* S9093, 1998, Proceedings and Debates of the 105th Congress, Second Session.) Obviously, this would have included NCUA rules which permitted all federal charters to serve underserved areas.

Further evidence of this legislative spirit can be found in Section 2 of CUMAA, which recognizes that credit unions continue to fulfill the public purpose of serving "the productive and provident credit needs of individuals of modest means." We believe Congress was acknowledging that federal credit unions were currently serving underserved consumers and communities, and should continue to include such groups in their FOMs. As evidenced by both Congressional debate and the stated purpose and findings of the Act, it was not Congress' intention to restrict underserved expansions to only multiple common-bond credit unions.

Our Position on What Constitutes a "Service Facility"

We strongly object to NCUA's proposed changes as to what constitutes a "service facility" in an underserved area. By eliminating a credit union owned electronic facility from the list of acceptable service facilities, as well as prohibiting a credit union from serving an underserved area with a preexisting office that is already within close proximity to the underserved area, NCUA will be setting a service standard for underserved areas of "physical presence only." We believe this is unrealistic and unfair.

Under such a restriction, credit unions will be forced to employ branching strategies which would not permit them to effectively balance factors such as costs, benefits, location, and the convenience and needs of their members. As a result, many credit unions interested in serving underserved consumers will be faced with two equally unattractive choices: (1) operate unprofitable branches in underserved areas or (2) not expand into underserved areas. Ultimately, neither choice serves to advance Congress' and NCUA's long-standing goal of providing affordable financial services to those of low and modest means.

This restrictive definition of service facilities is even more baffling in light of the fact that enforcement of the Community Reinvestment Act (CRA) for FDIC-insured institutions expressly allows banks to apply a very broad definition of service facility. The CRA service test—which only applies to institutions over $1 billion in assets—is designed to evaluate the availability and effectiveness of a bank's systems for delivering banking services to its entire community, including low- and moderate-income neighborhoods. However, it does not require a physical branch in outlying areas. As stated in the FFIEC's Interagency Questions and Answers Regarding Community Reinvestments (July 12, 2001):

> "The regulation recognizes the multitude of ways in which an institution can provide services, for example, *ATMs, banking by telephone or computer*, and bank-by-mail programs. Delivery systems other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low- and moderate-income areas and individuals." (Emphasis added.)

Just as CRA regulations allow large banks to use ATMs and banking by computer as acceptable alternative delivery systems in lieu of physical branches to provide services to low-moderate income areas, so too should NCUA define "service facility" to include electronic facilities such as ATMs and a credit union's website. We recommend the proposed rule be changed as indicated:

> "A service facility is defined as a place where shares are accepted for members' accounts, or loan applications are accepted ~~and~~, or loans are disbursed. … This definition ~~does not~~ includes an ATM or the credit union's web site."

Not only does this recommended change accord with CRA practice, it also recognizes what is in the best interests of consumers and their community. People of low-income status who

may live or work in underserved areas must often take jobs with non-conventional work hours requiring access to personal accounts en route to or departing from evening, "graveyard," or otherwise unconventional shifts. An ATM or website can provide "24/7" access that a physical branch cannot.

Conclusion

We believe the effect of NCUA's two proposed changes to its field of membership policy can be fairly summarized as follows:

- Over 2,700 federal credit unions in the U.S. would be prohibited from choosing to expand their fields of membership to serve consumers in underserved communities. (This is based on a total of 5,392 FCUs, less the 2,644 FCUs classified as having a multiple common bond under NCUA's Type of Membership Code system.)

- The remaining credit unions permitted to serve or expand into underserved areas would be prohibited from utilizing the most cost-effective, efficient means to reach those consumers/members. This is a prohibition that doesn't even apply to the largest banks.

The California and Nevada Credit Union Leagues thank the NCUA for the opportunity to comment on these proposed changes. While we understand NCUA's concerns given the ongoing litigation, we firmly believe that the implementation of these proposed changes will allow the bankers to gain an early upper hand in a battle that could have harmful and long-term effects on all underserved consumers. We feel this can only serve to weaken the credibility of the NCUA, the dual chartering system, and the credit union industry as a whole. Given the current focus on demonstrating the credit union commitment to serving the underserved, we respectfully urge the NCUA to reconsider its approach on this critical issue.

Sincerely,

Bill Cheney
President/CEO
California and Nevada Credit Union Leagues