



August 6, 2007

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

Re: Chartering and Field of Membership for Federal Credit Unions
72 FR 30988 (June 5, 2007)

Dear Ms. Rupp:

America's Community Bankers (ACB)¹ is pleased to comment on the National Credit Union Administration's (NCUA) proposed amendments to its chartering and field of membership manual.² The proposal would modify the agency's rules pertaining to the geographic areas that qualify for a community charter field of membership. The NCUA proposes to amend the definition of what constitutes a well-defined local community. Under the proposal, a core based statistical area and a rural district would be presumed to qualify for a community charter if certain conditions are met. In other circumstances, the NCUA proposes to implement a public comment process for community charter applications.

ACB Position

ACB believes that all regulators of depository intermediaries should give thorough, thoughtful, and meaningful review to all charter applications and ensure that the approval of such applications is consistent with the letter and spirit of applicable statutory requirements.

The proposed rule's categorization of core based statistical areas and rural districts as presumptive local communities is an overly broad interpretation of what constitutes a well-defined local community. The proposed amendment is a continuation of the NCUA's view that credit unions should operate like tax-exempt community banks. ACB is also very concerned that the proposed amendment would enable federal credit unions to obtain or expand a community charter without sufficient regulatory review. For these reasons, we request that the proposed rule be withdrawn.

¹ America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit www.ACB.us.

² 72 Fed. Reg. 30988 (June 5, 2007).

ACB generally supports the proposed notice and comment process for community charter applications that fail to qualify as a presumptive local community. However, we believe that all credit union charter applications should be subject to public comment. We also urge the NCUA to require public notice of charter applications to be printed in a newspaper of general circulation in the proposed community.

As credit union fields of membership continue to be liberalized, we urge the NCUA to give serious consideration to requiring credit unions to demonstrate their service to low-and-moderate income customers. Such a requirement would help the NCUA ensure that the intent of the Federal Credit Union Act is being implemented and would prevent credit unions from focusing product design and marketing efforts on affluent customers.

Background

The Federal Credit Union Act (FCUA) provides that credit union membership is limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. Designed to serve persons of modest means, credit unions have the specified mission of meeting the credit and savings needs of its members.

The Credit Union Membership Access Act (CUMAA) amended the FCUA to provide for a community charter designation. Under CUMAA, a community credit union consists of “persons or organizations within a well-defined local community, neighborhood, or rural district.”³ The NCUA is charged with defining these terms.⁴

The NCUA has liberalized its community charter regulations several times to enable community credit unions to do business in ever-larger geographic areas. In recent years, credit unions that historically served well-defined groups, such as employees of a specific company, have moved to adopt all-encompassing community charters, whereby the credit union can serve much of the general public over a wide geographic area. As a result, a small but significant and growing number of credit unions have grown into institutions that look and act nothing like what Congress intended when it passed the FCUA. Lawmakers exempted credit unions from federal income tax in exchange for assurance that low-and-moderate income consumers would have access to financial services and that credit unions would operate within limited fields of membership. Since then, some credit unions have grown into large, sophisticated institutions that do business with the general public and are not held accountable for demonstrating service to low-and-moderate income customers.

The proposed amendment would further loosen the NCUA’s field of membership regulations by treating core based statistical areas (CBSA) and rural districts as presumptive well-defined local communities.⁵

³ 12 U.S.C. §1759(b)(3).

⁴ 12 USC 1759(g).

⁵ Currently, a single political jurisdiction below the state level is presumed to qualify as a local community.

A CBSA, as defined by the Office of Management and Budget is:

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.⁶

Under the proposed amendments, a CBSA would presumptively qualify as a well-defined local community if:

- The area contains a city, county, or equivalent with a majority of all jobs in the CBSA; and
- The city, county or equivalent must contain at least 1/3 of the CBSA's total population.⁷

The proposed amendments to the NCUA's field of membership regulations would also define the term "rural district." The proposed rule is the first time that the NCUA has attempted to define this term. Under the proposal, a rural district would also be treated as a presumptive well-defined local community for field of membership purposes. Under the proposed definition, a rural district would:

- Have well-defined geographic boundaries;
- Not be contained in an metropolitan statistical area or micropolitan statistical area;
- Not have a population density in excess of 100 people per square mile; and would
- Not have a population of more than 100,000 people.

Treatment of Core Based Statistical Areas and Rural Districts

The language of CUMAA plainly shows that Congress intended that there be limits on the geographic scope of community charters. However, the proposed rule is not consistent with the intent that community charters be granted only in well-defined, local communities, neighborhoods, and rural districts.

CBSA's include economic hubs and their outlying geographic areas. Multiple outlying counties could have commonality with the city or county containing the majority of jobs in the area, but may have little in common with each other. Similarly, the geographic reach of a rural district may be so large that there is no meaningful interaction among people who live there. Accordingly, ACB believes that the proposed rule would result in community charter fields of membership that are overly broad and that do not constitute a local community. We would also note that the NCUA Board acknowledges that "it is proposing a definition [of "rural district"]

⁶ 65 Fed. Reg. 82238 (Dec. 27, 2000).

⁷ CBSAs with a Metropolitan Division would not qualify as a presumptive local community.

that reflects an area that may lack the traditional characteristics of interaction or shared common interests.”

Moreover, we are concerned that creating broad categories of presumptive local communities would allow CBSA's and rural districts to qualify for a community charter without sufficient regulatory review. The NCUA has the statutory responsibility to ensure that a requested field of membership is consistent with the parameters established in the CUMAA. We do not believe that creating such liberal categories of presumptive local communities fulfills that obligation.

Public Notice and Comment

The proposed amendment would require community charter applications that do not qualify as a presumptive local community to be subject to a public notice and comment period. The NCUA would publish a notice in the Federal Register seeking comment on whether the proposed community charter application constitutes a well-defined local community.

ACB believes that credit union field of membership applications should be subject to the notice and comment process. Instituting a more transparent procedure would help the NCUA address criticisms that it has acted without proper consideration of applications that have been brought before it. It would also help the NCUA demonstrate that field of membership applications are thoroughly reviewed and that the agency approves only applications that are consistent with the statutory field of membership limits established for federal credit unions.

However, we believe that the final rule should require credit unions applying for an expanded field of membership to publish the public notice in a manner that is consistent with the branching rules established by the federal banking agencies. Banks and savings associations are required to notify the public before establishing a new branch. Institutions publish such notices in newspapers of general circulation where the new branch is slated to open. The public may comment on the non-proprietary portions of the branch application during the relevant comment period.

This approach would make information regarding the credit union's field of membership application more readily available to the general public. Publishing the notice in the Federal Register would not, as a practical matter, make information about the field of membership application available to the public-at-large because the general population is not aware of the existence or function of this publication.

Community Reinvestment Documentation

ACB believes that the proposed amendments illustrate the need for all credit unions to demonstrate that they provide financial services to low-and-moderate income persons within their fields of membership. The preamble to the proposal states that the evolution of the community charter is “likely to enhance the delivery of financial services to individuals at all income levels through the communities that they serve.” The NCUA goes on to note the role that community charters play in fulfilling the mission envisioned by Congress in enacting the FCUA and the CUMAA by having the ability to “offer credit union service to as many people as

possible.” ACB strongly believes that credit unions should be required to comply with CRA-like requirements in exchange for liberalized fields of membership.

Documentation of service to persons of modest means would ensure that a credit union is prepared to meet the needs of such customers in the field of membership and would minimize the risk that a credit union would expand a field of membership in order to “cherry-pick” affluent customers. Furthermore, requiring a credit union to demonstrate its service to low-and-moderate income customers within the existing field of membership before granting an application to expand would be consistent with the FCUA’s mandate that credit unions serve persons of modest means. Also, community activists and members of Congress have taken note of the growth of community chartered credit unions, have raised concerns about the levels of support provided to persons of modest means, and are increasingly calling for CRA-like requirements for the credit union industry.

Conclusion

The proposed amendments will continue to encourage the growth of large, financially complex credit unions. The changes do not adhere to the FCUA and the CUMAA and will allow credit unions to serve the general public without serious regard to the commonality of credit union members.

Over 50 years ago, Congress declared that mutual savings banks were in active competition with commercial banks for the public savings, as well as competing in the real estate markets, and determined that the tax-free treatment accorded mutual savings banks was discriminatory and revoked that treatment. Today, credit unions are more like banks than mutuals were 50 years ago. The proposed amendments to the NCUA’s field of membership rule illustrates how the NCUA is continuing to allow some credit unions to become substantially similar to tax paying commercial banks and mutual savings banks. Adopting the amendments substantially as proposed will provide Congress with further incentive to treat credit unions the same as banks with both taxation and compliance with the Community Reinvestment Act or similar requirements.

Sincerely,

A handwritten signature in cursive script that reads "Krista Shonk". The signature is written in black ink and is positioned above the typed name and title.

Krista J. Shonk
Senior Regulatory Counsel