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December 9, 2019

Submitted via www.regulations.gov

National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: Comments in Response to Proposed Rulemaking, Chartering and Field of Membership

Dear Sir/Madam:

On behalf of the New York Credit Union Association, we are submitting comments in response to the National Credit Union Administration's (NCUA) Notice of Proposed Rulemaking Chartering and Field of Membership ("the Proposed Rule") published in the Federal Register on November 7, 2019.

The New York Credit Union Association (NYCUA) is the leading voice of New York Credit Unions, committed to advancing the credit union movement by advocating, educating, uniting and supporting the interests of all credit unions statewide. We appreciate the opportunity to weigh in on the proposal below.

Background

Earlier this year the United States Court of Appeals for the District of Columbia upheld large portions of a rule promulgated by NCUA in 2016 giving federal credit unions much greater flexibility to expand into additional communities. The ruling did, however, require NCUA to pass additional regulations designed to better document the steps credit unions take to prevent engaging in racial gerrymandering by not providing services to populated urban areas.

The NCUA Board ("the Board") is proposing to amend its chartering and field of membership rules for community-chartered credit unions. Specifically, the proposed rule does three things, which we will address in turn:

- The proposed rule would re-adopt the 2016 Final Rule provision allowing a Combined Statistical Area (CSA) to be a presumptive well-defined local community (WDLC).
- The proposed rule provides further explanation and support for NCUA's elimination of the core service area requirement for CBSAs in the 2016 Final Rule.
- The proposed rule adds a new provision to the Chartering Manual to enhance service to low- and moderate-income individuals for Community Fields of Membership (FOMs) based on Combined Statistical Areas and Core Based Statistical Areas (CBSAs).

Comments

- I. **NYCUA supports the proposed re-adoption of the 2016 Final Rule provision allowing a Combined Statistical Area (CSA) to be a presumptive well-defined local community (WDLC).**

The NYCUA supports the Board’s proposal to re-adopt the CSA provision from the 2016 Final Rule and agrees with its assertion that CSA’s are “sufficiently compact to promote interaction and common interests among its residents,” thus qualifying them as a “well-defined local community” for purposes of qualification as a community-chartered credit union.

The CSAs fully within the state of New York include¹:

- Albany-Schenectady, NY Combined Statistical Area
- Buffalo-Cheektowaga-Olean, NY Combined Statistical Area
- Elmira-Corning, NY Combined Statistical Area
- Ithaca-Cortland, NY Combined Statistical Area
- Rochester-Batavia-Seneca Falls, NY Combined Statistical Area
- Syracuse-Auburn, NY Combined Statistical Area

Here in New York’s Capital Region the Albany-Schenectady CSA is intrinsically linked through both recreation and work. Any local can attest to enjoying both The Palace Theater in downtown Albany and Proctor’s Theater in downtown Schenectady, while many of our own Association employees commute back and forth between counties each day.

II. The elimination of the core service area requirement will not encourage discriminatory lending practices.

In its decision, the United States Court of Appeals for the District of Columbia Circuit (“the Court”) challenged several arguments made by NCUA in its dismissal of the redlining concern. Broadly speaking, the NCUA “dismissed the redlining concern on other grounds, pointing to its “supervisory process to assess [credit-union] management’s efforts to offer service to the entire community [the credit union] seeks to serve.””²

The Court has given the unique opportunity to NCUA to further explain why elimination of the core service area requirement will not encourage discriminatory lending practices. Any satisfactory response to the Court must include adequate responses to those challenges. Specifically, the NCUA must demonstrate it has sufficient and effective procedures in place to systematically review community FOM applications to ensure they do not result in communities that exclude minority groups.

1. NCUA’s proposed changes to the Chartering Manual implement affirmative protections against discrimination and alleviate the Court’s concerns about a retroactive-only annual review.

¹ Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas No. 18-04 (2018, September 14). Office of Management and Budget. Retrieved from <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>

² United States Court of Appeals for the D.C. Circuit (2019, August 20). American Banker Association v. National Credit Union Administration. Retrieved from pg. 29 [https://www.cadc.uscourts.gov/internet/opinions.nsf/EB59CD243BABE1BD8525845C0050E450/\\$file/18-5154.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/EB59CD243BABE1BD8525845C0050E450/$file/18-5154.pdf).

The Court, in its decision, challenged the effectiveness of NCUA’s annual evaluation in fixing or preventing potential gerrymandering or discriminatory lending practices.³ Specifically, the Court notes the annual evaluation occurs after the structure of the credit union has already been established – including the charter, the business plan, and the proposed community. A retroactive lookback is not preventative.

In response, NCUA proposes a number of changes to the Chartering Manual including:

- Requiring an applicant for a community FOM to explicitly outline how it proposes to serve low- and moderate-income communities;⁴
- Explicitly authorizing NCUA to require additional information, conduct further inquiries, and reject a community-based FCU charter application if it deems its proposed FOM has a discriminatory intent or effect;⁵ and
- Require an applicant for a community FOM to affirmatively state it does not have a discriminatory purpose for choosing its FOM.⁶

These proposed Chartering Manual amendments adequately address the Court’s timeline concerns (that current NCUA evaluations occur *after* the structure of the credit union has already been established) and implement a framework for credit union charters that builds in preventative discriminatory protections. These proposed amends should be highlighted in the proposal so as to clearly respond to the Court’s challenge.

2. Community credit unions already serve the majority of urban cores without the core service requirement.

Despite the Court’s concerns that urban cores will not be served without implementation of a core service requirement, the Proposed Rule indicates “NCUA’s data show that a substantial majority of CBSAs, including their core areas, are currently served by community-based FCUs.”⁷

While the Proposed Rule addresses the Court’s concerns, given the importance of this issue to the Court’s analysis, NCUA should further supports its assertions. It is imperative that the data referenced by the NCUA be detailed in the Proposed Rule and that the “substantial majority,” referenced by NCUA be broken out into numerical illustration, whether as a percentage, flat number, or something else. The current paragraph in the Proposed Rule addressing this concern does not clearly delineate what core areas are served by community FCUs, as opposed to other charter structures.

3. Due to the changing demographics throughout the United States, a requirement to serve the urban core does not ensure adequate financial services by FCUs to low- and moderate-income communities.

³ United States Court of Appeals for the D.C. Circuit (2019, August 20). American Banker Association v. National Credit Union Administration. Retrieved from pg. 30
[https://www.cadc.uscourts.gov/internet/opinions.nsf/EB59CD243BABE1BD8525845C0050E450/\\$file/18-5154.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/EB59CD243BABE1BD8525845C0050E450/$file/18-5154.pdf).

⁴ NCUA Chartering and Field of Membership Proposed Rule for 2019, 84 Federal Register 59989 (November 7, 2019) (to be codified at 12 C.F.R. pt. 701).

⁵ Id.

⁶ Id.

⁷ Id.

United States demographics continue to change at a rapid clip. The country's racial and ethnic diversity continues to grow and according to current trends will be a "majority-minority nation by 2044."⁸ One noticeable change is the increasing population of minorities moving out of the cities and into the suburbs, which are "increasingly [becoming] the most racial and ethnically diverse areas in the country."⁹

According to an April 2019 report by the New York Times,

*"In city after city, a map of racial change shows predominantly minority neighborhoods near downtown growing whiter, while suburban neighborhoods that were once largely white are experiencing an increased share of black, Hispanic and Asian-American residents."*¹⁰

Additionally, the same New York Times research shows wide disparities in mortgage holders between urban and suburban areas. As revitalized cities bring in wealthier homeowners whose incomes dwarf those of their neighbors, the new residents receive the majority of the mortgages.¹¹ Conversely, minority groups moving into the suburbs have less distance between incomes than their neighbors and "receive mortgages proportionate to their share of the population."¹²

The trend toward more diverse suburban areas throughout the United States means that, should the urban core requirement be sustained, FCUs will service increasingly white urban areas rather than the minority populations for which they were intended to benefit. According to data collected by the New York Times, downtown populations in Raleigh, Brooklyn, Atlanta, Indianapolis, Philadelphia, Nashville, Houston, Denver, and Chicago have all grown increasingly non-Hispanic white. As minority groups relocate out of these cities, the surrounding suburbs have experienced corresponding trends of increased racial diversity.

Urban core service requirements were created for the purpose of providing financial services to low income individuals in underserved areas. Historically, these areas were urban cores populated predominantly by minority groups that stood to benefit from gaining access to credit union membership.

As minority groups relocate to surrounding suburbs, these individuals also stand to lose access to the financial services offered exclusively within urban cores. Urban core service requirements therefore become less effective in serving their intended purpose.

4. Credit unions are already subject to numerous anti-discrimination laws and the NCUA already has the authority to oversee compliance.

⁸ Williams, Aaron, & Emamdjomen, Armand (2018, May 10). America is more diverse than ever – but still segregated. Retrieved from <https://www.washingtonpost.com/graphics/2018/national/segregation-us-cities/>.

⁹ Id.

¹⁰ Badger, E., Bui, Q., & Gebeloff R (2019, April 27). The Neighborhood is Mostly Black. The Home Buyers Are Mostly White. Retrieved from <https://www.nytimes.com/interactive/2019/04/27/upshot/diversity-housing-maps-raleigh-gentrification.html>.

¹¹ Id.

¹² Id.

Of course, even without these additional requirements, credit unions are subject to the crucial anti-discrimination and fair lending laws including the Equal Credit Opportunity Act and the Fair Housing Act, both of which ban discriminatory lending practices based on sex or minority status.

In addition, the Home Mortgage Disclosure Act mandates that qualifying credit unions provide extensive data on their lending practices. The data now required under the statute is so extensive that it provides an additional mechanism for both the public and federal regulators to spot discriminatory lending trends and to take appropriate action against offenders.

Finally, NCUA's examiners receive training on fair lending issues and are empowered to take appropriate action against offending institutions.¹³ Furthermore, compliance with these laws is a core responsibility of credit union boards of directors. Boards are responsible pursuant to regulation to ensure that their credit unions have policies and procedures in place to comply with these statutes and that they themselves conduct business free of biases.¹⁴

Conclusion

The Association appreciates the opportunity to comment on the Proposed Rulemaking with respect to this important issue, and thanks NCUA staff for its efforts and thoughtful approach to the Chartering and Field of Membership changes addressed by the proposed amendments. We respectfully request NCUA consider the comments and recommendations set forth above and are available to meet and discuss these matters and to respond to any questions.

Very truly yours,



William J. Mellin
President and CEO
New York Credit Union Association

¹³NCUA Opinion of Counsel (1992, February 19). Retrieved from <https://www.ncua.gov/files/legal-opinions/OL1992-0124.pdf>.

¹⁴ NCUA Letter to Federal Credit Unions (2011, February). 11 F.C.U. 02. Retrieved from <https://www.ncua.gov/files/letters-federal-credit-unions/LFCU2011-02.pdf>.