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August 15, 2008

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

re: National Credit Union Administration; Organization and Operations of Federal Credit Unions; 12 CFR Parts 701; 73 Federal Register 34366, June 17, 2008

Dear Ms. Rupp:

The American Bankers Association (ABA) appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposed modifications to its Chartering and Field of Membership Manual (Chartering Manual) updating the process of approving multiple common bond credit unions' addition of underserved communities to their fields of membership. ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2 million men and women.

ABA recognizes that NCUA's current review is part of a regular effort to update its Chartering Manual. However, this update is also a perfect time to reevaluate its policies that have been the subject of recent congressional review to ensure that credit unions are serving the underserved. Most importantly, ABA recommends that NCUA reevaluate its policy on "underserved" designations. In particular, its policy should be changed from a definition by which an underserved area must be a single, unified entity to a definition based on ***census tracts*** that are defined as ***investment areas***. Given the ease with which the current underserved requirement may still be manipulated, such a policy change is necessary for NCUA to ensure that a credit union that is given permission to expand into an underserved area is actually complying with the mission and purpose of the Credit Union Membership Access Act (CUMAA).

Additionally, ABA believes that the test that NCUA proposes for determining whether an area is underserved by other depository institutions will generate a result that finds such an area as underserved when in fact it is not. Instead, ABA recommends that if a branch or main office of a depository institution is located in the census tract that is also defined as an investment area, then this would indicate with a high probability that the area is not underserved. This test can be carried out by examining data from the FDIC and from NCUA's new database of credit unions to determine what other depository institutions have branches in the area under review.

The New Proposal

In 1998, Congress enacted CUMAA, which authorized the NCUA Board to allow ***only*** multiple common bond credit unions to add a person or organization within any local community, neighborhood, or rural district that is qualified as "underserved." NCUA's Chartering Manual implemented the statutory language. NCUA is proposing a rule that would modify the approval process for identifying underserved areas (within the context of the statute) in four ways. The proposal clarifies the procedure for establishing that an "underserved area" qualifies as a local community; addresses the application of the economic distress criteria that determine whether an area combining multiple geographic units is sufficiently distressed to qualify as underserved; updates the documentation and clarifies the scope requirements for demonstrating that a proposed area has significant unmet needs for loans and applicable financial services; and recognizes that meaningful data from NCUA and the federal banking agencies will be available to assess whether an area is underserved by other depository institutions.

ABA's Position

NCUA Should Refine its Criteria for Approving Underserved Areas, not Merely Refine the Process

Current NCUA regulations require an underserved area to be a single, unified entity. The single, unified entity criterion is met by a city, county, or the political equivalent, or a portion thereof. This has resulted in NCUA's approval of whole cities - such as Washington, D.C., Philadelphia, and Houston - as underserved areas. ABA believes this single unified entity approach is not necessary to meet the requirements of the statute and opens the door to abuse. Whole communities have been designated as underserved when only a small portion of the area could possibly qualify as genuinely underserved. Therefore, ABA recommends that ***NCUA limit its "underserved" designations to a census tract or group of census tracts that are defined as investment areas rather than designating entire cities or counties***.

The inappropriate use of NCUA's current approach was also questioned during a March 6, 2008, hearing before the House Financial Services Committee on the need for credit union regulatory relief. Representative Mel Watt questioned the logic of a single unified entity approach in designating underserved areas:

> Could it possibly be that the whole City of Houston, Texas, is an underserved area? Could it possibly be that the whole City of Washington, D.C., is an underserved area?... I think part of the problem that people are having here is that if you define this area as being so broad, people don't understand what the distinction is any more between a nonprofit credit union and a for-profit financial services entity of another kind…the language

> that ... we have here is broad enough to drive megatrucks and planes and tanks and everything else through.

Moreover, NCUA even acknowledges in the proposed rule that "the single, unified entity approach is incompatible with the geographic units the Community Development Financial Institutions (CDFI) Fund utilizes to apply its 'economic distress criteria'[1] to determine whether a proposed area is an investment area, thus qualifying it as underserved.

The geographic areas that the CDFI Fund uses are prescribed census units (e.g., tracts or blocks) or political subdivisions. This allows the CDFI Fund to treat such a geographic unit or group of units as a separate "investment area." ABA recommends using a census tract designated as an investment area by the CDFI Fund is an appropriate measure of underserved for the purposes of the statute.

The Presence of Any Depository Institution within a Census Tract Is Prima Facie *Evidence that the Area Is Not Underserved and the Financial Needs of the Community Is Being Met*

Under current law, the NCUA Board can allow membership of a multiple common bond credit union to include any person or organization within a local community, neighborhood, or rural district if it falls within the definition of an investment area and the area is underserved based on data of the NCUA Board and the Federal banking agencies or by other depository institutions. Nearly a decade after the enactment of CUMAA, NCUA is belatedly proposing to test whether the proposed expansion area for a credit union is underserved by other depository institutions by measuring the concentration of depository institution facilities within the area:

> The first measure – which sets a benchmark level of adequate service – is the ratio of depository institution facilities to the population of the non-'distressed' tracts in a proposed area, regardless whether those tracts are contiguous. In cases where there are no non-'distressed' tracts within a proposed area, a non-'distressed' tract or larger unit immediately adjoining the proposed area (e.g., county or city) may be used to set the benchmark ratio.[2]

This language highlights the crux of the problem, admitting that ***there are non-distressed areas in these proposed area applications***. This is the very reason why it is inappropriate to deem entire large cities as underserved areas.

The proposal continues, "The second measure is the ratio of facilities to the combined population of all of the tracts within the proposed area." If the benchmark measure for adequate service, the ratio of depository institution to the area's population in a non-distressed community, is above the ratio for the entire area, it is deemed underserved.

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[1] 73 Federal Register 34367.
[2] 73 Federal Register 34369.

ABA believes that the proposed test does not prove that the area is underserved by other depository institutions. Assume the benchmark ratio of facilities to population was 1 facility for every 100 people and the ratio of facilities to population for the proposed area was 1 facility for every 101 people. The test would deem the proposed area underserved. ***However, such a conclusion is ludicrous.*** The distressed area may be adequately served by other depository institutions, although it may not have the same level of concentration as non-distressed areas. ABA believes that the proposed test may serve to validate NCUA's inappropriate policy whereby entire cities, such as Washington, D.C. and Houston, are identified as underserved by other depository institutions; but it is not a good method for identifying whether there is a genuine lack of financial service.

ABA recommends a simpler test to identify whether the area is underserved by depository institutions. If there is a branch or main office of a depository institution in the investment area census tract, this would indicate with a high probability that the area is not underserved.

Determining whether there is a financial institution within the proposed underserved area can be easily accomplished by evaluating the FDIC's Summary of Deposits (SOD) data. The SOD database reports the specific location of bank branch offices. These branch locations can be manually matched to specific census tracts within an underserved area.

Additionally, ABA supports NCUA's proposal to make information regarding the location of credit union facilities available in a database at NCUA's website. This new NCUA database, which should be publicly accessible, used in tandem with the FDIC's SOD data, will provide a more accurate picture of whether those communities are adequately served by other depository institutions.

Furthermore, the proposed rule requires that a credit union adding an underserved area document that the area has unmet financial needs. Since 2000, NCUA's policy recognizes that a proposed area that is distressed is by definition presumed to have significant unmet needs. The proposed rule revises the Chartering Manual to require a credit union to support its underserved area application with a one-page "Narrative Statement" demonstrating a pattern of significant unmet needs. ***The Narrative Statement on "significant unmet needs" must be supported by relevant, objective statistical data reflecting, among other things, loan and financial services activity in the proposed area.***

ABA agrees that anecdotal and qualitative evidence is not sufficient to show a significant unmet need for financial services. However, ABA believes this unmet needs test can be easily fulfilled by using publicly available SOD data and the new NCUA database that shows the location of all credit unions. According to research from Federal Reserve economists, empirical evidence suggests that the geographic scope of banking markets are still local for most households and small businesses. Data from the 2004 Survey of Consumer Finances show that the distances between households and the financial institutions at which they get their financial services remain quite short. Therefore, any area where a bank or credit union already collects deposits would also be serviced with other financial products – therefore providing a high probability that the area is adequately served.

Conclusion

Credit unions were designed to provide targeted financial services to a well-defined group of individuals, particularly those of modest means. NCUA's proposed rule would be more effective if it limited its underserved designations to census tracts that are designated as investment areas.

Sincerely,

Keith Leggett