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CREDIT UNION ASSOCIATION

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

Re: Comments on Notice of Proposed Rulemaking Regarding Associational Common Bond – RIN 3133–AE31

Dear Mr. Poliquin:

On behalf of the 1.45 million credit union members we represent in Missouri and 650,000 credit union members we represent in Kansas, the Heartland Credit Union Association (HCUA) appreciates the opportunity to submit comments regarding the National Credit Union Administration (NCUA) Board's proposed changes to its chartering and field of membership (FOM) rules.

The HCUA strongly supports this modernization effort and we encourage the NCUA Board to quickly adopt the proposed changes along with our additional suggestions. We believe these will make NCUA's rule better for federally chartered credit unions and their members.

We recognize that NCUA is restricted by provisions of the Federal Credit Union Act (FCUA). However, we believe there is additional flexibility to update these requirements so they are current with today's economic and technological environment.

Legal Authority

Based on the Administrative Procedure Act (APA) and *Chevron* deference, the proposal by the NCUA appears to fall well within its statutory authority. The Board's interpretation of the FCUA appears reasonable and supported by the record. While some have expressed concern the proposal could allow redlining by credit unions, we find no evidence that the proposal would allow or encourage credit unions to engage in this practice. The proposed definitions of well-defined local community (WDLC) appear to be within the scope of the FCUA for NCUA to define. The allegations of the NCUA



overstepping its bounds, once an honest evaluation of the proposal is undertaken, are unfounded.

Suggestions for Additional Improvements

The HCUA supports most of the changes in the proposed rule. However, we believe more can be done to put the federal charter on equal footing with most states and we suggest the following additional improvements before we provide our comments on the proposed rule:

1. Merger Process Improvements

NCUA should facilitate mergers between credit unions with unlike fields of membership when there is no desire to retain the merged credit union's field of membership by establishing a process that eliminates the need for a conversion. NCUA could simplify the existing process by providing clear guidance stating the merged credit union can change its FOM and approve the merger in one step. An update to NCUA's chartering manual would be required for the charter conversion to be completely removed from the process.

2. FOM Type Conversions

NCUA should permit FCUs that convert to a community charter to keep approved groups in their FOMs that are outside the boundaries of their new community. There are credit unions that have both communities and SEGs in their FOMs because of an emergency merger. This precedent could be extended to conversions so credit unions could switch to the charter that best fits the needs of the credit union while allowing it to continue to serve and add new members from an SEG.

State chartered credit unions converting to FCUs should be allowed to keep their current FOMs as well and be allowed to expand based on NCUA's FOM regulations. There is precedent through the emergency merger process for FCUs to have fields of membership that would not be normally allowed under NCUA rules. If these credit unions can keep the members and field of membership that would not otherwise be permissible, then other credit unions should have this opportunity.

Similarly, NCUA needs to address expansion by credit unions with grandfathered FOMs that do not fit under the current or proposed rules. NCUA should develop ways for these credit unions with legacy FOMs to use the new regulations without dropping their old FOMs.



3. Full Narrative Approach

NCUA should reinstate the pre-2010 narrative approach for defining a community when a community cannot be adequately defined by a statistical area or political jurisdiction. Not all communities fit into NCUA's statistical or single political jurisdiction requirements to be a WDLC. We believe NCUA's proposed addition of an area adjacent to a Core Based Statistical Area could give credit unions most of the flexibility that was lost when the narrative approach was removed from the Chartering Manual, as long as NCUA does not impose difficult requirements on its use.

4. Process Reform and Transparency

NCUA needs to evaluate further the agency's processes for approving FOM expansion. Many credit unions have complained to CUNA that the FOM expansion applications are onerous. We urge NCUA to develop methods for automatic approval for FOM expansion for all credit unions similar to what NCUA provided in the 2014 associational common bond final rule. Statistical areas, Congressional districts, single political jurisdictions (SPJs), and rural districts also should get automatic approval.

5. More Access to Underserved Areas for All Credit Unions

We believe NCUA can do more to help all credit unions provide financial services to underserved areas. In accordance with the FCUA, an underserved area that is contiguous with the boundaries but outside of the boundary of a community, whether it be an SPJ, statistical area or a Congressional district, should be approved as part of the community credit union's FOM. The HCUA also encourages the NCUA to raise the population limit for statistical areas, if not eliminate the limit entirely. This population limit should not apply to underserved areas; there is no rational justification for regulatory barriers that in any way limit credit union access to underserved Americans.

NCUA should work to develop a list of underserved areas and make the list available to credit unions. Pre-approved underserved areas would ensure that credit unions could direct their resources towards serving the area instead of using resources on consultants for applications when there is no certainty that NCUA will approve service to an underserved area.

Comments on the Proposed Rule

The following are section-by-section comments on the proposed rule.

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1. Population Limit for Well-Defined Local Community Based on Statistical Areas

NCUA should increase the population limit for a WDLC based on statistical areas beyond the 2.5 million in the current FOM regulation. We recommend elimination of this limit, or if such a limit is necessary, it should be based on the most populous SPJ. The use of a Core Based Statistical Area (CBSA) or SPJ to define a WDLC in itself limits the population that a credit union can serve as both are made up of finite areas. In fact, CBSAs were designed to define communities, so a population limit splits these communities. We oppose the imposition of artificial, arbitrary population limits. Such limits are not required in the FCUA.

A CBSA can serve as a proxy for a WDLC, but just like an SPJ, it does not necessarily describe or represent an entire community or a community that needs financial services from a credit union.

A CBSA does not over-include, but under-includes communities because of the difficulty in truly defining a community by anyone other than the members of a community. Under inclusion is exacerbated by the 2.5 million-population limit which, because of other NCUA limitations, has prohibited the use of CBSAs for community chartered credit unions in larger metropolitan areas.

The current limit discriminates in favor of community credit unions in areas with large SPJs even though a CBSA or Combined Statistical Area (CSA) can better represent a community because it is not subject to political jurisdiction border limitations.

The 2.5 million-population limit constrains who credit unions can serve and makes the other proposals for the use of statistical areas less useful. It makes the removal of the “core area” requirement necessary as that requirement, along with the population limit, restricts areas that credit unions can serve. The chartering rules should be designed to allow multiple political jurisdiction community chartered credit unions to expand to the limits set by SPJs.

2. Core Area Service Requirement

We support NCUA’s proposal to eliminate the requirement for community chartered credit unions wishing to serve a community consisting of a CBSA to serve the “core area” of the CBSA. The requirement to serve a “core area” along with the population limitation restricts the areas that a credit union can serve in a CBSA.

Serving a CBSA or “core area” is not required by the FCUA. NCUA should not place limitations on service areas in statistical areas, because these limitations or requirements can divide these areas into portions that do not represent a viable community or exclude the viable portions of a community.

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All credit unions, whether state chartered or federally chartered, have an FOM, and this requires they only serve select groups of people. Whether this is defined by a common bond or community, Congress places limits on who credit unions can serve in the FCUA by design. NCUA should not place additional constraints on who credit unions can serve.

3. Limit as Applied to a Well-Defined Portion of a Core Based Statistical Area

HCUA supports removing the restriction that prohibits community chartered credit unions from serving a portion of a CBSA if the overall population of the CBSA exceeds 2.5 million. The limitation is superfluous since the current regulation allows a community chartered credit union to serve a portion of a CBSA with a population of 2.5 million or less as long as the credit union serves the core area.

4. Combined Statistical Areas

HCUA supports the proposal to let CSAs serve as a WDLC for community chartered credit unions. The CBSAs that combine to create a CSA retain separate identities within the larger CSA. A CSA goes beyond the concept of a CBSA and yet is constituted by a combination of CBSAs. The Census Bureau requirement for substantial employment interchange further substantiates commonality.

Serving all or part of a CSA gives credit unions flexibility to serve an entire community that normally would not fall into a single CBSA. In addition, allowing CSAs to be WDLCs will give community chartered credit unions the flexibility to serve more entire communities that might otherwise be excluded from the current FOM regulation.

5. Addition of Areas Adjacent to a Core Based Statistical Area

The HCUA supports the proposed addition of an area adjacent to a CBSA, which would allow a credit union to serve a contiguous area outside of a CBSA, CSA, SPJ or rural district if that area is within the WDLC. We are concerned, however, that NCUA may impose policy or process hurdles that make this provision less flexible. Credit unions should be approved to serve areas without the need for marketing plans and proving a commitment to serve. We ask NCUA to adopt reasonable standards for use of this provision with pre-approved areas.

6. Individual Congressional District as a Well-Defined Local Community

The HCUA strongly supports the addition of a Congressional district as a WDLC. A Congressional district inherently defines a community with shared interests, is contiguous in land area and, with an average population of slightly over 700,000, is

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much smaller than many SPJs. While the exact boundaries of a Congressional district might change every decade, an FCU would be able to continue to serve anyone who is a member-of-record at the time of re-districting. We also think an FCU should be able to include a Congressional district combined with other contiguous communities.

7. Rural District Multistate-Expansion Limit

The HCUA does not support the requirement that limits rural district credit unions to serving only those states contiguous with the credit union's headquarters. The only limitation on rural district credit unions should be the credit union's ability to serve the district; current technologies should allow credit unions with an acceptable level of online banking services to be authorized to provide membership to people living in rural areas of the country. A population limit serves as an appropriate check on the area a credit union can serve. Any other restrictions are redundant.

8. Rural District Population Limits

The HCUA supports raising the population limitation to 1 million people as the only requirement that should be placed on credit unions, and we believe the previously higher limits allowed under the current rule should be grandfathered in.

9. Underserved Areas

The HCUA supports NCUA's amendment that would allow agency staff to recalculate the concentration of facilities ratio analyses to exclude non-community credit unions and other non-depository financial institutions.

10. Reasonable Proximity through Members' Online Access to Services

The definition of "Service Facility" under the proposal is modified to include a transactional website or mobile platform permitting, at a minimum, accepting shares for members' accounts, accepting loan applications or disbursing loans. HCUA supports this amendment. This amendment accommodates modern banking technology. The rule also requires a demonstration that the modern technology actually can perform the required services. These criteria will inherently limit the ability of a credit union to broaden its geographic reach without having the capability to have a presence in the region. This amendment thus clearly falls within the auspices of the FCUA.

We further request that NCUA should likewise strongly consider extending the same ability for purposes of establishing a presence in an underserved area. This would allow a credit union to target and serve an area that might otherwise be underserved.

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11. Inclusion of Select Employee Group Contractors in a Multiple Common Bond

HCUA supports the extension 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 SEG sponsors listed in its charter, provided the contractor has a “strong dependency relationship” with the sponsor. The “strong dependency relationship” test is currently available to *single* occupational common bond credit unions. A single occupational common bond credit union can already serve those individuals that have the strong dependency relationship to the sponsor. There is no reason that a multiple common bond credit union could not also serve those that are so closely associated with the individual sponsor.

12. Inclusion of Office or Industrial Park Tenants in a Multiple Common Bond

This proposal allows multiple common bond credit unions to include as an SEG the employees of a park’s tenants in its FOM, assuming two limitations are met: 1. The group must have fewer than 3,000 employees working at a facility within the park; and 2. Only those employees who work regularly at the park during their employer’s tenancy are eligible for membership. New tenants joining the park would be eligible provided both conditions are satisfied. We suggest, however, that the 3,000 employee threshold should be raised to 5,000.

HCUA supports this method of establishing an SEG. We also request the NCUA provide flexibility and clarification as to how to document and demonstrate the presence of a group in a facility; as long as the credit union can demonstrate sufficient verifiable knowledge of a valid tenant that should suffice. Clarity as to examiner expectations in this area is welcomed.

13. Streamlined Determination of Stand-Alone Feasibility of Groups Greater than 3,000

The FCU Act currently presumes that groups of 3,000 or more can form a credit union. Unfortunately, recent experience indicates groups between 3,000 and 5,000 members frequently cannot feasibly establish a new single common bond credit union. This proposal eliminates the overlap analysis required for groups between 3,000 and 5,000; the NCUA would accept a written statement indicating the conditions that exist for why a group cannot form its own credit union.

The HCUA supports the increase but believes the threshold of 5,000 should be increased to 10,000. NCUA statistics show that 80 percent of credit union failures occurred in credit unions with fewer than 5,000 members. The 10,000 threshold represents the point at which a standalone single common bond credit union could reasonably have a chance at success. In this proposal, NCUA does not eliminate the requirement of demonstration that a group cannot establish a new single common bond

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credit union, but now accepts a statement in lieu thereof. NCUA can still accept or reject (or investigate the veracity of) this statement during the application process; the proposal merely adjusts the extent of the required documentation. Thus, this provision appears to be within the NCUA's statutory authority.

14. Other Persons Eligible for Credit Union Membership

This proposal will allow a credit union to include within its common bond those who have been honorably discharged as a veteran of any branch of the United States Armed Forces listed in its charter, continuing eligibility for credit union membership beyond their time of active duty. The HCUA supports this proposal.

15. Trade, Industry or Profession (TIP) as a Single Common Bond

NCUA supports the expansion of the definition of a TIP charter to include those vendors, contractors, or other groups closely associated with a particular trade or industry. This provision recognizes current employment practices where employers outsource or make use of independent contractors. The rule implements a test that will require the credit union to show a "strong dependency" and a demonstration of significant economic impact on either or both parties if one were unable to continue in its operations without doing business with the other.

NCUA did not propose to eliminate geographic limitations for TIPs, although a geographic restriction is not required by statute. NCUA's own policy does not apply the geographic restriction "for credit unions currently serving a national field of membership or operating in multiple states." Therefore, this mandate should be removed to allow other credit unions to explore the desirability of operating with a TIP charter.

Conclusion

The HCUA supports the NCUA's proposed FOM rule. As always, we appreciate the opportunity to review and comment upon this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,



Don Cohenour and Marla Marsh
Co-Presidents