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August 18, 2008

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

*sent via email*

**Re: RIN 3133-AD48**

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) and its member credit unions appreciate this opportunity to provide comments to the National Credit Union Administration (NCUA) regarding its proposed rule to amend 12 CFR Part 701, Organization and Operations of Federal Credit Unions. Specifically, NCUA proposes to amend its Chartering and Field of Membership Manual (Manual) to update and clarify the process of approving service to underserved areas.

The PCUA is a statewide trade association that represents over eighty percent (80%) of the approximate 589 credit unions located within the Commonwealth of Pennsylvania. To respond to this request for comments, the PCUA consulted with its Regulatory Review Committee (the Committee). This Committee consists of 12 credit union CEOs who lead the management teams of Pennsylvania federal and state-chartered credit unions. Members of the Committees represent credit unions of all asset sizes.

The content of this letter reflects the comments of the Committee and PCUA staff.

The Committee members conduct outreach to lower income consumers through their fields of membership, as well as, the inclusion of underserved areas within their charters. We believe and act on the belief that serving members of all income strata is consistent with the cooperative philosophy of credit unions. Consistent with our cooperative structure, NCUA policy should facilitate or encourage federal credit unions to serve underserved communities as opposed to impeding such outreach. The proposed test to determine whether a proposed area is underserved by other depository institutions appears to create a barrier to accommodating an underserved community.

Before addressing the depository institution issue, the Committee would like to share some general observations regarding the timing of the proposal, the interaction between the Federal Credit Union Act (FCUA) and Community Development Banking and Financial Institutions Act (CDFI Act), and the narrative statement regarding unmet needs.

#### *Timing*

The timing of the current proposal is curious. A major overhaul of the underserved community provisions of the Manual follows closely in the wake of the US House's passage of the Credit Union Bank Thrift Regulatory Relief Act (CUBTRRA), H.R. 6312. CUBTRRA offers clear and necessary reform by permitting all Federal credit unions, regardless of their charter type, to seek to serve underserved communities. It also permits reliance on the Internal Revenue Code's criteria for low-income communities in addition to criteria established by the CDFI Act. Accordingly, the Committee prefers continued advocacy of CUBTRRA and suggests that NCUA defer implementation of this proposal.

#### *Interaction of FCUA and CDFI Act*

The FCUA references or incorporates several definitions or criteria from the CDFI Act and its implementing regulations. We appreciate that NCUA, based on the language of the FCUA, must ensure compliance with the CDFI Act when it reviews a federal credit union's application to serve an underserved area. To that end, we understand NCUA's insertion of CDFI Act definitions into Chapter 3, section III of the proposed Manual.

#### *Unmet Needs, Narrative Statement*

Chapter 3, section III(6) of the proposed Manual requires a one-page narrative outlining the area's unmet needs, while section III(10) requires a business plan that demonstrates how a federal credit union will serve the area. This construct is redundant. The final rule should simply require a business plan that articulates unmet needs, consistent with the CDFI Act, and a showing of the federal credit union's ability to serve the area.

#### *Underserved by Other Depository Institutions*

Chapter 3, section III(7) would establish various ratios aimed at identifying the number of depository institutions located inside or outside of census tracts or distressed areas as a determinant of whether an area is underserved by such institutions. The FCUA does not require such a measure. NCUA cited no CDFI Act authority requiring the proposed ratios or analysis. The draft chart in the background and summary to the rule

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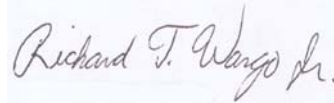
does not answer the concentration of facilities issue. Fed. Register/ Vol. 73, No 117 at 34370. Further, the research required to identify and locate all of the depository institutions in order to calculate the ratio could well deter smaller asset sized credit unions from applying to serve underserved areas.

The proposed set of ratios exposes NCUA's decision making to pernicious legal challenges from other financial services interest groups. For example, a credit union could apply for an area, document the concentration of facilities and sustain approval. It is foreseeable that other institutions or trade groups could attack or deconstruct NCUA's conclusion and analysis, merely by seeking to offer into evidence the number of their own facilities in or near the underserved area. In short, the NCUA could find itself in a legal action, arguing about the number of facilities located in a certain area; meanwhile, consumers who could benefit from credit union services are denied access.

It is clear that NCUA seeks to satisfy the FCUA language requiring that an area be underserved by other financial institutions. Perhaps an approach that focuses on consumers would yield better results. Research is warranted to determine the number of unbanked consumers or households within underserved census tracts or distressed areas. A measure of unbanked consumers is arguably a better indicator that an area is underserved by depository institutions than quantifying the number of such institutions in or around the area.

Thank you again for this opportunity to comment on behalf of Pennsylvania credit unions. Please feel free to contact me or any of the PCUA staff at 1-800-932-0661 if you have any questions or if you would like to discuss our comments.

Very truly yours,



Richard T. Wargo Jr., Esq.  
Executive Vice President/General Counsel

cc: Association Board  
Regulatory Review Committee  
J. McCormack  
R. Wargo  
M. Dunn, CUNA