

March 28, 2006

Ms. 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, Service to Underserved Areas

Dear Ms. Rupp and Members of the NCUA Board:

I am writing in response to NCUA's request for comments on its Notice of Proposed Rulemaking regarding service to underserved areas. On behalf of the Board of Directors and Executive Management Team of Black Hills Federal Credit Union, I will comment on the two proposed amendments to NCUA's field of membership policy and will then address the issues posed in the Request for Comments.

First amendment which limits the addition of new underserved areas to only multiple common-bond credit unions.

We strongly disagree with this amendment as well as the moratorium on allowing non-multiple common-bond credit unions to add underserved areas. In NCUA's notice of proposed rule making, the Board states, "In establishing a federal credit union system Congress recognized that a primary purpose was to make credit more available to persons of modest means." NCUA then states "From 1994 through 1998, NCUA rules permitted federal credit unions, regardless of charter type, to include low-income communities and associations in their field of membership." The document continues, "NCUA believes that the statutory language also reflects Congress' intent to make clear that this new charter type was authorized to add underserved areas, not to prohibit the other two federal charter types from doing so. This conclusion is supported by the legislative history and the fact that at the time Congress enacted CUMAA it was aware of NCUA's long standing policy allowing all federal credit unions to serve communities and groups in need of additional financial services."

After reading the NCUA Board's comments, we seriously questioned the propriety of imposing the moratorium and proposing a permanent change to policy to disallow service of new underserved areas by non-multiple common-bond credit unions. There is no evidence to warrant a policy change which will compromise the well-being of the credit union industry and the members served. A change in policy will only serve a special interest group which stands to directly benefit from the restrictions. There should be no moratorium and this amendment should be eliminated.

We also believe NCUA should have allowed the lawsuit to continue as the congressional intent is very clear in allowing all charter types to serve underserved areas. If a federal court were to rule against NCUA's authority to grant underserved expansions for community and single-bond credit unions, regulatory relief should then be sought through Congress to lift the ban and correct the language in CUMAA. If the courts were to rule against credit unions, the chances of obtaining Congressional approval would probably be quite favorable as Congress wants credit unions to serve people of modest means. Instead, we are unfortunately allowing bankers to dictate who we serve.

You state in your Notice of Proposed Rulemaking that, "We are concerned about the financial affect of continuing to approve new requests to serve underserved areas by non-multiple common-bond credit unions that then invest resources in serving these areas." We believe you should have allowed the present policies to continue and issued very clear warnings to credit unions that wished to expand into underserved areas that bankers have litigated this issue and there is a danger that credit unions could lose the right to serve the underserved area. If you don't require a facility in the underserved area until this issue is resolved in the courts or by Congress, credit unions' risk exposure would be mitigated.

Consumers are the ones who will be damaged by NCUA's proposed amendments as underserved communities need credit unions to provide low cost services to individuals of modest means since other financial institutions generally do not want to provide services to these individuals. Again, it is clear Congress never intended to exclude community credit unions and single common-bond credit unions from serving underserved areas; therefore NCUA should restore the authority for these credit unions to serve these areas.

Second amendment changes the definition and location of the service facility when adding underserved areas.

We strongly disagree with this change to require a physical presence in underserved areas. This may have been necessary years ago but multiple electronic delivery channels now bring credit union services right into the home, even in rural areas. Why impose a costly burden on credit unions when they are capable of providing services 24/7 through other means? As stated above, you could allow non-multiple common-

bond credit unions to serve new underserved areas if you don't stack the deck against them with high facility costs.

With this requirement, NCUA will be closing the door to any credit union serving counties with sparse populations. Don't these people have the right to improve their financial status by having access to less costly credit union services? Of the 66 counties in South Dakota, 31 have populations of less than 5,000, and 17 have fewer than 3,000 residents. Credit unions would be willing to serve these areas through electronic or other less costly means but it would not be cost effective to serve these areas if a facility is required. Credit unions of all charter types should be allowed and encouraged to serve these underserved areas without burdensome capital expenditures.

Request for Comments

(1) NCUA's authority to permit expansions to underserved areas for all three federal charter types.

We stated very clearly in our comments on page one our opposition to limiting the types of credit unions that can expand into underserved areas. At the time of passage of CUMAA, Congress knew all credit union charter types were being allowed by NCUA to serve underserved areas and that it was never their intent to take this authority away from single-common bond or community chartered credit unions. Congress stated clearly in the passage of the Credit Union Membership Access Act that they wanted credit unions to serve people of modest means. It would then follow that the most expedient method of accomplishing this would be to allow all credit unions, regardless of charter type, to serve underserved communities.

(2) The impact of limiting expansions into underserved areas to only multiple common-bond credit unions.

The impact would be enormous and at cross-purposes with the definition of "community". How can you single out underserved areas as inappropriate areas to be served by a community chartered credit union without offending the very few you are trying to protect – the underserved? How will NCUA rationalize their actions which discriminate against underserved areas? This is a question that will be difficult for NCUA to answer given that community chartered credit unions do not segregate their memberships, but focus instead on serving the greater good of the community as a whole.

Furthermore, how can you put a price tag on people's inability to obtain affordable financial services? For example, where would low-income people turn to get a loan to buy a pair of eye glasses for \$50? Who would make them a loan for \$50 or \$100 to fix their car, complete their rent payment, buy food for the table, or

purchase clothes for their children? Black Hills Federal Credit Union makes these types of affordable loans on a routine basis. We have a very positive impact on the lives of the people we serve as our members know they can count on us for small, affordable loans and they will not be forced to turn to payday lenders as the only alternative. Banks do not meet the needs of low-income families. Your proposals will eliminate affordable credit union service for millions of people. As a community credit union, we are experienced in serving the underserved and should be allowed to expand into new underserved areas.

If you limit expansions into underserved areas to only multiple common-bond credit unions, expansions will slow significantly as most multiple common-bond credit unions will not have the comfort and experience to serve low-income communities. Community credit unions have been serving all types of communities for years and are the most experienced and capable at serving underserved areas.

(3) Whether, if only multiple common-bond credit unions are permitted to add underserved areas, they should be permitted to retain these areas in the event they change charter type.

We believe they should be able to continue serving such areas. Removing this authority from these credit unions would be devastating to these communities. The reputation risk to the credit union would be enormous. The financial impact on low-income people would total in the millions of dollars. Some multiple group credit unions would avoid expanding into underserved areas if they had reason to believe they might need to convert to a different type of credit union charter but would then lose the right to serve the underserved area. They would not want to step close to such a reputation risk. The result of implementing this type of restriction would be punitive to low-income families.

(4) The type and extent of existing investment by non-multiple common-bond credit unions in underserved areas including for example; capital investment, loans, share deposits, and other programs targeting low income people.

BHFCU serves the underserved county of Lawrence. We have a facility in the county from which we serve 5,313 members who have \$38.9 million in loans and \$45.3 million on deposit at the Credit Union. The capital investment for the land and building exceed \$441,000 and this doesn't consider the monetary value of staff's time in planning for and moving into the facility, and the ongoing investment in keeping the facility operational and modernized. We offer loans for first time home buyers with very little or no down payment required. As previously stated, we make many small loans – as low as \$50 – that are affordable for the members because we do not charge application fees or any other fees that are charged by other financials in order to make a profit on the loans. We have free checking

accounts, savings accounts with no minimum deposit required except for the membership share deposit, and certificates with very low minimum deposit requirements. Our e-services are free and widely used. Many of our fees are much lower than what other's charge as we truly focus on people rather than profits. If we aren't here to serve them, who will step in with this people rather than profits philosophy? We all know the answer is no one and that the cost of doing business for these low and modest income people will rise dramatically. In many cases, they will become "unbanked" because they won't be able to afford any other financial institution and may be intimidated going elsewhere as well.

(5) The impact to members of underserved areas, and non-multiple common bond credit unions, of restrictions on the addition of new members in underserved areas they are currently serving.

We would hope that you aren't remotely considering such a restriction. We are strongly against any regulations that would restrict our right to add new members in the underserved area of our field of membership. The damage of such action to members and their credit unions would be incomprehensible. We were asked by NCUA to serve the underserved area of Lawrence County and applied in good faith with the understanding that once we were allowed to serve this area that such authority would continue. We have invested hundreds of thousands of dollars in this area and have a very positive image in the community. Withdrawing from this community would seriously damage our reputation, not only in this community, but in the other communities we serve. It is likely that we would be forced to close the branch facility over time because we could not add new members.

Summary of Recommendations

It is time for credit unions and NCUA, not the bankers, to determine who we serve within the laws as set forth by Congress. The bankers want no competition and will continue to litigate in an attempt to limit who we serve and to weaken the resolve of credit unions and their regulator to serve areas and people that we can rightfully serve under the purview of the FCU Act. Now is not the time to succumb to the banks threats, bullying, and lawsuits. Now is the time to stand strong on behalf of our members and potential members and allow and encourage credit unions of all charter types to serve underserved areas. Let's let the litigation with the banks proceed and have the courts or Congress – not the banks - determine who we can serve.

The summary of our recommendations are as follows:

- (1) Remove the moratorium on allowing non-multiple common-bond credit unions to add underserved areas.
- (2) Let the litigation with the bankers continue in order to give the courts a chance to decide which credit union charter types can serve underserved communities.

- (3) Allow all credit unions, regardless of charter type, to expand into new underserved areas.
- (4) Do not mandate service facilities in underserved areas. Recognize that today's delivery technologies give credit unions many options to serve remote areas instead of requiring expensive facility alternatives.
- (5) Once a credit union is given the authority to serve an underserved area, they should retain this authority as long as they remain a credit union.
- (6) Credit Unions should not be restricted from adding new members in underserved areas they currently serve.
- (7) It is imperative that NCUA work with Congress immediately to secure legislative changes to the FCU Act to clearly define the intentions of Congress when CUMAA was passed. Congress enacted the Federal Credit Union Act of 1934 because bankers were not doing their job in providing affordable financial services to all segments of society. It is therefore incomprehensible that NCUA would allow the banking industry to define who credit unions can serve.

I would welcome a call if you have any questions about our letter.

Sincerely,

BLACK HILLS FEDERAL CREDIT UNION

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CC: CUNA
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