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February 8, 2016

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

Re: Chartering and Field of Membership Manual

Dear Mr. Poliquin:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposal to significantly expand the field of membership rules for federally chartered credit unions. **The proposal would make comprehensive, sweeping and substantive policy changes that, if adopted, would violate both the intent and the plain language of the Federal Credit Union Act, as amended by the Credit Union Membership Access Act of 1998 (CUMAA). It would also further erode any meaningful distinction between tax-exempt credit unions and taxpaying community banks, thereby further undermining any justification for credit unions to remain tax exempt.**

Background

The NCUA claims it is amending its chartering and field of membership rules for federally chartered credit unions to "put them in a more efficient framework and to maximize access to federal credit union services to the extent permitted by law." The NCUA also wants to "maximize competitive parity between federal and state charters, to the extent allowed by law, while respecting the national system of dual chartering." The

¹ The Independent Community Bankers of America®, the nation's voice for more than 6,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With 52,000 locations nationwide, community banks employ 700,000 Americans, hold \$3.6 trillion in assets, \$2.9 trillion in deposits, and \$2.4 trillion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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NCUA states it has a strong desire to compete with and match all the credit union charter innovations that are being made at the state level.

The Federal Credit Union Act, as amended by CUMAA, provides a choice of three charter types for credit unions: (1) single common bond, with a single group sharing a single occupational or associational common bond; (2) a multiple common bond, with each group having a distinct occupational or associational common bond among group members, and (3) a community common bond among persons or organizations within a well-defined local community, neighborhood, or rural district.

With respect to community credit unions, the proposal would (1) no longer require that a credit union that serves a portion of a Core Based Statistical Area include the Core Based Statistical Area's "core area" in its service area, (2) expand the existing single Core Based Statistical Area definition of a well-defined local community to include Combined Statistical Areas as designated by OMB, subject to the 2.5 million population limit (3) allow areas adjacent to a well-defined local community to be added to the community, subject to the proposed population limits for community charters (2.5 million) and rural district charters (1 million), (4) allow an individual Congressional district to serve as a well-defined local community, (5) increase the population limit for a rural district from 250,000 people to 1,000,000 people, and (6) consider allowing a Core Based Statistical Area to exceed a population of 2.5 million people.

With respect to multiple common bond credit unions, the proposal would allow those credit unions to add a group to their field of membership and meet the statutory requirement to have a "service facility within a reasonable proximity to the group" just by having a transactional website or other electronic access that meets minimum levels of service as determined by the NCUA. No longer would the group need to be in "reasonable proximity of the credit union."

The proposal would also extend to multiple occupational common bond credit unions the ability to add persons who work regularly for an entity that is under contract to any of the multiple select employee group sponsors. Also, although the Federal Credit Union Act currently presumes that groups of 3,000 or more can form their own separate credit union, that statutory presumption could be overcome merely with a written statement indicating the conditions that exist that prohibit the formation of a single common bond credit union. In that case, the proposal would allow the addition of the group to an existing credit union. For groups exceeding 5,000 members, the proposal would require the group to fully describe its inability to establish a new single common bond credit union before allowing it to join a multiple common bond credit union.

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ICBA's Comments

The NCUA's justifications for expanding the field of membership rules often defy logic and certainly go beyond that agency's underlying statutory authority. The proposal would significantly ease the field of membership requirements for all charter types but particularly for multi-common bond credit unions and community credit unions to the point that the restrictions would become essentially meaningless.

The Federal Credit Union Act limits membership in a community credit union to "persons or organizations within a well-defined **local** community." Yet, under the proposal, the NCUA would recognize an individual Congressional district as a "well-defined local community" without regard to population. **This would allow community credit unions in seven states--Montana, Alaska, Delaware, North Dakota, South Dakota, Vermont and Wyoming to serve the entire state, making a mockery of the term "local."**

According to the NCUA, the rationale for using Congressional districts as well-defined local communities is that they "reflect interaction and common interests among each district's constituents based on issues and matters decided at the federal level that affect them locally." But if that is the standard for defining a well-defined local community, should not the entire United States be considered a well-defined local community since all U.S. citizens have a common interest "based on issues and matters decided at the federal level that affect them locally?" **In effect, NCUA's interpretation of a "well-defined local community" goes well beyond any reasonable definition of "local" and "community" and, without any population limits, would allow a community credit union to include the entire United States or any part thereof as part its field of membership as long as the constituents within that community interact on issues and matters decided at the federal level.**

The NCUA would also expand the existing single Core Based Statistical Area definition of a well- defined local community to include Combined Statistical Areas as designated by OMB. These Combined Statistical Areas can in some cases, encompass thousands of square miles of land and cross numerous county and even state borders. To claim that these large land masses and population centers should be considered a "local" community because the constituents within this area "interact" is absurd.

While the NCUA has not eliminated population limits entirely from its definition of what is a well-defined local community, clearly, the agency does not attach much significance to them. To wit: the NCUA invites comment on whether a Core Based Statistical Area can be a well-defined local community even if the local area has a population that exceeds 2.5 million. The NCUA implies that 2.5 million may be too small to define a local area particularly in light of the fact that the NCUA has already approved single political jurisdictions as large as Los Angeles County, California (9.6

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million) and Harris County, Texas (3.45 million). Under NCUA's tortured analysis, even if a "community" has 10 million people, as long as the people within the community interact in some way (i.e., they live within the lines drawn by NCUA), this is sufficient to classify the community as "local."

Also, the NCUA proposal would expand the rural district population limit by four times—from 250,000 people to 1 million people. The NCUA's justification for this four-fold increase is that the rural district "must have a population sufficient to enable credit unions to achieve a sufficient level of operating efficiencies."

The NCUA's overly broad interpretation of what is "rural" or "local" is at odds with any reasonable interpretation of those terms and makes a mockery of the field of membership restrictions. We question why a rural credit union needs to serve 1 million to achieve "operating efficiencies" particularly when there are hundreds of tax paying community banks that serve far fewer people in rural areas. Furthermore, how can a "local community" encompass an area as large as 2.5 million people—much less 10 million? If the proposal becomes effective, we predict that in a short time, the NCUA will again propose further increases to the rural district population limits as well as the Core Based Statistical Area limits so that credit unions can achieve further "operating efficiencies."

The proposal would also remove the requirement that community credit unions serve the "core" area of Core-Based Statistical Areas. Since credit unions are not covered by the Community Reinvestment Act, this would permit them to carve out the wealthy areas of a metropolitan area as their services areas and ignore the urban core area, further distorting their mission to serve people of modest means.

Under the proposal, community credit unions would also have a much easier time adding an "adjacent area" to a well-defined local community. According to the NCUA, areas adjacent to the perimeter of these geographic units often "lack a credit union presence and/or lack sufficient access to financial services, even though residents on both sides routinely interact." The NCUA offers little evidence in the proposal to support its assertion that adjacent areas to community credit unions often "lack sufficient access to financial services."

In any case, according to the NCUA, any interaction by the adjacent area with the well-defined local community should be enough to include them as long as the entire area (including all adjacent areas) stay within a population limit of 2.5 million. **In effect, the NCUA proposal is encouraging all community credit unions to simply bootstrap expansion of their field of membership to include all adjacent areas up to the 2.5 million population limit with little justification. This will make credit unions larger and more likely to abuse their tax exempt status.**

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The NCUA’s proposal would also unacceptably ease rules for multiple common bond credit unions to add new groups. For instance, credit unions could use a streamlined process for adding a group with fewer than 5,000 members even though the Federal Credit Union Act limits the maximum size for a group to be added to an existing multiple common bond credit union to 3,000. The NCUA believes the 3,000 limit is a presumption that can be easily overcome if the group can show it is unable to form a stand-alone credit union.

ICBA believes this contradicts the intent of the statute. The Federal Credit Union Act expresses a strong preference for separately chartered credit unions. It states that:

“The Board shall (A) encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union”

Furthermore, the 3,000 limit is stated very plainly in the statute and although there is an exception—it is a narrow one. **In short, permitting a streamlined application to add a group with over 3,000 members simply is inconsistent with the intent or the plain language of the statute.**

NCUA also proposes to allow multiple common bond credit unions to add groups that are not within “reasonable proximity” of the credit union as long as the credit union has a “transactional website” and allows for internet banking. Although the NCUA has formerly interpreted the statutory “reasonable proximity” requirement to mean that the credit union must have a branch office or mobile office near the group to be added, the agency now claims that circumstances have changed because so many credit union customers are now using mobile and internet banking. In other words, “reasonable proximity” should now mean access to a computer or a mobile phone. **Essentially, this would allow creation of nationwide, online credit unions, again circumventing the law, totally disregarding the statute’s clear preference for separately chartered credit unions and making a mockery of the common bond requirements.**

Conclusion

If this proposal becomes final, there will be few field of membership restrictions left, effectively allowing credit unions to expand their fields of membership as large as they want in contradiction of statutory limitations and use their tax exemption to compete with community banks for the same pool of customers. Even NCUA admits this proposal is really pushing the envelope in order to “maximize competitive parity” between federal and state credit union charters.

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When Congress amended the Federal Credit Union Act in 1998, it intentionally inserted the term “local” in the statute to limit the scope of community chartered credit unions. **The NCUA proposal largely nullifies the terms “local” and “well defined.” Furthermore, it circumvents the limits and restrictions in the statute that apply to adding groups to a multiple common bond credit unions and disregards the statute’s clear preference for separately chartered credit unions.** By eroding the original purpose of the tax exemption (which is to allow credit unions to serve persons of modest means), the NCUA proposal would likely result in much larger credit unions serving larger and more economically and demographically diverse geographic areas.

This proposal is another example of the NCUA attempting to inappropriately and illegally extend the industry’s government-subsidized competitive advantage and shows how captive the agency really is to the industry it regulates. This proposal should be rejected by the NCUA Board and the NCUA should hereinafter focus on implementing and enforcing both the intent as well as the plain language of the Federal Credit Union Act. If credit unions want to eliminate the common bond requirement and operate like banks, they should be taxed like them and required to meet the same set of regulatory standards. They can’t have it both ways.

ICBA appreciates the opportunity to comment on the Federal Reserve’s proposal to expand the field of membership rules for federally chartered credit unions. If you have any questions or would like additional information, please do not hesitate to contact me by email at Chris.Cole@icba.org.

Sincerely,
/c/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel

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