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JUN21'07

June 18, 2007

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

Re: NCUA Proposed Changes to 12 CFR Part 701 -Chartering and Field of Membership for Federal Credit Unions

Dear Ms. Rupp:

On behalf of the management and Board of Directors of Consolidated Federal Credit Union, please accept these official comments for the record on the National Credit Union Administration's proposal to amend Section 12 CFR Part 701 on Chartering and Field of Membership.

As a prelude to our comments below, we feel that the great majority of the provisions of today's Chartering and Field of Membership Manual are adequate and do not need an extensive level of modification. With effective implementation and reasonable interpretation, they can certainly continue to establish a strong foundation for those federal credit unions who seek to comply with them when pursuing a field of membership revision.

With our statement in mind that consistency in field of membership rules is important and unnecessary changes to those rules are burdensome, we would like to take this opportunity to comment on the proposal referenced above. We trust that the agency will give them serious consideration and appreciate the opportunity to give these comments.

Community Charter Documentation Requirements

This proposal seems to be overly prescriptive as it establishes by regulation the exact types of documentation that a credit union should use to demonstrate interaction in a proposed community.

Every credit union is different, as is every community. To establish a "one size fits all" regulatory preference for certain types of documentation fails to recognize the difference that is in every community. Some have an airport while other do not. Hospitals, roadways, shopping centers, community organizations…they are different in every community.
This proposal, by specifying the agency's preference for certain types of documentation over other types, will serve to standardize what should be individualized – the determination of community. Earlier NCUA Boards have removed such unnecessary documentation requirements as costly third-party surveys and purchases of data from exclusive sources beyond what is commonly available. This provision will put credit unions back into the "purchase and acquisition" approach when it comes to community charter applications.

Consultants, commercial data vendors and research firms will be the primary beneficiaries of this provision. We encourage the agency to continue to review community documentation on a case by case, community by community basis without establishing a "one size fits all" regulatory preference for the type of data which will be acceptable.

Local Community Presumption

We are pleased that the agency is proposing to keep in place its policy that a single political jurisdiction is presumed to be a well-defined local community. We feel that this should also include any portion of a single political jurisdiction within the presumption. If an entire county or city can be presumed to be a community, then certainly a smaller portion of either would also be so presumed. The smaller the geographic area, it would follow that community would be strengthened.

However, as it relates to presumed communities larger than a single political jurisdiction, we would like to comment on the proposal's treatment of Core Based Statistical Areas (CBSAs). Although it again seems that the proposal errs on the side of a "one size fits all" definition of a presumed community as a CBSA, or portion thereof, that contains a dominant city, county or equivalent with a majority of all jobs in the CBSA and at least 1/3 of the total population of the CBSA, the intent to increase the effect of the presumption based upon independent third party criteria from another governmental entity (in this case, the U. S. Census Bureau) is commendable.

In follow up to our earlier reference to the need for a portion of a single political jurisdiction to also be presumed a community, we commend the agency for including in this section a provision that a "part thereof" of a qualifying CBSA is likewise a community. This would, properly in our view, make it possible for a credit union to define a community where it can extend its service to a portion of a CBSA without being required to assume the costs of extending its service to its entirety. This could prevent credit unions from over extending themselves in order to define a presumed community that is larger than they would otherwise seek to serve or feel that they have the ability to serve most effectively.

This proposed change, with the addition of a provision that a portion of a single political jurisdiction is also a presumed community as is the larger entity, has the potential to be a positive addition to the existing rules.

Previously Approved Communities Become No Longer Presumed After Five Years

As stated above, any provision that helps make the burden of documenting a community that has already been held to be sufficiently interactive to meet the regulatory requirements is positive. We commend the agency for including in this proposal that it will continue to save previously approved communities from having to go through the costly and burdensome process of documenting again a community that has already been documented to the satisfaction of the agency. However, we must state our vigorous opposition to the limitation of this documentation exemption to apply to only a community that has been approved by the agency within the past five years.

It seems to us that there is no empirical data to indicate that communities have an expiration date. As the statute clearly states that communities must be "well defined and local" in order for credit unions to serve them through a community charter, there is no reference in the statute to a time frame in which that "well defined and local" determination must be re-qualified. We cannot envision a situation in which the demographics and characteristics of a community will so dramatically change over any five year period that it would no longer meet the statutory definition of "well defined and local."

To require the additional documentation of a previously approved community simply because the calendar has turned five times seems arbitrary. Why not three years, six years, ten years? Is there any data indicating that five years has any disqualifying length for determining if a community is still a community? Again, all this provision seems to accomplish is to make the documentation process more costly, time consuming and burdensome.

Since the current rules mandate the use of statistics derived from the most recent ten year U. S. Census data, it certainly makes sense that any determination of a community based upon this census data would be valid for the entire ten year

period of the census. A five year expiration of a documented community is inconsistent with the life of the very census data the original community approval was based upon. We see no data based or historically validated support for this "five year community" provision and encourage the agency to remove this part of the proposal.

Establishment of Rural District Criteria

The statute has always allowed for a rural district to be established, recognizing the geographic and demographic differences in rural and urban areas. We feel that it is appropriate that the agency recognize those differences, particularly for the benefit of credit unions seeking to serve widespread communities that are rural in nature.

The documentation that would be required to demonstrate interaction in a community is much more available for urban areas than it is for rural areas. We support the rural district presumption, even though it is somewhat limited and again seems to take a "one size fits all" approach. More appropriate that the 100,000 maximum for a community to qualify as a rural district would be a presumption with a 500,000 maximum, consistent with the present rules for a multi-county community other than a MSA.

Business Plans

As many of our comments have been based upon the need to remove unnecessary burden in the community charter application process, we find benefit in the agency's proposal to provide specific guidance in the manual regarding what must be included in a business plan.

Whereas there are distinct differences in communities that make a "one size fits all" list of community documentation standards problematic, there are certain financial and service extension commitments that should be a part of any community charter application. Although this is required under current rules for any credit union seeking to convert to a community charter, there is some value to credit unions to know in regulation what those requirements are.

Of course, as always, the key is the implementation. It is imperative that the agency, in evaluating an application for community charter, recognize that budgets, branching plans, marketing plans, product enhancements, etc. must be fluid and not rigid. For safety and soundness purposes, it may be best for one credit union to open a new branch every year whereas, for another, it may be best to spread the branch openings over multiple years for financial, service and even property acquisition reasons.

Federal Register Notice and Comment Period

We are very much opposed to requiring notice of any community charter application to be published for comment in the Federal Register. The definition of what is a well-defined local community and whether a proposed community meets those standards is the purview of NCUA as the regulator of federal credit unions, not to any other individual or body. To open the definition of a community to every commenter's individual definition of that same community is irrelevant. Even worse is the opening of the details of a credit union's business plan to serve that community to every competitor in the community through a public notice and comment period.

We certainly acknowledge the importance of public notice and comment periods for the regulatory rule-making process. We are herein ensuring that our voice is heard through such a process regarding a proposed rule with which all federal credit unions will be required to comply. However, the compliance with those rules, or the failure to do so, is a matter between the regulated institution and its regulator. To invite public comment, whether by supporters of the credit union or its critics, is not relevant to the compliance decision at hand. Has the credit union met the standards in the view of the agency charged with so determining? It's that simple. Public notice and comment only elongates and makes more cumbersome that compliance process.

The Administrative Procedures Act does not require public notice and comment on community charter applications. Lacking such a statutory mandate, it is likely that the proposed public notice and comment period will be ineffective at anything other than brewing controversy over what is essentially a compliance related decision by the agency statutorily charged with making that determination.

Not only would establishing a public notice and comment period on some field of membership decisions establish a dangerous precedent that could never be reversed without appearing to take away a public right that should never be granted on a compliance based decision, there is the greater likelihood that the demand for more public notice and comment periods will grow. Competitors, critics, dissatisfied employees…the list of those who can take advantage of the public notice and comment period is endless to potentially damage, or at least delay, a necessary strategic action by a credit union fully complying with the requirements of the regulations.

Our fear is that this proposal will eventually be extended to every field of membership expansion application, thus having a paralyzing impact on the ability of credit unions to diversify and maintain their financial stability within the federal credit union charter. Flight to the state charter or, of more damage to the viability of the credit union charter, flight to the mutual savings bank charter could result if federal charters are not able to grow sufficiently to better serve their members.

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A costly, burdensome, unnecessary and litigation fostering public notice and comment period where not required by federal statute would not be good public policy when applied to what is essentially a compliance based decision for a credit union seeking to expand its field of membership within the rules established by NCUA.

Voluntary Mergers Affecting Community Chartered Credit Unions

We commend the agency for including in this proposal its request for public comment on whether there should be any attention given to the voluntary mergers of federal credit unions.

Without question, community chartered credit unions are often limited when a potential partner requests a proposal for a voluntary merger. If both credit unions are community chartered, the communities must be identical (or, at least, the merged credit union's community must be fully encompassed within the continuing credit union's community charter). If the merging credit union is multiple group, only those SEGs within the continuing credit union's community will be able to be served on an ongoing basis. This eliminates for many potential voluntary mergers for community chartered credit unions with multiple group credit unions because of the inability to maintain the relationships with all of their SEGs in the combined credit union. If the continuing credit union in a voluntary merger is not the community charter but a multiple group credit union, this is simply not allowed – regardless of whether there is a better strategic, financial and service fit.

These disadvantages unnecessarily restrict the ability of many credit unions of all charter types to select the best potential merger partner. This could, over the course of years, result in marriages that are not in the long term interest of either the members of the credit unions involved or their long term safety and soundness.

We are convinced that community chartered credit unions should be able to enter into voluntary mergers with other community credit unions in their service area, as well as multiple group credit unions that need to ensure continued service to their former SEGs within their service area. Included in this authorization should be for multiple group and single sponsor credit unions to be able to merge a community chartered credit union within their service area as well. The driving issues should be the financial and "ability to serve" factors, not the field of membership.

If the merging credit union has community or SEGs outside of the service area of the continuing credit union, perhaps the regulator should intervene in a proposed merger out of concern for the ability of the continuing credit union to safely and soundly serve the expanded credit union membership. However, lacking a safety and soundness reason, voluntary mergers should be approved by the regulator

as long as they are within the service area of the continuing credit union and it has the financial wherewithal to serve the membership. Safety and soundness should be the overriding issue, not an artificial field of membership limitation as long as the service area is viable.

Underserved Communities, Not Community Charters

We cannot justify the need for an underserved area to be documented in the same way as a community charter in order for a federal credit union to step forward to meet the needs of the underserved residents there. Basically, we see this as black and white: every census tract in America has been determined by a recognized federal agency as either underserved or not.

When a neighborhood, city, county or multiple counties meet the standard for being underserved, it is recognized that the residents would benefit from access to lower cost financial services from a credit union. If a credit union is willing, able and committed to providing that service, the regulations should make that easier rather than more difficult

The underserved criteria are well defined in the current field of membership manual. They are objective, reasonable and demanding. It will make many federal credit unions bypass the decision to extend their services into underserved areas is they must both validate them as underserved and also then go further to validate them as a community.

If a multiple group credit union (the only federal credit union charter type authorized under present regulation to expand service into an underserved area) wishes to convert to a community charter, it would expect to meet the community documentation standards outlined in the rules and regulations. With that documentation and compliance with the regulations, it would be able to serve the entire community approved. Indeed, it would be a community chartered credit union.

However, if a multiple group credit union has the heartbeat to strategically extend its service only into a section of its service area that has been defined as "underserved" and therefore in need of additional financial service enhancement, this proposal would force the credit union to either document that underserved area to the same extent it would to convert to a community charter or force it to forego a service extension of another choice for lower cost service that would be valuable to the community residents and potentially beneficial as a diversification tool for the credit union as well.

There has been for years a distinct difference in the regulations between a community chartered credit union and a credit union serving a defined underserved area. This distinction was further made when the agency in 2006 removed the ability for community chartered credit unions to expand into

underserved areas outside of their community. This service expansion option is now available, by regulation, only to multiple common bond credit unions.

The distinction between community chartered credit unions and those credit unions serving an underserved area should remain. This proposal will have a negative impact on the adoption of underserved areas. The losers will be the underserved residents of these neighborhoods, cities, counties and areas.

We strongly encourage the agency to withdraw this provision to blur the distinction between community charters and underserved areas by applying the same standards to both.

In closing, please allow me to thank you for the opportunity to comment for the official record on these proposed amendments to the NCUA Chartering and Field of Membership Manual.

Sincerely,

Ed Baldwin
President and CEO

cc: Chairman Johnson
Vice-Chairman Hood
Board Member Hyland