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July 30, 2007

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

Re: National Credit Union Administration; Chartering and Field of Membership for Federal Credit Unions; 12 CFR Part 701; 72 Federal Register 30988, June 5, 2007

Dear Ms. Rupp:

The American Bankers Association (“ABA”) submits this letter in response to a request for comments regarding proposed changes to the National Credit Union Administration’s (“NCUA’s”) Chartering and Field of Membership Manual. (“Chartering Manual”), Interpretive Ruling and Policy Statement 03-1. *See* 72 Federal Register 30988 (June 5, 2007). The NCUA Board has proposed a number of amendments to its Chartering Manual in order to “update” community chartering policies in response to “NCUA’s experience with reviewing applications of credit unions seeking community charters.” Among the topics for comment raised by the NCUA is a request for guidance regarding whether any “adjustments” are necessary to the Chartering Manual with respect to mergers involving community charters.

As set forth more fully below, ABA opposes any change to the merger rules contained in the Chartering Manual that would allow a credit union to evade the statutory limitations on credit union membership that have been imposed by Congress. Specifically, ABA opposes any change to the merger rules involving community credit unions that would permit the resulting institution to add members that are located outside of a single “well-defined local community.” The Federal Credit Union Act (“FCUA”) does not authorize such a result, and any change to the Chartering Manual or staff interpretation that would permit such mergers to go forward would violate the statute.

Congress has made it very clear that federally chartered credit unions may be chartered using one of three specific membership models. Section 1759(b) of the FCUA provides that, subject to certain limited exceptions, the membership of any Federal credit union “shall be limited to the membership described in one” of three categories: (1) single common-bond credit union, (2) multiple common-bond credit union, or (3) community credit union. 12 U.S.C. § 1759(b). The statute’s use of the phrase “shall be limited to” only one of the three membership models is significant because it renders the three enumerated membership models mutually exclusive: an institution may be either a community credit union or one of the two common-bond credit unions, but it cannot be both. Any question on this point was settled by the United States Supreme Court in *National Credit Union Admin. v. First Nat. Bank & Trust Co.*, 522 U.S. 479, 503 (1998), which rejected previous agency interpretation of the FCUA that permitted the creation of a membership model not specifically enumerated in section 1759. Thus, it is well established that NCUA lacks the authority to create a membership model beyond that authorized by the statute that would consist of a mixed or “hybrid” set of affinities or attributes.

We note that these statutory limitations are currently reflected in the sections of the NCUA’s Chartering Manual that govern the terms and conditions under which a community credit union may merge with another credit union. The Chartering Manual is specific with respect to the constraints that the statute places on this category of merger:

- Where both credit unions are community charters, the continuing credit union must meet the criteria for expanding the community boundaries.
- A community credit union may not merge into a single occupational, associational, or multiple common bond credit union, except in an emergency merger.
- A single occupational or associational or multiple common bond credit union may merge into a community charter as long as the merging credit union has a service facility within the community boundaries or a majority of the merging credit union's field of membership would qualify for membership in the community charter.
- A community charter may take in an occupational, associational, or multiple common bond credit union in a merger. However, the resulting institution must remain a community charter. Groups within the merging credit union's field of membership located outside of the community boundaries may not continue to be served. The credit union may continue to serve members of record.

ABA respectfully submits that NCUA must decline any request to amend its Charting Manual where the result would be to ease the current restrictions on mergers. Any such amendments to the NCUA’s current merger rules would violate the restrictive language of section 1759 of the FCUA. While NCUA has not proposed any specific amendments to the merger rules, and it is impossible to anticipate and respond to all of the possible amendments or revisions that may be

proposed by other commenters, ABA wishes to take this opportunity to address two specific points.

First, NCUA cannot abandon the fundamental principle that the surviving entity of a merger between a single or a multiple common-bond credit union and a community credit union will operate with a community charter, and that groups located outside of the proposed community may not continue to be served by the resulting institution. Amending the Chartering Manual to permit a community chartered institution to continue to serve groups located outside of a “well-defined local community” after a merger with a common-bond credit union would operate to create a species of hybrid charter: an institution ostensibly created to serve a specific community but with a customer base that is not limited to a particular geographic area. Such a membership model is clearly not authorized by the FCUA and, as discussed above, the Supreme Court has previously rejected similar attempts by NCUA to interpret section 1759(b) in ways that circumvented the express limitations that the statute imposes upon credit union membership.

Second, NCUA must continue to require that a credit union that results from a merger of two or more community credit unions must meet all of the statutory criteria governing an expansion of its geographic boundaries. In other words, the resulting community credit union must establish that the geographic area that it will serve represents a single “well defined local community, neighborhood or rural district.” Allowing a community credit union to merge without first ensuring that the resulting entity serves a single well-defined local community would, as a practical matter, eliminate application of the geographic restrictions on membership contained in the statute; community credit unions would be able to expand geographically through single or multiple mergers into locations that might otherwise be prohibited by the FCUA. *See, American Bankers Ass'n v. National Credit Union Admin.* 347 F.Supp.2d 1061, 1073-74 (D. Utah, 2004)(the NCUA’s discretion in approving a “well-defined local community” is limited by the word “local.”). NCUA must retain its current policy in order to abide by the plain statutory limitations that the FCUA places upon the permissible membership of a community credit union.

In conclusion, the FCUA states that membership is limited to one type of common-bond – single, multiple, or community. To allow a community charter to merge with another type of common-bond credit union and continue serving groups outside of the “well-defined local community” would violate the FCUA by mingling different forms of common-bond. Community common-bond credit unions are limited to “persons or organizations within a well-defined local community, neighborhood or rural district.” For the NCUA to modify its merger policy to permit community common-bond credit unions serving unrelated and distinct well-defined local communities to merge would violate the Congressional requirement that it be a single well-defined local community, neighborhood or rural district. Therefore, NCUA should not make any of these proposed changes to its policy with regard to community credit union mergers.

If you have any questions about this letter, please do not hesitate to contact the undersigned.

Sincerely,

Gregory F. Taylor
Associate General Counsel
American Bankers Association