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March 27, 2006

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

Re: Comments on Proposed Rule Part 701.1: Organization and Operations of Federal Credit Unions

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to offer comments on the National Credit Union Administration's (NCUA) proposal to amend its rules regarding service to underserved areas.

Background and Proposal

As a result of a lawsuit challenging NCUA's policy related to adding underserved areas, the NCUA Board of Directors issued a moratorium last year on allowing non-multiple common bond credit unions to add new underserved areas to their fields of membership. Following the moratorium, the NCUA conducted a comprehensive review of its underserved area policy. As a result of its review, the NCUA is now proposing two amendments to its field of membership policy. The first would limit the addition of new underserved areas to only multiple common bond credit unions. The second would require that once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or service facility in the community within two years. A service facility would include a credit union owned branch, a shared branch, or a mobile branch but would not include an ATM.

¹*The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than \$876 billion in assets \$692 billion in deposits, and more than \$589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

ICBA's Position

We approve of the NCUA's proposal to limit the addition of new underserved areas to only multiple common bond credit unions. In ICBA's opinion, this should have been done immediately following the enactment of the Credit Union Membership Access Act (CUMAA)² in 1998. The law as amended by CUMAA, 12 U.S.C. 1759(c)(2), is clear that the only field of membership category that can expand into underserved areas is the multiple common bond category. That section states:

“(2) EXCEPTION FOR UNDERSERVED AREAS.—Notwithstanding subsection (b), in the case of a Federal credit union, the field of membership category of which is described in subsection (b)(2), the Board may allow the membership of the credit union to include any person or organization within a local community, neighborhood or rural district if

(A) the Board determines that the local community, neighborhood, or rural district...

(ii) is underserved, based on data of the Board and the Federal banking agencies.”

By referring only to subsection (b)(2) which describes the multiple common bond credit unions and not to subsection (b)(1) which describes the single common bond credit unions, CUMAA leaves no doubt about Congress' intent to limit the underserved area exception to one federal charter type.

NCUA says that it is only proposing this change to its membership policy because it recognizes that “the statutory language is susceptible to different interpretations” and that Congress's real intent with CUMAA was to authorize multiple common bond credit unions to add underserved areas, not to prohibit the other two federal charter types (e.g., single common bond or community credit unions) from doing so. **However, the statute is so clear on this issue and NCUA's interpretation of CUMAA is so wrong that the NCUA has an obligation to retroactively review all of the applications by non-multiple common bond credit unions to add underserved areas since CUMAA was enacted and revoke those agency approvals that violated CUMAA.**³ This should be done immediately to remedy any impact these decisions have had on other financial institutions. It is not enough for the agency just to change its rules prospectively. This would allow non-multiple common bond credit unions that have previously received approvals in violation of CUMAA to continue adding members from underserved areas.

Furthermore, those non-multiple common bond credit unions that have added underserved areas since 1998 should not be allowed to change their charters to community charters without dropping the underserved area. Unless the underserved area is inside the geographic area of the community credit union's boundaries, it should not become part of the new credit union's charter.

² Pub. L. 105-219, 112 Stat. 914 (1998)

³ We understand that the NCUA has granted approvals for over 100 non-multiple common bond credit unions to expand into underserved areas since 1998.

We believe this proposed rulemaking is also an opportunity for NCUA to reexamine other aspects of its underserved area policy. **Before a multiple common bond credit union is allowed to expand into an underserved area, there should be some definite requirements imposed on that credit union to ensure that individuals of modest means in that underserved area will be fully served.** While we agree with NCUA's proposed requirement that the multiple common bond credit union must establish a physical presence in the underserved area, we believe that allowing it two years to do so is not enough. We think the new policy should require that the credit union establish a branch office in the underserved area within a year of receiving NCUA approval of the expansion.

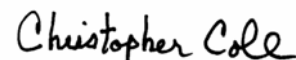
Furthermore, a multiple common bond credit union that has received approval to expand into an underserved area should not be allowed to establish a branch in one of the more affluent areas of the underserved area. If the true reason for allowing credit unions to expand into these areas is to serve the underserved, then the branch office should be established in those areas where it can do the most for serving individuals of modest means. If the whole city of say Baltimore, Maryland, is designated an underserved area, then a multiple common bond credit union that is allowed to expand into that city should be required to establish a branch in those areas of the city where it would truly serve individuals of modest means and not in the more affluent areas of the city such as the Inner Harbor area.

Conclusion

Although we approve of the NCUA's proposal to prospectively limit the addition of new underserved areas to only multiple common bond credit unions, the NCUA should review all prior approvals to expand into underserved areas granted to non-multiple common bond credit unions to determine whether CUMAA was violated. It is not enough for the NCUA to change its underserved area policy prospectively. Furthermore, the NCUA should require that multiple common credit unions establish offices in those areas of the underserved area where they can do the most for serving individuals of modest means.

ICBA appreciates the opportunity to comment on NCUA's proposal to change its rules regarding service to underserved areas. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,



Christopher Cole

Regulatory Counsel

