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July 5, 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”) is responding to the proposed rule published by the National Credit Union Administration (“NCUA”) that would amend NCUA’s Chartering and Field of Membership Manual (“Chartering Manual”). The American Bankers Association, on behalf of the more than two million men and women who work in the nation’s banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

ABA strongly objects to the modifications to the Chartering Manual that would treat Statistical Areas and Rural Districts as presumptive local well-defined communities. This proposed definition would extend fields of membership far beyond those allowed by law or envisioned by Congress in the creation of credit unions as special purpose cooperatives united by a genuine common bond. Additionally, ABA believes that the NCUA Board should revisit its policy that a single political jurisdiction, regardless of population size, can be legally deemed a well-defined local community.

ABA Position

ABA strongly objects to the idea of treating statistical areas and rural districts as presumptively local well-defined communities as proposed by this rule. NCUA’s proposed rule – which significantly expands the definition of community beyond any reasonable definition of “local” – circumvents Congressional intent as expressed in the Credit Union Membership Access Act (“CUMAA”) and goes beyond NCUA’s underlying statutory authority for chartering and establishing field of membership requirements for federal credit unions. The proposed rule ignores CUMAA’s mandate to limit the field of membership boundaries of federal credit unions to ***“a meaningful affinity and bond among members in the context of shared and***

related work experiences, interests, or activities, the commonality of routine interactions, and a well-understood sense of cohesion or identity.”

But it is not just ABA that is concerned by NCUA’s abuse of the concept of community chartered credit unions. Small, traditional credit unions are deeply troubled by NCUA’s abuse of the community charter. In a letter to the editor of *Credit Union Journal*, Margarete H. De May, Manager of Canandaigua V.A. Employees FCU (Canandaigua, N.Y.), wrote that “I never thought in my lifetime that I would say that we do not have a future. But even now I have to come [to] the conclusion that we have to merge or voluntarily liquidate....It all started when NCUA opened the door for community charters.”¹

One point where ABA and NCUA agree is the need to provide public notice for comment on community charter applications. Public notice and comment should certainly be required when a proposed charter does not meet the established presumptive definition of “local.” Such a process would have helped provide a balanced record in the case currently in litigation in Pennsylvania.

Moreover, ABA believes that a 5-year limit on supporting documentation for approved communities is an improvement over current NCUA practices. Currently, a request for a proposed community charter, charter amendment, or charter conversion that would encompass the same exact geographic area as one previously approved by NCUA does not need to be accompanied by a narrative summary or documentation supporting the request. This is an information gap in need of filling.

Nevertheless, NCUA should not adopt this proposed rule. This letter details ABA’s objections and urges NCUA – if it intends to go ahead with a rulemaking – to incorporate appropriate changes prior to issuing its final rule.

Background

In response to Congressional requirements embodied in the Credit Union Membership Access Act, the NCUA implemented the Field of Membership aspects of CUMAA through modification of its existing Field of Membership Policy. The Chartering Manual reflects the Field of Membership Policy, which was subsequently modified in 2000, 2002, 2003 and 2006.

Currently, the Chartering Manual treats a single political jurisdiction as a presumptive local community regardless of the size of the population or land area served.

Rather than solving this already-too-extensive definition, NCUA proposes to amend the Chartering Manual by making the presumptive local community designation applicable to two additional community types. First, the NCUA Board is proposing that a “statistical area” be designated as a well-defined local community in cases involving multiple political jurisdictions. Second, the NCUA Board is proposing to

¹ “United We Stand, Divided We Fall,” *Credit Union Journal*, New York: June 4, 2007. Vol.11, Issue 22; pg. 8.

define a “rural district” such that its definition will also meet the presumptive definition of a local community.

The Proposed Rule Further Excises the Term “Local” from Community

The NCUA Board proposes to, in effect, excise the term “local” from the Federal Credit Union Act (“Act”). When Congress amended the Act by enacting CUMAA in 1998, it intentionally inserted this term as a means of limiting the geographic scope of community chartered credit unions.

There are reasons why Congress imposed the limits on community charters. Congress has provided credit unions with certain advantages, but with those advantages there are also limitations, such as the size and scope of community credit unions. It is not the expressed intent of Congress for credit unions to become an alternative, tax-exempt bank. Moreover, Congress understood that if a community credit union were going to fulfill its public mission, there needed to be a meaningful affinity and bond among members, manifested by a commonality of routine interactions. The Act defines the permissible membership for a community credit union as “persons or organizations within a well-defined *local* community, neighborhood or rural district.” (Emphasis added) In adding the word “local” to the already existing term “well-defined,” Congress clearly intended to impose finite and narrow limits on the area that a community credit union may serve.

A colloquy between Senator D’Amato (Chairman of the Senate Banking, Housing and Urban Affairs Committee) and Senator Bennett (a senior member of the Committee) demonstrates the point. Senator Bennett, expressed concern over how the NCUA would “design their regulations dealing with the size and scope of community credit unions,” and asked Chairman D’Amato about the necessity for an amendment he intended to offer addressing this issue.

Senator Bennett stated: “Although I had initially intended to offer an amendment *limiting the size of a federally-chartered community credit union to three or four contiguous census tracts*, after discussing the matter with the Chairman I decided that *my amendment would be unnecessary*.” (Emphasis added)

Chairman D’Amato responded: “The Senator is quite correct when he states that his amendment would be unnecessary. The Banking Committee was very careful and direct in its instructions to the NCUA ... The Committee intends for the NCUA to limit federally-chartered community credit unions to be subject to well-defined, local, geographic expansion limits.”

Senator Bennett concluded: “I thank the Chairman for his clarification on this issue.... I am satisfied by the Committee’s report and by the remarks of the Chairman that such an amendment would be redundant and unnecessary.” (See *Congressional Record* of November 12, 1998, page S13003.)

This dialogue clearly demonstrates that by including the term “local” within the community charter definition, Congress intended to confine the permissible membership of a community credit union to a narrow geographic area – no greater than three or four contiguous census tracts.

According to the U.S. Census Bureau, “census tracts are small, relatively permanent statistical subdivisions of a county.... Census tracts usually have between 2,500 and 8,000 persons and, when first delineated, are designed to be homogeneous with respect to population characteristics, economic status, and living conditions. Census tracts do not cross county boundaries.”²

Despite Congress’ intent, the current Chartering Manual, as modified in 2003, states that “any city, *county*, or smaller political jurisdiction, ***regardless of population size***, meets the definition of a local community.”

NCUA is now proposing to create two additional categories that will meet the presumptive definition of a well-defined local community: (1) statistical area and (2) rural district. Not only does this proposal ignore the intent of Congress, it creates an environment in which community chartered credit unions may operate without meaningful geographic restrictions.

A Statistical Area Is Neither Local Nor Well-Defined.

The NCUA Board proposes that a “statistical area” be designated as a well-defined local community in cases involving multiple political jurisdictions. The “statistical area” designation will only apply when the following three requirements are met:

- the area must be a recognized core based statistical area (“CBSA”), or part thereof, without a Metropolitan Division;
- the area must contain a dominant city, county or equivalent with a majority of all jobs in the CBSA; and
- the dominant city, county or equivalent must contain at least 1/3 of the CBSA’s total population.

The NCUA Board has correctly concluded that a CBSA that contains a Metropolitan Division does not meet the criteria for being a well-defined local community. However, ABA believes that using CBSAs to designate a “statistical area” as a well-defined local community is inappropriate and serves merely to further the excessive expansion of community chartered credit unions.

A CBSA is defined as “a statistical geographic entity consisting of the county or counties associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and Micropolitan Statistical Areas are the two categories of Core Based Statistical Areas.” 65 Fed. Reg. 82238 (Dec. 27, 2000).

² http://www.census.gov/geo/www/cen_tract.html

In ABA's January 31, 2003 letter to NCUA, ABA objected that a multi-jurisdictional area that involves one million or fewer individuals in a metropolitan statistical area ("MSA") when combined with a nominal level of community interaction would meet the NCUA's "local" community test for membership purposes, but it defied Congressional intent. Now, NCUA proposes to expand the scope of multi-jurisdictional areas further by defining a CBSA as a presumptive local community in defiance of statutory requirements that community charters be "local."

CBSAs have a limited, statistical purpose. The Office of Management and Budget ("OMB") "cautions that Metropolitan Statistical Area and Micropolitan Statistical Area definitions should not be used to develop and implement Federal, state, and local nonstatistical programs and policies without full consideration of the effects of using these definitions for such purposes." 65 Fed. Reg. 82228 (Dec. 27, 2000). The appropriate use of a Metropolitan Statistical Area is for collecting, tabulating, and publishing statistics as well as informing policy. OMB believes that it is inappropriate to use a Metropolitan Statistical Area for implementing nonstatistical programs and determining program eligibility. According to OMB, CBSAs should never "serve as a general purpose geographic framework for nonstatistical activities." 65 Fed. Reg. 82228 (Dec. 27, 2000). Therefore, NCUA's reliance upon CBSA designation is not supported by the fundamental purpose of CBSA designations.

Furthermore, a CBSA describes the interaction of the outlying county or counties with the central (dominant) county, city, or equivalent. However, the CBSA does not measure the commonality and interaction among the outlying counties. In adopting the above criteria, NCUA erroneously makes the assumption that if the citizens in County A have a commonality and interaction with citizens in County B, and if citizens in County B have a commonality and interaction with citizens in County C, it must follow that the citizens in County A have a commonality and interaction with citizens in County C. The Federal Credit Union Act does not allow the NCUA to string together a chain of unrelated counties to maximize the geographic area of a community charter.

In the Tooele FCU ("TFCU") case, Judge Kimball in his opinion wrote that the:

Defendants then contend that there is no requirement that there be commonality and shared interest among all six counties. According to Defendants, the fact that each county has ties to Salt Lake City is enough – for example, there is no requirement that Morgan county [sic] have ties to Tooele County. Based on this reasoning, even if there were no common interests or interaction between Tooele County and Morgan County and TFCU could not establish a community charter if it only sought to expand only into Morgan County, it could expand into Morgan County if it included four other counties. This type of reasoning directly contradicts the insertion of the term "local" in the regulations. Rather than limiting community charters, such an argument favors an expansion of community charters.... If TFCU cannot establish that it has ties and interaction with another county it seeks to expand into or that there are similar interaction patterns within the six-county area, the NCUA should

critically analyze whether such factors diminish the likelihood that one local community exists.³

Additionally, in the proposed rule the NCUA Board recognizes that an important characteristic of a local community charter is that there must be some geographic certainty to the community boundaries, i.e., the boundaries must be well-defined. ABA believes that a CBSA does not meet this criterion. While a CBSA does demonstrate economic interaction, a CBSA with multiple political jurisdictions is inherently not well-defined, because it is subject to geographic change.

In 2003, OMB defined CBSAs based on 2000 Census data. In 2008, OMB will review all existing CBSAs using commuting data from the Census Bureau's American Community Survey, and new CBSAs will be designated in 2008 and 2009. Hence, it is entirely possible that the counties that comprise current CBSAs will no longer be designated as such.

For example, in 1999 the Salt Lake City (UT) Metropolitan Statistical Area included the counties of Davis, Salt Lake, and Weber. In 2003, the borders of the Metropolitan Statistical Area changed. The new area included the counties of Salt Lake, Summit, and Tooele. Weber and Davis Counties were incorporated into a new Metropolitan Statistical Area along with Morgan County.

Thus, ***CBSA borders are not stable and should not be used for determining well-defined local communities.***

Finally, according to the Chartering Manual, “[a]lthough...state boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community.” ABA is concerned that the proposed statistical area definition could be inappropriately applied to a small state as a presumptive well-defined local community. For example, the central counties in Rhode Island account for more than half the population and jobs, and the entire state is part of a single CBSA.⁴ Hence, it would be possible under the NCUA proposal to treat all of Rhode Island as a well-defined local community. For this reason, while ABA opposes the proposed rule, if the NCUA Board proceeds with this proposal, the ABA recommends that any CBSA that encompasses an entire state be prohibited for authorizing a community charter.

By adopting the statistical area definition as a *de facto* local community, NCUA broadens the nexus of the community charter despite Congressional intent to narrow the scope of community charters. CBSAs do not meet the statutory requirement that a community charter be local and well defined. Moreover, use of CBSA designation could lay the foundation for NCUA to treat an entire state as a local community, clearly not within the statutory language as amended by CUMAA.

³ American Bankers Association v. National Credit Union Administration, 347 F. Supp. 2d 1061 (D. Utah 2004).

⁴ According to OMB, the central county or counties of a CBSA are those counties that: (a) have at least 50 percent of their population in urban areas of at least 10,000 population; or (b) have within their boundaries a population of at least 5,000 located in a single urban area of at least 10,000 population. 65 Fed. Reg. 82236 (Dec. 27, 2000).

A Rural District Does Not Meet the Requirement of Being Local.

NCUA is also proposing to define a rural district as an area that is not in a CBSA and that has a population density not exceeding 100 people per square mile where the total population of the rural district does not exceed 100,000. If the rural area meets these criteria, it is assumed to be presumptively a local community.

First, ABA believes NCUA's proposed definition of rural district is at odds with Congressional mandate and intent. In 1998, Congress found that "[t]o promote thrift and credit extension, a meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well-understood sense of cohesion or identity is essential to the fulfillment of the public mission of credit unions."

Significantly, the NCUA Board acknowledges that "it is proposing a definition that reflects an area that may lack the traditional characteristics of interaction or shared common interests." The lack of meaningful affinity is clearly at odds with statute and would make it more difficult for credit unions to fulfill their public mission.

Second, the geographic scope of a proposed rural district may be vast. At the minimum, a territory with 1,000 square miles could meet the proposed standards. This circumvents the statute's requirement that a community charter be local.

Moreover, in 1998 Congress found that an important characteristic of credit unions was that they were democratically operated and managed by volunteers. However, NCUA's proposed rural district could encompass such vast geographic territories that it would render this characteristic moot, as members would have a hard time volunteering and participating in the democratic governance of their credit union.

NCUA's definition of a rural district is at odds with the common understanding of the term and could encompass many counties.

ABA urges the NCUA Board to reject its proposal that a rural district constitutes a local well-defined community.

Public Notice Would Give NCUA Constructive Feedback on Community Charter Applications.

For a community charter application that does not meet the established presumptive definition of "local," the NCUA Board is proposing to publish a notice in the Federal Register seeking comment on whether the proposed community charter application is a local well-defined community. The comment period under this proposal would be 30-days, but could be expanded at the Board's discretion.

The NCUA "Board believes that in situations where the CBSA does not exhibit the standards required to meet the new statistical definition for a well-defined local community, or the area does not qualify under the single political jurisdiction

definition, public notice and comment will assist it with its analysis of whether the area in question is a well-defined local community ... and provide the public with an opportunity to provide timely comments and relevant information to the NCUA on the proposed local community area the credit union is seeking to serve.” 72 Fed. Reg. 30991 (June 5, 2007).

ABA is supportive of NCUA’s public notice proposal, but believes there should be wider publication of the notice for comment. Rather than simply publishing the notice in the Federal Register, the notice for comment should also be published in local newspapers within the proposed community as are other notices in the banking environment.⁵ In addition, NCUA could easily post the notice for comment on its website. The assumption that the public-at-large reads the Federal Register is misplaced and provides far too limited notice to credit union members and potential members in the impacted areas. ABA believes these changes to the proposed public notice rule would solicit more input from the community, and the benefits to the Board would outweigh the cost associated with the wider distribution of the notice for public comment.

Additionally, ABA recommends that the comment period be lengthened from 30 days to 60 days. This would give those parties who wish to comment on the proposed community charter application sufficient time to analyze the proposed community and to give NCUA constructive feedback.

Five-Year Limitation Is Appropriate.

Since 2001, the Chartering Manual has exempted a community charter applicant from submitting a narrative summary or documentation supporting a request of a proposed community charter, amendment, or conversion, with the same exact geographic area as one NCUA had previously approved for another credit union. The Board is proposing a five-year limitation on a community charter applicant’s use of this exemption.

In general, ABA believes the five-year limitation is an improvement over NCUA’s current policy. However, each community charter circumstance is different, even if a credit union is applying for the same community, and should be handled on a case-by-case basis.

If NCUA moves forward with its proposal, ABA believes that NCUA should require a community charter applicant to provide narrative support or documentation that the community meets the well-defined local requirement if the Office of Management and Budget redefines the boundaries of a CBSA within the five-year time interval.

⁵ 12 CFR 5.8

NCUA Needs to Re-evaluate its Policy that a Single Political Jurisdiction Is Local.

ABA continues to take exception to NCUA's policy that treats every city, county, or smaller jurisdiction as a presumptive well-defined "local" community and, therefore, eligible for a community charter. This was not always the case.

At an October 2001 NCUA Board meeting, the issue of treating a county as a local community was addressed in relation to the application of two separate federal credit unions that were seeking to convert from multiple group to community charters. Both credit unions sought to serve the *entire* Miami/Dade County community, which contains a population of over two million individuals. Their applications were rejected by the Regional Director, and the NCUA Board denied their appeal at the October meeting. After conducting a detailed analysis and review of the proposed community charters, the NCUA Board determined that the entire county incorporating the two major cities, Miami and Hialeah, did not meet the local community standard due to a lack of individual interaction and common interests.

However, as previously indicated, NCUA modified its Chartering Manual in 2003 in order to avoid having to reject similar applications in the future. Today, "any city, *county*, or smaller political jurisdiction, *regardless of population size*, meets the definition of a local community...any credit union that wants to serve such an area would *no longer need to provide a letter demonstrating how the area is a community or any other type of documentation demonstrating that the area is a community*. This is an *irrefutable presumption*, regardless of population size." 67 Fed. Reg. 72447 (Dec. 5, 2002) (Emphasis added)

Hence, under this rule, the NCUA Board never considers any detailed analysis on the merits of a community charter application or conversion – even in cases where the likelihood of a single local community is in question. In fact, after the NCUA Board adopted the standard that any city, county, or smaller political jurisdiction met the requirement of being a local community, NCUA granted both credit unions a community charter for Miami/Dade County, even though the NCUA Board had earlier found that the community did not meet the requirements of being local.

ABA is reminded of the remarks by then NCUA Chairman Dennis Dollar during the October 2001 NCUA Board meeting. Expressing the notion that each community charter application or conversion proposal should be handled on a case-by-case basis, Chairman Dollar stated:

Each one is different. Each circumstance is different. Each need is different. I can't say that the next community, even if it is this large, may not meet the standard. But this one does not.

We have approved large ones. We have turned down large ones. We have approved smaller ones. We have turned down smaller ones.

The standard is not the size. The standard is the interaction – the criteria that is set forth of a clear, well-defined community in

which there is interaction that can be documented, and the ability of the credit union to serve. (Official Transcript, NCUA Open Board Meeting, October 18, 2001)

Former Chairman Dollar sized the issue up succinctly and correctly: each circumstance is different. Thus, the NCUA Board should reconsider its blanket exception that a single political jurisdiction is a presumptive local community.

Conclusion

The ABA urges NCUA to withdraw the proposed modifications to its community chartering regulation. NCUA's proposed rule would expand beyond the letter and logic of the law the number of communities that would meet the presumptive standard of being local. These proposed standards make a mockery of Congressional intent that community chartered credit unions be **local** and have a meaningful affinity and bond among members. But ABA supports the NCUA public notice requirement.

ABA will file a separate comment on NCUA's request for comment on community charter mergers.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Leggett". The signature is written in a cursive, flowing style.

Keith Leggett