

August 6, 2007

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

RE: Comments on Proposed Rule IRPS 07-1; NCUA's Community
Chartering Policy

Dear Ms. Rupp:

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), in response to the National Credit Union Administration's (NCUA) request for public comment on the proposed amendments to its chartering and field of membership manual to update the agency's community chartering policies. NAFCU has always maintained—and continues to firmly believe—that the agency could further expand, clarify and expedite the community chartering process.

The proposed rulemaking is the result of a review of NCUA's current chartering policy with regard to the "local community" standard, undertaken at the request of the NCUA Board in March 2007, concurrent to the Board's denial of the appeals of Cinfed Federal Credit Union and Emery Federal Credit Union regarding their applications to convert from multiple common-bond to community charters able to serve the same eight county area, including counties in Ohio, Kentucky and Indiana. The proposed changes would, among other things, establish a new statistical definition for a well-defined local community, clarify the documentation requirements for a local community, and add a public notice and comment procedure for certain types community charter applications.

Since passage of the Credit Union Membership Access Act (CUMAA) in 1998 and the subsequent implementation of IRPS 99-1 (as amended), NAFCU has had continuing communications with NCUA regarding suggested improvements to its chartering and field of membership policy.

NAFCU would like to express its thanks the NCUA Board and staff for their continued efforts to provide greater clarity and flexibility in the community charter application process. NAFCU remains firmly committed to working with the agency on



this important issue to ensure the continued strength and vitality of the federal credit union charter. Toward that end, we appreciate the opportunity to share our views on this proposal and would like to submit the following comments.

Presumptive Local Communities

Single Political Jurisdiction

The proposed rule retains NCUA's current policy with regard to single political jurisdictions. Specifically, any county, city, or smaller political jurisdiction, regardless of population size, is presumptively a local community; thus, no documentation is required to demonstrate that the area is a well-defined local community. IRPS 03-1; 68 Fed. Reg. 18334, 18337 (Apr. 15, 2003). NAFCU supports the retention of the presumption that a single political jurisdiction meets the local community standard.

Statistical Areas

NCUA has proposed the establishment of a new standard statistical definition of a well-defined local community in order to help clarify and improve the community charter application process.

Specifically, the proposal would create a presumptive statistical definition in cases involving multiple political jurisdictions when the following conditions are met: (1) the area must be a recognized Core Based Statistical Area (CBSA) or part thereof without a Metropolitan Division; and (2) the area must contain a dominant city, county or equivalent with a majority of all jobs in the CBSA; and (3) the dominant city, county or equivalent must contain at least 1/3 of the CBSA's total population. Further, applications for part of a CBSA would be acceptable if they include the dominant core city, county, or equivalent.

NAFCU commends the agency for its significant efforts and prompt work in responding to the NCUA Board's recent directive to clarify and streamline the community charter requirements. NAFCU is strongly supportive of the establishment of a standard and objective statistical definition and believes that the proposed definition is both clear and sufficiently simple to apply. In particular, NAFCU is pleased that the new presumptive definition eliminates population ceilings. As we have expressed on several previous occasions, NAFCU believes that population cannot and should not dictate whether the local community standard is met.

A number of NAFCU member credit unions, however, have expressed concern about the proposed definition's limitation that the recognized CBSA must not include a Metropolitan division. NAFCU members are concerned that this stipulation may be too limiting in some cases. Accordingly, we ask the agency to reconsider its approach with



regard to CBSAs that include Metropolitan divisions, and to reevaluate whether the statistical definition might be unduly restrictive in this regard.

Additionally, NAFCU recommends that the final amendments clarify that applications for a part or portion of a CBSA may also be acceptable; in particular, NAFCU requests that the final rule make clear that applications to serve only a Metropolitan division may also meet the presumptive statistical definition.

NAFCU also suggests that NCUA provide credit unions with easy access to the OMB's current definitions of CBSAs. The proposal incorporates the OMB definitions at 65 FR 82238 (Dec. 27, 2000) by reference; however, NAFCU feels that it would be helpful for the agency to provide a direct link to the relevant OMB webpages on NCUA's website.

Rural district

The proposed rule defines a rural area as (1) an area that is not in a Metropolitan Statistical Area (MSA) or Micropolitan Statistical Area (MicroSA); and (2) has a population density that does not exceed 100 people per square mile, where the total population of the rural district does not exceed 100,000.

NAFCU generally supports the proposed rural district definition; however, we are concerned that the total population threshold of 100,000 may be too low. Given our present market complexities, adequate technological infrastructures and facilities are necessary to viably serve a widely dispersed rural population. Indeed, a wide geographic dispersion in population requires the availability of remote services that can help bridge these distances, for example, telephone services, internet banking, ATMs, etc. Ever escalating costs for these technologies requires a large enough membership base to provide the economy of scale necessary to provide adequate services for rural communities. Accordingly, we suggest that a total population threshold of 250,000 is appropriate.

Additionally, while NAFCU believes that the proposed definition is a suitable framework for NCUA's chartering policy, we would caution against an over-reliance on OMB's statistical definitions in the rural context. For example, in establishing the CBSA definitions, OMB itself noted the limitations of the MSA and MicroSA definitions:

“Metropolitan and Micropolitan Statistical Areas . . . should not serve as a general purpose geographic framework for nonstatistical activities and may or may not be suitable for use in program funding formulas . . .

. . . Programs that base funding levels or eligibility on whether a county is included in a Metropolitan or Micropolitan Statistical



Area may not accurately address issues or problems faced by local populations, organizations, institutions, or governmental units. *For instance, programs that seek to strengthen rural economies by focusing solely on counties located outside Metropolitan Statistical Areas could ignore a predominantly rural county that is included in a Metropolitan Statistical Area* because a high percentage of the county's residents commute to urban centers for work . . .

. . . *Program designs that treat all parts of a CBSA as if they were as urban as the densely settled core ignore the rural conditions that may exist in some parts of the area.* Under such programs, schools, hospitals, businesses, and communities that are separated from the urban core by large distances or difficult terrain may experience the same kinds of challenges as their counterparts in rural portions of counties that are outside CBSAs. . .”

65 FR 82238, at 82228-29 (Dec. 27, 2000) (emphasis added). As such, NAFCU encourages the agency to reassess its approach with regard to rural areas inside MSAs and MicroSAs.

Federal Register notice and request for public comment

Where the CBSA does not meet one of the presumptive definitions of a well-defined local community, NCUA proposes to establish a public notice and comment process to assist the agency with its analysis of whether the area is a well-defined local community capable of supporting a community credit union.

While NAFCU appreciates the agency's efforts to gather ample information and to better ascertain public views about proposed local communities, some of our member credit unions have expressed concern about the proposed notice and comment process. For example, a number of NAFCU member credit unions have expressed reservations about the efficacy of providing notification about charter applications to the public at large through the *Federal Register*. Indeed, the public is accustomed to referencing the *Federal Register* for notices of federal rulemakings and public meetings of federal regulatory agencies; however, the *Federal Register* may be somewhat less effective in giving adequate public notice of provincial issues that are very localized in nature, such as community charter applications. Accordingly, NAFCU encourages the agency to consider other methods for providing public notice of charter applications. For example, the Office of Thrift Supervision (OTS) provides an Application Status Report, a searchable database of applications filed with OTS. Similarly, the Office of the Comptroller of the Currency (OCC) issues a Weekly Bulletin, which is a record of the actions that OCC takes on all applications involving national banks.



NAFCU is also concerned that self-interested parties and oppositional groups could exploit the proposed notice and comment process. Accordingly, NAFCU encourages the agency to give substantial weight to input from native individuals and groups that are local to the proposed area and would be directly impacted by the particular community application.

Documentation requirements for certain applications

Under the proposed rule, applications for areas not meeting a presumptive local community definition and therefore subject to public notice and comment would also require a supplemental narrative and supporting documentation to demonstrate that the area demonstrates sufficient common interaction and/or interests to qualify as a well-defined local community. The proposed amendment clarifies that statements in a narrative must be substantiated through documentation and provides more guidance on the type of evidence that would demonstrate that an area is a well-defined local community.

NAFCU supports the proposed amendments to the documentation requirement for areas that are not presumptively well-defined local communities. However, we suggest that it may be helpful to establish a general point system for evidentiary documentation. For example, assigning specific point values or weighted values to particular types of documentation may create a more objective evidentiary standard for which applicants can rely.

Five-year limitation

The proposal would impose a five-year limitation on the exception from the requirement to submit a narrative summary and supporting documentation where an applicant is requesting a community charter, amendment, or conversion with the same exact geographic areas as one that has been previously approved.

NAFCU believes that the 5-year time period is appropriate and generally supports the proposed limitation. We would recommend, however, that the agency continue to monitor the applications for previously-approved areas. If NCUA finds that statistical measures of geographical areas tend not to change materially in five years, NAFCU suggests that it may be appropriate to increase the time period to up to ten years.

Business Plans

The proposal also provides additional guidance regarding business and marketing plans. NAFCU believes that the proposed changes will be effective in providing greater clarity to credit unions regarding the adequacy of business plans. In particular, we believe that the proposed guidelines will help to eliminate variances and inconsistencies at the regional level. As such, NAFCU strongly supports the proposed modifications.



Community Charter Mergers

The notice of proposed rulemaking indicates that NCUA is unaware of any particular problems in the merger context.

In several previous communications with the agency, however, NAFCU has raised concerns that NCUA's merger policy stifles growth and hinders many federal credit unions from making reasonable business decisions that might benefit their members. In response to these concerns, NCUA has requested comment on whether adjustments to its current policy may be prudent.

NAFCU appreciates the agency's move to reassess its merger policy. We persist in our hope that the agency will provide greater flexibility for those community credit unions wishing to merge with other community credit unions.

Under NCUA's current policy, voluntary mergers involving community credit unions are essentially limited to mergers with other community charters. A community credit union cannot merge into a single- or multiple- common bond credit union, *except in an emergency merger*. A single- or multiple- common bond credit union can merge into a community charter; however, the merging credit union must have a service facility within the community boundaries or a majority of the merging credit union's field of membership must qualify for membership in the community charter.

NAFCU continues to believe that adjustments to the agency's merger policy are necessary to ensure that federal credit unions are able to remain competitive in our complex financial marketplace. Depending on their particular business needs, some credit unions may choose to convert to community charters in order to gain greater access to the consumer market or to provide diversification, which enhances safety and soundness. However, as we have previously expressed to the agency, some credit unions may not have the option to convert under the existing rules. For example, outlying branch locations or geographically diverse select groups may preclude a local community determination under current policy.

Further, merging into a community credit union may not be viable where a large number of the merging credit union's groups would be located outside the community boundaries of the continuing credit union and removed from the field of membership as a result of a merger. NAFCU firmly believes that multiple common bond credit unions that have already added groups to their fields of membership should be permitted to retain these groups in the event that they merge with a community charter. Consistent with the principle "once a member, always a member," credit unions should be able to continue to serve their membership when a merger occurs. Accordingly, NAFCU strongly supports H.R. 1537, the *Credit Union Regulatory Improvements Act of 2007*, which would allow credit unions to convert to, or merge with, community charters while



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continuing to serve their exiting member groups, and allowing new members to be added from such groups.

We also reiterate that, in many cases, mergers between community credit unions are not feasible, leaving some credit unions with very limited options for growth. For example, NAFCU has found that many community credit unions, particularly smaller institutions or credit unions in rural areas, have difficulty finding appropriate merger partners under NCUA's current policy for community charters. Absent insolvency (or likely insolvency), these community credit unions have very limited options. Credit unions must not be pushed to the verge of insolvency before they are permitted to exercise their business judgment to merge. Accordingly, NAFCU continues to strongly urge NCUA to reconsider its merger policy with regard to community credit unions.

NAFCU appreciates the opportunity to share its views on this important issue and we look forward to continuing to work with the agency to further enhance the federal charter. Should you have any questions or require additional information please call me or Pamela Yu, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 218.

Sincerely,



B. Dan Berger
Senior Vice President of Government Affairs

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