NEW YORK creditunion ASSOCIATION

strength in members.

February 8, 2016

Gerard S. Poliquin, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Dear Mr. Poliquin,

As the President/CEO of the New York Credit Union Association, I am writing to comment on NCUA's proposed amendments to its Chartering and Field of Membership Manual. If the federal credit union charter is to remain viable, this 20th century charter must be updated to accommodate the 21st century marketplace.

The changes proposed by NCUA are a good first step but do not go far enough. In promulgating the final amendments, NCUA can and should make even more changes. The purpose of this letter is to (1) demonstrate that these amendments are well within NCUA's legal authority; (2) underscore the broad-based support within the New York credit union movement for these changes; and (3) urge NCUA to take additional steps to maximize the ability of credit unions to grow in response to member needs. [1]

Background

The Federal Credit Union Act (the Act) mandates that a federal credit union's Field of Membership be comprised of either a single common bond, multiple common bonds or a Well Defined Local Community (WDLC). [2] The Act gives NCUA broad discretion to implement this mandate. Most importantly, for purposes of this proposal, the Act empowers NCUA to define what constitutes a WDLC, when a membership group is within "reasonable proximity" to a credit union, and precisely what statistics should be used when determining if an area is underserved by other financial institutions.

[1] The Association is supportive of all the amendments but is limiting its specific comments to those areas that have generated the greatest interest from our members.

[2] 12 USC 1759.

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In discharging its Field of Membership obligation, by far the most contentious area of debate has been the NCUA Board's designation of WDLC. NCUA recognized in 1999 that WDLC determinations were fact-sensitive inquiries in which it had to weigh several criteria rather than mandate inflexible requirements. IRPS 99-1 established three requirements for community charters: (1) "[t]he geographic area's boundaries must be clearly defined;" (2) "[t]he charter applicant must establish that the area is a 'well-defined local, community, neighborhood, or rural district;'" and (3) "[t]he residents [in the area] must have common interests or interact."[3]

The Board stated that in determining interaction or common interests, a number of factors become relevant, such as the existence of a single major trade area, shared governmental facilities, local festivals and area newspapers, among other things. Conversely, an area which has numerous trade areas, multiple taxing authorities or multiple political jurisdictions would tend to diminish the factors that demonstrate the existence of a local community, neighborhood or rural district.[4] As the number of community credit unions increased, so too did banker complaints and lawsuits.[5] The plaintiffs in these suits never claimed that NCUA lacked the power to use flexible criteria in approving additional areas. Rather they contended that NCUA did not exercise this power in a rational way.[6]

Nevertheless, in 2010, responding in part to the pressure of litigation and the desire to have a more streamlined community approval process, NCUA instituted an "objective" approach in which it eliminated its discretion and instead relied on geographic designations designed by the Office of Management and Budget and eliminated the use of narratives.

Existing FOM Restrictions Hurt Credit Unions and Consumers

This radical shift in approach has severely restricted the ability of community charters to grow and attract new members. Other changes NCUA effectuated in 2010 made it more difficult for credit unions to provide services to underserved areas, imposed severe restrictions on the expansion of credit unions within Core Based Statistical Areas (CBSA), and effectively capped at 2.5 million people the size of any area that could be served by community credit unions.

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[3] See 63 Fed.Reg. 72037; Am. Bankers Ass'n v. Nat'l Credit Union Admin., No. CIV A 1:05-CV-2247, 2008 WL 2857678, at *3 (M.D. Pa. July 21, 2008).

[4] See Organization and Operations of Federal Credit Unions, 63 FR 71998-01.

[5] See, e.g. Am. Bankers Ass'n v. Nat'l Credit Union Admin., at *1 (M.D. Pa. July 21, 2008); Pennsylvania Bankers Ass'n v. Pennsylvania Dep't of Banking, 981 A.2d 975 (Pa. Commw. Ct. 2009).

[6] See Am. Bankers Ass'n ., at *10 (M.D. Pa. July 21, 2008).

All of these restrictions harm consumers irrespective of whether they live in rural, suburban or urban areas of the state. For example, there is a community credit union in western New York that can't serve neighboring counties that have much in common with its existing WDLC because it has no right to explain how the intercounty area is part of a single community.

By any reasonable criteria Nassau and Suffolk counties on Long Island constitute a WDLC. Many of their residents drive on the Long Island Expressway or take the Long Island Railroad to commute to work in and around New York City. They share common recreational areas, such as Jones Beach. And they share common political interests. But, because the combined population of these two counties exceeds 2.5 million people, only credit unions that serviced this community before 2010 are allowed to serve them both.

NCUA's proposal addresses many of these issues but does not go far enough to reverse the mistakes it made in 2010. The Association supports allowing community charters to introduce narratives to explain how areas in counties bordering CBSAs constitute WDLCs. The agency should allow credit unions the option of using narratives for all community charter expansion applications. To ensure, however, that it demonstrably acts within its powers, NCUA should continue to use the OMB designations as guides in determining whether areas that stretch across more than one county are WDLCs. But it should not categorically forbid credit unions from expanding in areas that don't meet these definitions. After all, as the OMB itself has explained, the purpose of the Standards for Defining Metropolitan and Micropolitan Statistical Areas is to provide nationally consistent definitions for collecting, tabulating and publishing federal statistics for a set of geographic areas, not to implement non-statistical programs and determine program eligibility.[7]

Another pair of proposed amendments also head in the right direction, but don't go as far as they can or should. One amendment would allow credit unions to add areas that have less than 2.45 million people even if it is part of a CBSA that exceeds the cap. Another important change would allow community charters to serve parts of CBSAs without serving the so called "Core of the Core." This requirement was imposed to incentivize credit unions to serve populated urban areas. In fact, it has proven to be counterproductive. It discourages credit unions from expanding into areas because of the increased cost and resources needed to serve them. In contrast, eliminating this requirement may lay the groundwork for future "Core" expansions by allowing credit unions to serve neighboring areas and helping consumers become familiar with their reputation and services.

[7] Standards for Defining Metropolitan and Micropolitan Statistical Areas, 65 FR 82228-01, 862228-9.

A more fundamental shift would do away with the cap completely. There are WDLCs with more than 2.45 million people. Credit unions with a credible marketing plan and the proven expertise to serve these areas should be allowed to do so. There is no cap on community size imposed under federal law, nor is it good public policy to discourage credit unions from serving areas that banks are already allowed to compete in without limitation.

Underserved Areas

Under existing regulations, an area is classified as underserved by financial institutions based on an analysis of the number of financial institutions in the proposed area. NCUA should follow through on its proposal to exclude from this concentration analysis financial institutions that can't provide a range of basic financial services to the area as a whole. This group would include trust companies, mortgage bankers and credit unions with a limited Field of Membership.

But more can be done to better capture the extent to which an area is financially underserved. For example, pursuant to 12 C.F.R. § 1026.35, which mandates escrow requirements for high-priced loans, an area is "underserved" during a calendar year if, based on HMDA data, it is a county in which no more than two creditors extended at least five mortgages in the county. NCUA should follow this example and not simply analyze the number of financial institutions in an area, but rather the number of loans being made by those institutions. This approach would better capture if financial institutions are truly dedicated to serving a financially distressed area or simply interested in cherry picking its well-off members. One of our credit unions suggests that this analysis could be further refined by analyzing loans made to persons below a certain credit score. This approach would also help ensure that persons in need of access to affordable credit aren't disadvantaged by the fact that other members of their community are able to access credit.

Just as NCUA is proposing to allow credit unions to satisfy the "reasonable proximity" requirements of common bond credit unions with technology, credit unions should be allowed to satisfy the requirement that they have a "service facility" in underserved areas by ensuring that the area has access to a full range of online banking services. This amendment is consistent with the agency's ruling that the "service facility" requirement can be satisfied by giving members access to sophisticated video terminal machines [8] as well as NCUA's "reasonable proximity" proposal. Most importantly, it would position credit unions to better serve persons of modest means since so many of the unbanked and

[8] https://www.ncua.gov/regulation-supervision/Pages/rules/legal-opinions/2012/0965.aspx

underbanked use cell phones for financial transactions before they go into a physical branch.[9]

Multiple Common Bonds

Both large and small financial institutions are achieving cost efficiencies by integrating technology into their operations. For example, Bank of America estimates that mobile technology now performs a number of transactions equal to 700 branches[10]. On the other end of the spectrum, a small Key Bank branch in Philmont, New York – the only branch in town – was recently closed because the bank concluded that customers were already forgoing the branch in favor of online banking. [11]

Against this backdrop, one of the most innovative proposed amendments is to permit Multiple Common Bond Credit Unions to satisfy the requirement that groups be within proximity of their branches by ensuring that they have access to a credit union by way of technology. The existing requirement made sense when members could only conduct teller functions at branches. With credit union members increasingly relying primarily on cell phones and tablets to access transactions, maintaining the physical branch requirement makes no sense. In addition, just as Bank of America has seen its bottom line improve with the closing of branches, credit unions may recognize huge cost savings if they are no longer required to maintain a physical location.

Another proposed amendment that multiple common bonds favor would allow credit unions adding groups of less than 5,000 members to use a streamlined application process. Credit unions have told the Association that it is getting more and more difficult to convince groups to become credit union members. Anything NCUA can do to expedite the process is a welcomed change. NCUA also asks if it should consider expanding the streamlined process to even larger groups of members. While many members found it difficult to pinpoint an exact number, there was widespread agreement that even groups with more than 5,000 members should be encouraged to join an existing credit union. Simply put, this is a difficult time to be starting a credit union.

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[9] http://acdivoca.org/sites/default/files/attach/legacy/site/Lookup/ACDIVOCA_WR_Summer11_CellPhonesBringFinancialServicestotheUnbanked/$file/ACDIVOCA_WR_Summer11_CellPhonesBringFinancialServicestotheUnbanked.pdf

[10] http://www.charlotteobserver.com/news/business/banking/bank-watch-blog/article47768360.html

[11] http://www.registerstar.com/news/article_81912f26-c955-11e5-b65f-5798b7487f8e.html

Finally, credit unions are broadly supportive of NCUA's proposal to qualify honorably discharged members of the military for membership in any federal credit union of their choice. Over the last several years, there has been increasing focus on the need to protect members of the Armed Forces from unscrupulous lenders. NCUA's proposal can help accomplish this goal by demonstrating to a broad cross section of the military community the advantages that come with credit union membership. In addition, persons who have honorably served their country, particularly in a time of war, deserve to be honored and respected by the industry consistent with safety and soundness, especially since so many credit unions started on military bases.

While the Association strongly supports efforts to improve the adoption of WDLCs and member groups, the limits of the existing regulations demonstrate why the industry as a whole has to advocate for statutory changes to give federal credit unions greater flexibility. Without these changes the federal charter will cease to be an attractive option for credit unions. Last year, New York became the latest in a growing number of states that allow credit unions to mix and match membership groups and communities. For example, a state-chartered, Multiple Common Bond credit union can now apply for approval to serve a WDLC. Such flexibility maintains the existing concept of defined Field of Memberships while allowing credit unions to more easily attract and serve new members. In addition, since these Field of Membership modifications are subject to the approval of the state Department of Financial Services, regulators have the ability to assure that they are consistent with safety and soundness. Similar legislation must ultimately be advocated for and passed at the federal level.

The Board deserves a tremendous amount of credit for its willingness to update its Field of Membership procedures and regulations. The Association urges NCUA to swiftly finalize these changes but with the suggested improvements explained above. Doing so would help both credit unions and also consumers by providing more of them with a real option when it comes to choosing a financial institution.

Sincerely,

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