



March 28, 2006

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

Re: Organization and Operation of Federal Credit Unions
71 FR 4530 (January 27, 2006)

Dear Ms. Rupp:

America's Community Bankers (ACB)¹ is pleased to comment on the National Credit Union Administration's (NCUA) proposed amendments to its regulations regarding the addition of underserved areas to a credit union's field of membership. The proposed changes would 1) limit the addition of new underserved areas to credit unions with a multiple common bond field of membership, and 2) change the definition of "service facility" to require credit unions to have a physical presence in the underserved area.

ACB Position

ACB believes that all regulators of depository institutions should give thorough, thoughtful, and meaningful review to all charter applications and ensure that the approval of such applications is consistent with the letter and spirit of the law.

We support the NCUA's proposal to limit the addition of underserved areas to credit unions with multiple common bond fields of membership. We also support eliminating the "close proximity" exception to the service facility requirement. While these are important amendments, we offer the following suggestions to improve oversight of credit unions seeking to expand their fields of membership by adding underserved areas.

- Applications to expand into underserved areas should identify the location of the credit union office or service facility that will be established in the underserved area.

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

- Credit unions should be required to establish an office or a service facility in the underserved area within one year.
- The NCUA should review a credit union's record of service to low-and moderate-income persons and neighborhoods within a credit union's existing field of membership before permitting the credit union to expand into an underserved area.
- The NCUA should re-emphasize a credit union's obligation to serve persons of modest means in the underserved area. Credit unions should not be permitted to tailor their business to pockets of middle class and affluent customers that are located in an area that has been designated as "underserved."
- Credit unions should document how the location of a new branch or service facility in the underserved area will be accessible and convenient to low-and moderate-income customers.
- Credit unions should be required to regularly document their service to persons of modest means in the underserved area.
- Credit union field of membership applications should be subject to a public notice and comment process.

We believe that adopting these suggestions are consistent with the NCUA's role as a regulator. The NCUA is under increasing pressure from members of Congress and the courts to demonstrate that the agency is a vigilant and effective regulator. As a federal district court noted in 2004, the NCUA cannot "act as a rubber stamp or cheerleader." In addition, the credit union industry is being challenged to demonstrate that it is committed to serving persons of modest means, as required by statute. Adopting the changes identified above would help address the concerns of lawmakers.

Background

The Federal Credit Union Act² expressly authorizes multiple common bond credit unions to expand their fields of membership to serve persons and organizations within a geographic area that is considered "underserved."

Specifically, a **multiple common bond** credit union may expand its field of membership to include any person or organization within a local community, neighborhood, or rural district if the NCUA determines that the local community, neighborhood, or rural district:

1. Is an 'investment area,' as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994; and

² 12 U.S.C. § 1751 *et seq.*

2. Is underserved by other depository institutions, based on data of the NCUA and the federal banking agencies.

A credit union that expands into an underserved area must establish and maintain an office or service facility in that community.³

Notwithstanding the express limits established in the statute, current NCUA regulations permit “*all* federal credit unions” to include underserved areas within their fields of membership. (Emphasis added)

The proposed amendments would align the NCUA’s regulations with the Federal Credit Union Act’s field of membership provisions by allowing only multiple common bond credit unions to add underserved areas to their fields of membership. In addition, credit unions adding underserved areas would be required to establish a meaningful physical presence in the community. Credit union branches and service facilities in close proximity to, but not located in, the underserved area would no longer satisfy the office/service facility requirement.

The NCUA issued the proposed amendments after the American Bankers Association, the Utah Bankers Association, and five banks in Utah sued the agency for improperly approving America First Federal Credit Union’s application to add multiple underserved areas to its field of membership. America First Federal Credit Union is a community chartered credit union. The approval enabled the credit union to do business in all of the metropolitan areas located in the state of Utah. On December 29, 2005, the NCUA issued a moratorium on the addition of underserved areas for all single group and community chartered credit unions.

Credit Unions Eligible to Add Underserved Areas

ACB strongly supports the proposal to limit the scope of credit unions eligible to expand their fields of membership through the addition of areas that are considered underserved. Congress expressly limited the option to add underserved areas to credit unions with multiple common bond fields of membership.

It is the NCUA’s responsibility to implement the law even though the agency believes, as a matter of policy, that all federal credit unions should be permitted to expand their fields of membership by adding communities that are characterized as underserved. We believe that aligning the NCUA’s field of membership rules with the clear language of the Federal Credit Union Act will improve the agency’s credibility. This is particularly important considering recent criticism by judges and lawmakers of the NCUA’s lack of independence and objectivity.

³ 12 U.S.C. § 1759(c)(2).

Establishment of Service Facility

Under the Federal Credit Union Act, a multiple common bond credit union that enters an underserved area must establish an office or a service facility there. Current NCUA regulations require credit unions to establish an office or a service facility within two years after the NCUA approves the credit union's application to expand. However, credit unions with a preexisting office in close proximity to the underserved area are exempt from the service facility requirement. The proposed amendment would eliminate this exception.

Credit unions that draw members from underserved areas should be required to establish a meaningful presence in those locations. Therefore, we strongly support the NCUA's proposed amendment. While this is an important change, ACB believes the following suggestions would make the service facility provisions more meaningful and would ensure that underserved areas will be provided with physical access to the credit union in a more timely manner. These changes would improve the NCUA's regulation by improving NCUA oversight of expanding credit unions.

First, ACB suggests that the NCUA require credit unions to include in their application to add an underserved area the exact location of the credit union office or service facility that will be established there. This requirement could be met by providing a copy of an option or a contract to purchase or lease a piece of property. Credit unions electing to implement mobile branch service in the underserved area should specify the community or communities in which the vehicle will operate and the manner in which it will be used.

Second, we suggest that the NCUA shorten the amount of time that credit unions have to establish an office or a service facility in the underserved area. We specifically recommend that the NCUA's approval of the field of membership expansion expire if an office or service facility has not commenced business within one year of the approval.

We believe these suggestions would ensure that a credit union is committed to expeditiously entering the underserved community and maintaining a meaningful presence there. These suggestions are not without precedent. The federal banking agencies⁴ have similar requirements for banks and savings associations that apply for approval to open a new branch.

Prior Record of Service

Existing NCUA regulations require a federal credit union that desires to include an underserved community in its field of membership to develop a business plan specifying how the credit union will serve the underserved community. At a minimum, the business plan must identify the credit and depository needs of the community and explain how the

⁴ The federal banking agencies consist of the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

credit union plans to meet those needs. We believe this requirement is important, but urge the NCUA to evaluate a credit union's future plans as well as its past record of service.

Before the NCUA approves a credit union's application to add an underserved area to its field of membership, the agency should review the credit union's record of service to low-and moderate-income persons and neighborhoods within the credit union's existing field of membership. This approach would ensure that a credit union is prepared to meet the needs of such customers in the underserved area and would minimize the risk that a credit union would enter a metropolitan area that has been identified as underserved and cherry-pick the more affluent customers in the area. Requiring a credit union to demonstrate its service to persons of modest means within the existing field of membership before granting an application to expand would be consistent with the Federal Credit Union Act's mandate that credit unions serve persons of modest means.

This recommendation is not without precedent. When a bank or savings association applies for regulatory approval to establish a new branch, the federal banking regulators review the institution's record of helping to meet the needs of its entire community, including low-and moderate-income neighborhoods.

Operations in the Underserved Area

The Federal Credit Union Act defines an underserved area as "a local community, neighborhood, or rural district" that is:

1. An "investment area" under the Community Development Banking and Financial Institutions Act of 1994; and
2. Underserved by other depository institutions, based on the data of the NCUA and the federal banking agencies.

Under the NCUA's regulations, a "local community, neighborhood, or rural district" includes:

- A single political jurisdiction.
- Multiple contiguous political jurisdictions or any contiguous portion thereof with a population of 500,000 or less.
- A metropolitan statistical area, or its equivalent, or a portion thereof where the population is 1,000,00 or less.

The regulations further provide that a credit union may add an underserved area that does not meet any of the above requirements as long as it can provide documentation to demonstrate that the area is a "well-defined" local community, neighborhood, or rural district.

ACB is concerned that existing field of membership rules could allow a credit union to enter a metropolitan area that qualifies as underserved and serve only the pockets of

prosperity within that designated area. We do not believe federal credit unions should be permitted to hopscotch across a state or a region adding “underserved” areas only to open a branch or service facility that primarily caters to middle class and affluent customers in those locations.

Therefore, we request that the NCUA re-emphasize a federal credit union’s obligation to serve persons of modest means in the underserved area. When applying to add an underserved area, credit unions should be required to document how the location of the new branch or service facility in the underserved area will be accessible and convenient to low- and moderate-income customers.

We also urge the NCUA to require credit unions to regularly document how their operations in an underserved area meet the needs of persons of modest means. The NCUA’s regulations state that a federal credit union operating in an underserved area will be expected to regularly review its business plan to determine if the community is being adequately served. The appropriate regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the community are being met. Such reports may also be required before a federal credit union is permitted to add an additional underserved area to its field of membership. ACB urges the NCUA to enhance the meaning of these provisions and require credit unions in underserved areas to regularly document their service to persons of modest means. These steps would help the NCUA ensure that credit unions are serving those customers most in need of financial services.

Public Notice

The federal banking agencies require banks and savings associations to notify the public before establishing a new branch. Institutions publish such notices in newspapers of general circulation where the new branch is slated to open. The public may comment on the non-proprietary portions of the branch application during the relevant comment period.

ACB believes that credit union field of membership applications, including applications to add an underserved area, should likewise be subject to the notice and comment process. Instituting a more transparent procedure would help the NCUA address criticisms that it has acted like a rubber stamp for any application that is brought before it. It would also help the NCUA demonstrate that field of membership applications are thoroughly reviewed and that the agency approves only applications that are consistent with the field of membership limits established for federal credit unions.

Conclusion

ACB reiterates its support for the proposed amendments, and we urge the NCUA to adopt our suggestions for improving the application process and ensuring credit union accountability for serving persons of modest means.

Thank you for the opportunity to address this important matter. Should you have any questions, please contact the undersigned at 202-857-3121 or pmilon@acbankers.org, or Krista Shonk at 202-857-3187 or kshonk@acbankers.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia A. Milon". The signature is fluid and cursive, with a prominent initial "P" and a long, sweeping underline.

Patricia A. Milon
Chief Legal Officer and
Senior Vice President,
Regulatory Affairs