



August 13, 2008

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

Dear Ms. Rupp:

Re: Proposed Rule Part 701.1 (Eligibility Requirements for Underserved Areas)

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on proposed amendments to NCUA's Chartering and Field of Membership Manual, which seek to update and clarify the process of approving credit union service to underserved areas. By way of background, the California and Nevada Credit Union Leagues (Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

Overview of the Proposed Amendments

NCUA seeks public comment on four proposals to modify its Chartering and Field of Membership Manual regarding eligibility requirements for underserved areas.

- Definition of a Local Community – requires an applicant requesting approval of an underserved area to submit a narrative summary letter “describing how the area meets the standards for community interaction and/or common interests” within the proposed area. This is identical to the current requirement for credit unions seeking a community charter.
- Criteria of Economic Distress – revises NCUA’s current rules for qualifying an underserved area (i.e., single, well-defined area) to conform to the economic distress criteria used by the Community Development Financial Institutions Fund (CDFI Fund) to define an “investment area.”
- Significant Unmet Needs for Loans or Financial Services – requires a credit union to support its underserved area application with a one-page narrative statement demonstrating a pattern of “significant unmet needs” in the proposed area for loans or for one or more of the financial services that credit unions are authorized to offer.

- Underserved by Other Depository Institutions – clarifies that approved areas must be underserved by other depository institutions, including credit unions. This requirement is met when the concentration of financial institution facilities in the non-distressed tracts in the area (or adjoining non-distressed tracts) is greater than the concentration of facilities in the total proposed area's tracts.

The balance of our letter will address our views of these proposals.

Definition of a Local Community

The Leagues find the requirement to provide the same extensive documentation to serve an underserved area as is required to apply for a community charter to be redundant and unnecessarily burdensome. The sense of “commonality” that must be demonstrated in order to illustrate the existence of a well-defined community for a community charter application is intrinsic in the presumption—determined by the objective economic distress criteria found in the other three proposals—that an area is underserved. In other words, the commonality that binds a presumptive underserved area is that fact that the area does not have sufficient access to financial services, suffers from higher unemployment or poverty rates, has a lower median family income, etc. We feel that no additional documentation or analysis needs to be provided for an underserved area. Further, we believe that such a requirement will have the effect of dissuading credit unions from pursuing approval for an underserved area.

Criteria of Economic Distress

While we understand and generally agree with NCUA’s efforts to align the criteria used by the NCUA and the CDFI Fund to determine whether a proposed area qualifies as “underserved,” we are troubled that the proposal effectively removes the ability to qualify an entire city located within a Metropolitan Statistical Area (MSA) as an underserved area, unless it can be qualified by census tracts, a block group, or American Indian or Alaskan Native area. This approach is not only unfair—as many cities currently qualify under existing rules as underserved in their entirety based on a number of current qualifying criteria—but also fails to recognize that many times it is more efficient and effective for a credit union to develop business plans along distinct, clearly recognized geographic and political boundaries, such as those of a city or a county. Therefore, the Leagues urge the NCUA to permit an entire city to qualify as underserved, as long as it meets the same criteria used to qualify individual census tracts as underserved areas.

We support NCUA's position that credit unions that have previously been approved to serve an underserved area will be grandfathered under the proposal. This approach recognizes and supports the time, effort, and expense that credit unions have dedicated to serving the underserved in these areas. Unfortunately, the proposal does not grandfather those areas that have previously been approved as underserved. As a result, each submission by a credit union to serve an underserved area will require new documentation of the area, rather than being allowed to utilize previously approved areas. We find no reason to require a credit union seeking to serve an underserved area to redefine an established underserved area already approved by NCUA. Consequently, the Leagues propose that the grandfather provision extend to the underserved area, as well as the credit union previously approved to serve it.

Significant Unmet Needs for Loans or Financial Services

The Leagues find the requirement to demonstrate, in the form of a one-page narrative statement, that "significant unmet needs" exist in a proposed underserved area to be duplicative and needlessly burdensome. While at first glance the requirement to submit a one-page narrative statement may not seem to present much in the way of additional burden, it would require appreciable research and additional, substantiating documentation to be included with such statement.

More importantly, we are puzzled as to why NCUA believes that an area already designated to be "distressed" using statistical standards would not also be considered as having significant unmet needs for financial services. In our view, it seems clear—without the need for additional redundant documentation—that an area which meets the economic distress criteria has consumer needs that are going unmet, regardless of the services currently being offered in the area or the number of financial institutions already offering those services. Therefore, the Leagues request that NCUA retain the current presumption that significant unmet needs exist in areas that have been determined to be economically distressed by their qualifying criteria.

Underserved by Other Depository Institutions

The Leagues believe that implementing a methodology of comparing the concentration of facilities in a proposed area to determine whether it is underserved to be confusing, unfounded, anti-competitive, and a substantial impediment to credit union efforts to serve the underserved. As with the provision regarding unmet needs, we are convinced that underserved areas, by definition, need more services, and underserved residents need more choices. Increased competition leads to better pricing, more favorable terms, and more convenient access for consumers in underserved areas. We are perplexed and concerned as to why NCUA is proposing requirements which will discourage competition, especially in underserved areas.

We would like to point out an inconsistency in this provision of the proposal. NCUA requests comments as to whether the facilities of “other” financial institutions should be defined to include ATMs and shared branches when calculating whether an area is underserved by other depository institutions. However, NCUA does not allow a credit union seeking to serve an underserved area to count its own ATMs and shared branches as part of its facilities plan to demonstrate a sufficient physical presence in the area. If the NCUA finalizes this provision in its current form, this inconsistency should be addressed.

Pending Applications to Serve an Underserved Area

Finally, the Leagues respectfully request NCUA reconsider its decision to suspend approval of underserved area applications until this rulemaking is complete. We fail to understand why the Agency would depart from its normal practice in this regard. It is reasonable and fair for a credit union to rely on the rules currently in existence when deciding to apply for approval to serve an underserved area. Further, by disregarding a rule that has been in effect for years in favor of a proposed rule that has not been formally adopted by NCUA or commented on by the public, we believe that such a moratorium potentially violates the spirit and intent of the Administrative Procedures Act. Therefore, we strongly urge the NCUA to withdrawal this provision of the proposal.

In closing, I would like to thank the NCUA for the opportunity to comment on this important issue, and for consideration of our views. While the Leagues appreciate the NCUA’s efforts to bring clarity and congruity to the underserved approval process, we have deep concerns that most of the provisions of this proposal serve to hinder, rather than foster, credit union service to underserved areas. Therefore, we respectfully appeal to NCUA to amend or remove its redundant, unnecessary, and burdensome aspects before finalization.

Sincerely,



Bill Cheney
President/CEO
California and Nevada Credit Union Leagues