

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION BOARD

In the Matter of

AOD FEDERAL CREDIT UNION

Docket No. 95-003

Decision and Order on Appeal

This matter comes before the National Credit Union Administration Board (Board) as an appeal of the Region III Director's denial of a field of membership addition for AOD Federal Credit Union. The addition, if approved, would create an overlap with BOPTI Federal Credit Union.

Background

AOD FCU (hereinafter AOD or AOD FCU) is a multiple group credit union located in Bynum, Alabama and is within Region III's jurisdiction. Its field of membership consists of over 100 federal, state and local agency employee and private sector groups. It is a full service credit union with several branches.

BOPTI FCU (hereinafter BOPTI or BOPTI FCU) is an occupational credit union serving employees of Bureau of Prisons Terminal Island, California, and employees at 18 other federal prison facilities throughout the nation. Its field of membership may be viewed as traditional in that it serves only the employees of one employer, albeit at widely dispersed locations throughout the nation. BOPTI is located at Terminal Island, California, and has no branch offices. It is within the jurisdiction of Region VI. BOPTI currently only offers regular share accounts, IRA accounts and closed-end consumer loans.^[1]

The overlap at issue involves employees of the Federal Correctional Institution located in Talladega, Alabama (hereinafter FCI or FCI Talladega). FCI Talladega was added to BOPTI's field of membership in 1982. The FCI Talladega members of BOPTI are served in part through the use of a credit union member representative who is a full-time employee of FCI. In addition, BOPTI has a part-time employee located at the Talladega facility. FCI Talladega has 354 employees, 234 of whom are BOPTI members. This is a 66.1% penetration rate. FCI Talladega members comprise 8.3% of BOPTI's total membership. FCI Talladega is located approximately twenty miles from the nearest AOD FCU branch.

The present controversy arose in April 1994 when the warden of FCI Talladega contacted AOD FCU requesting credit union service.^[2] AOD FCU wrote to BOPTI FCU requesting the overlap. BOPTI notified AOD of its objection to the proposed overlap, prompting AOD to write to the Region III Director requesting approval of the overlap. In August 1994, Region III wrote to BOPTI, asking if they objected to the overlap. BOPTI responded, noting its objection to the overlap and stating that its field of membership consists only of federal prison employee groups, that it has no interest in expanding its field of membership and does not view lightly attempts by others to infringe on its field of membership.

The Region VI Director informed the Region III Director of his recommendation that the overlap not be granted due to the effect that several "raids" on BOPTI's field of

membership might have along with other factors.

In November 1994, the Region III Director wrote to AOD, denying the overlap for the following reasons: 1) FCI Talladega employees support and use BOPTI; 2) BOPTI services are limited but of a high quality and BOPTI plans to expand services in the near future; 3) FCI employees have credit union service available at FCI Talladega through a member representative and part-time BOPTI employee; and 4) since BOPTI is composed totally of federal prisons employee groups, if overlaps are allowed, its membership base will be weakened. AOD appealed the decision denying the overlap on December 5, 1994. The appeal was presented to the NCUA Board initially on June 14, 1995. The Board held the appeal over until the July 27, 1995 meeting in order to obtain the views of the Region III and Region VI Directors.

Overlap Policy^[3] and its Application to this Case

NCUA's field of membership policy addresses overlaps in general terms. An overlap is defined as "the situation which results when a group is eligible for membership in more than one credit union." Chartering Manual, App. A, Glossary, p. A-2. The guiding principle, as set forth IRPS 94-1 (and its predecessor IRPS 89-1), is to make every reasonable effort to avoid an overlap. In the event an overlap situation arises, officials of credit unions involved should attempt to resolve the issue themselves. When resolution of an overlap problem is not possible, an overlap can be justified by certain circumstances and may be permitted by the Regional Director. However, the granting of an overlap is discretionary. There is no requirement that an overlap be permitted. Overlap protection will be provided if a proposed overlap poses significant safety and soundness concerns.

Among the circumstances that may justify an overlap are: 1) failure of the original credit union to provide quality service; 2) limited participation in the original credit union by the group seeking other service; or 3) the incidental nature of the proposed overlap. Conversely, neither certain specialized services by themselves nor proximity by itself, will justify an overlap. Regional Directors are to consider several factors in reviewing an overlap including the financial effect on the overlapped credit union; the desires of the overlapped group and its sponsor; and the best interests of the affected group and the credit union members involved.

In this particular case, it can not be said that there is limited participation by FCI Talladega employees nor does it appear that BOPTI's services, though limited, are of such poor quality as to provide a basis for an overlap. BOPTI has indicated that it is currently in the process of expanding available services. While it does appear that a significant portion of the FCI Talladega employees wish to join AOD since it provides more services and is more conveniently located to Talladega than BOPTI, as stated above, such factors do not require approval of an overlap. Further, the desire of the Talladega employees for improved services is not the only factor to be considered. Even though FCI Talladega represents less than ten percent of BOPTI's primary field of membership, the NCUA Board would be remiss if it did not consider the effect of the overlap on the entire credit union. It would appear BOPTI's membership base will be weakened and it will not be able to grow and maintain a strong financial structure if overlaps of this type are approved. BOPTI has already received requests from other credit unions for additional overlaps.

Even though the Region III and Region VI Directors agree that this particular overlap, if approved, would be incidental, BOPTI's existence as a credit union may be threatened if overlaps of this type are approved.

In addition, a decision allowing this type of overlap would establish a precedent with potentially adverse effects on all small credit unions. Many small credit unions simply cannot compete in services offered with larger credit unions. Credit union members should be encouraged to work with their credit union to obtain the services they desire. It is the Board's understanding that BOPTI is making a good faith effort to offer additional services desired by its members. Based on the facts presented in this matter, the NCUA Board is not inclined to jeopardize the financial viability the BOPTI Federal Credit Union.

Order

For the reasons set forth above, it is ORDERED as follows:

The Region III Director's denial of the addition of the employees of Federal Correctional Institution (FCI) in Talladega, Alabama to AOD FCU is upheld and the appeal of AOD FCU is denied.

So Ordered on this 28th day of August, 1995, by the National Credit Union Administration Board.

Becky Baker
Secretary of the Board

^[1] According to credit union officials, BOPTI plans to begin offering share draft and ATM services before the end of 1995.

^[2] FCI submitted petitions to AOD with a majority of its employees requesting service. It appears that service was requested due to AOD's location and variety of services, and some dissatisfaction with the time required for BOPTI to process loans.

^[3] NCUA's current chartering and field of membership policies, adopted as Interpretive Ruling and Policy Statement 94-1 ("IRPS 94-1"), are set forth in The Chartering and Field of Membership Manual ("Chartering Manual"). The policy regarding overlaps as discussed herein is set forth at pages 1-14 to 1-15 of that manual.