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Filed via regcomments@ncua.gov

August 6, 2006

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

Re: Proposed Changes to NCUA's Chartering and Field of Membership Manual, 12 CRF 701

Dear Ms. Rupp:

This comment letter reflects the views of the Credit Union National Association (CUNA) regarding the National Credit union Administration Board's proposed rule to amend its Chartering and Field of Membership Manual for federal credit unions, which encompasses the agency's policy on field of membership issues under 12 CFR 701. CUNA's position was developed under the auspices of our Federal Credit Union Subcommittee, chaired by William Raker, President and CEO of US Federal Credit Union. By way of background, CUNA represents about 90% of the approximately 8,500 state and federal credit unions in this country, which serve 87 million members.

Realities

For years, banking trade groups have been suing NCUA and individual credit unions over field of membership issues. These challenges have continued even after Congress passed the Credit Union Membership Access Act in 1998 to reinvigorate the credit union system, overturning the Supreme Court's February 25, 1998 decision that had favored the banks in *NCUA v. First National Bank & Trust Co. et al.* In 2000, the bankers lost in their lawsuit in the U.S. District Court for the District of Columbia and in 2001 on appeal against NCUA's reconstituted FOM rule. They then initiated litigation in Utah where they were partially successful in their suit against NCUA concerning community credit unions.

Later, as a result of separate legal action filed by bankers in Utah, the agency was forced to amend its FOM policy to limit service to new underserved areas to multiple group credit unions only, despite the well-documented need for financial institution services in such communities. Banker-initiated litigation in U.S. District Court in Pennsylvania as well as in state court there, in Missouri and in Kentucky is still pending.

Of course, banker groups have not limited their opposition to credit unions to the courts and have also worked consistently to block new legislative or regulatory proposals that would allow credit unions to grow in order to remain viable for the sake of their members' financial needs. While urging Congress, the Comptroller of the Currency, the Federal Reserve Board and other regulators to expand bank powers and activities, banker groups want credit unions to be bound by anachronistic limitations stemming as far back as 1934. A number of observers have concluded that the banker groups have launched litigation and public policy attacks out of frustration they have not been able to persuade Congress to eliminate credit unions' tax exemption. Banker groups have attempted to rationalize their patter of harassment against credit unions on the basis that their members need a "level playing field," despite year after year of ever increasing, gargantuan profits that dwarf the income of credit unions.

Against this backdrop, NCUA has issued the proposed changes to its field of membership policy. In issuing the proposal, the NCUA Board is seeking to improve the implementation of its field of membership authority for both the agency and credit unions. For NCUA, the proposal would mean an improved process that will afford it greater opportunities for additional scrutiny and reflection for larger community applications, thereby potentially providing a shield against further litigation. For credit unions, the proposal would mean streamlining the application system for areas that meet the new "presumption" definitions, giving community credit unions more latitude to plan their growth to benefit their members, consistent with the language and purposes of the Federal Credit Union Act.

For these reasons, NCUA is to be commended for undertaking a renewed effort to provide additional flexibility for community federal credit unions to develop fields of membership that meet the needs of their areas, consistent with the Federal Credit Union Act.

Specific Provisions in the Proposal

Despite wholeheartedly supporting the agency's objectives in this instance, CUNA does have concerns with a number of aspects of the proposal which are addressed below.

Single Political Jurisdiction

Under the proposal, NCUA would retain the current treatment of a single political jurisdiction. This process permits a community federal credit union to apply for a single city, county or portion thereof under a streamlined application that presumes the area constitutes a well-defined local community.

CUNA strongly supports this approach, and our analysis demonstrates that NCUA has ample legal authority to establish such a presumption for a single political jurisdiction. Under 12 USC 1759(g) of the FCU Act, NCUA alone is given the discretion to determine what is meant by "well-defined local community, neighborhood or rural district" and was directed by Congress to use that definition "in making any determination" regarding FOM applications and in "establishing the criteria" for such determinations.

This is extremely broad authority, and it recognizes that only NCUA among federal regulators has had any experience or expertise in what is required for the safe and sound operation of a credit union when establishing FOM policy. Nonetheless, the agency's authority is not unfettered on this or other any issue it must regulate, and its application process must comport with the FCU Act.

The presumption for a single political jurisdiction does fall within NCUA's authority under the Act. The presumption regarding single political jurisdictions was not permitted until 2003, five years after the passage of CUMAA. During that time as well as prior to the passage of CUMAA, the agency had garnered considerable experience in reviewing community applications (and continues to do so.)

The agency used that expertise to develop a process that confines the presumption to an area that past experience has shown has sufficient interaction and other indicia to constitute a community, while eliminating red tape and unnecessary documentation for both the agency and credit union applicants.

Also, this approach comports with one of NCUA's overarching responsibilities in all areas, including FOM -- the promotion of safety and soundness, as the FCU Act makes clear in a number of areas. A single political jurisdiction denotes economic sustainability, supporting the presumption that a viable community exists. For these reasons, the agency's policy toward single political jurisdictions is appropriate and consistent with the Act. We urge the agency to continue this approach.

Multiple Jurisdiction FCUs- New Definition

In addition to retaining the presumption for single political jurisdictions, the proposal would use a standard statistical definition of a "well-defined community" to establish a parallel presumption for community charter applications involving multiple jurisdictions.

The proposed definition for a well-defined local community for areas involving multiple jurisdictions states:

- The area is a "Core Based Statistical Area" (CBSA), which is a statistical area defined by the Office of Management and Budget as having at least one urbanized area and a population of at least 10,000.
- The CBSA does not include a Metropolitan Division.
- The area contains a dominant city, county or equivalent with a majority of jobs in the CBSA.
- The dominant city, county, or equivalent contains at least one-third of the CBSA's population.

We support this approach. In our view, it would facilitate applications for multiple-jurisdictional areas, is consistent with the Act, and appropriate at this time, although credit unions have asked that NCUA clarify the definition to allow an application to include only a portion of a CBSA.

The proposal would help streamline the application process by establishing the presumption that areas which meet the CBSA's definition are well-defined communities.

The new definition and process for multiple-jurisdictional areas is appropriate for several reasons. In developing the new definition, NCUA has conducted considerable research and analysis. Using that analysis combined with its past experiences in reviewing applications for such areas, the agency has developed a supportable methodology that relies on statistically based factors. Either the area in the application meets the factors -- or it is does not. Further, the approach NCUA is proposing is based on Office of Management and Budget statistics available in the public domain.

This approach should increase objectivity in the process and facilitate the ability of credit unions to assess the likelihood that their application will be approved under the presumption.

Contrary to how the bankers would like to have the Act interpreted in order to limit credit unions to the smallest communities, there are no size limitations under the FCU Act on a community credit union. If an area has sufficient interaction or commonality of interest, that is the deciding factor, not the

numbers in the community. The CBSA definition relies on economic and other indicators of community that are exactly the types of interaction that NCUA feels are necessary in order for a community credit union application to meet statutory requirements and be economically successful.

OMB has cautioned against the use of the "Metropolitan Statistical Area and Micropolitan Statistical Area definitions to develop no statistical programs and policies **without full consideration of the effects of using these definitions for such purposes**." 65 Fed. Reg. 8228 (Dec. 27, 2000). Through its own analysis and by inviting comments on this use of this approach, NCUA is taking appropriate steps to develop a definition that is well-reasoned, objective, and consistent with safety and soundness.

While we support NCUA's proposed approach, we note however, that some have been confused by its complexity. To help facilitate the implication of the proposed approach, we request that the agency make resources available to credit unions on its website that will assist them in determining whether they qualify for approval under the proposed CBSA definition. If adopted, CUNA also will work with the leagues to supplement such resources.

Multiple Jurisdiction FCUs - Additional Documentation and Notice and Comment

For multiple political jurisdictions that do not meet the proposed statistical definition, applicants would be required to provide additional supporting documentation demonstrating how the requirements of a well-defined local community have been met. This is appropriate, and we support this concept to the extent such additional materials are reasonable and not unduly burdensome.

NCUA is also proposing to publish a notice in the Federal Register for 30 days regarding any community application that does not meet the established definitions of a well-defined community and solicit comment. While we acknowledge NCUA's objective to help protect against litigation and help identify issues bankers would raise in the comment process, we are staunchly opposed to the process NCUA is proposing.

We do agree that some public notice procedure is likely appropriate but not one that is so burdensome and inconsistent with requirements for other financial institutions in merger or branching situations.

We would support some kind of notice in a local jurisdiction of the credit union's choosing but urge that before proceeding to adopt any new notice procedure, NCUA should develop a second proposal just on this aspect and again seek credit unions' comments.

Multiple Jurisdiction FCUs - Time Limits Re Application Process

NCUA is also proposing to continue its policy that when a community has already been approved, subsequent applications for the same area may continue to have reduced documentation requirements, but only if filed within five years after the first application was approved. We do not support the proposed change. It appears arbitrary, and there is no justification for the five-year period. If NCUA must proceed with this change, we urge you to make it consistent with the 10-year federal census.

Rural District

NCUA is proposing a definition of "rural district" under which federal credit unions could apply for a community charter and if the elements of the definition are met, the application could be approved on a streamlined basis. Under the proposal, such an area is one that has well-defined boundaries, it is not contained in an MSA or MicroSA, it does not have a population density in excess of 110 people per square mile, and the total population does not exceed 100,000.

CUNA supports the agency's objective in defining "rural district" as well as NCUA's authority to determine what constitutes a "rural community" for purposes of its FOM policy. The proposal also recognizes that a rural district cannot be held to the same standard of interaction that is appropriate for an urban area.

However, the numbers NCUA is proposing in the definition of 'rural' are too confining, as an area may still be rural and larger than what NCUA indicates. We recommend that NCUA delete the numbers from the definition so that a rural district for FOM purposes is one for which sufficient interaction can be demonstrated, it is not in an MSA and it does not meet the agency's requirements for a core based statistical area. We also support a change in the definition to allow an application to request only part of a rural district.

Marketing Plans

A clarification to the required marketing plan for community charter applicants is being proposed which would require applicants to include the financial products, programs, and services that will be provided to the new area. Credit unions have expressed a concern regarding how this information would be used. If this is for NCUA's information alone, then we do not object, but we do not support the change if the information will be made public.

Community Charter Mergers

NCUA is requesting comments on issues relating to mergers involving community credit unions. These issues are important for credit unions as well as the agency.

In our view, consistent with safety and soundness and their members' needs, credit unions should have substantial flexibility to merge and seek credit union merger partners without undue government entanglement. In that connection, community credit union merger issues should be considered in the context of a larger review of mergers – not with the goal of further regulation but with the objective of facilitating the ability of credit unions to make their own decisions regarding mergers. In any event, before the agency proceeds with any rulemaking, we encourage the Board to issue an advance notice of proposed rulemaking in order to coordinate the concerns of the agency as well as credit unions regarding the regulation of mergers.

Underserved Areas

NCUA is proposing to conform current provisions in its FOM manual regarding underserved areas to the changes in the proposal regarding community definitions and requirements. Because underserved areas have special needs and often lack economic capabilities, CUNA does not feel these changes are appropriate or justified.

In conclusion, we support NCUA's objectives to improve the application process for community chartered credit unions as well as the agency, but we urge the Board to make a number of critically important changes before adopting the rule in final form. Please feel free to contact me if you have any questions about this letter.

Sincerely,

Mary Mitchell Dunn
CUNA SVP and Deputy General Counsel