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March 4, 2010

National Credit Union Administration
Mary Rupp, Secretary of the Board
1775 Duke Street
Alexandria, VA 22314-3428

RE: Proposed Rule (IRPS 09-1) Field of Membership

Dear Ms. Rupp:

I want to thank you for the opportunity to comment on the above proposed regulation. There is no doubt the old regulation was outdated, over burdensome and did not facilitate field of membership (FOM) expansion. However, our credit union has several concerns with parts of the proposal that I will outline below.

NCUA deserves commendation for their stated purpose of trying to "streamline" the process for converting to a community charter. When a credit union needs the diversification of membership that a community charter provides, the process to convert to a federal community charter should not be as burdensome and paperwork laden as it is presently.

Concern #1: The proposal does not streamline community charters as much as it provides for a single track community charter, forcing all expansion requests into a one-size-fits-all matrix that is inflexible, eliminates other alternative communities and has no appeal process.

While many credit unions already have a community charter and others whose current field of membership is more attractive and diversified than a community charter, the reality is that retaining the option of converting to a community charter should be afforded to every credit union.

Existing federal community chartered credit unions may want to increase their community at some point in the future. Existing state chartered community credit unions may find the regulatory environment would make it better for them to convert to a federal charter. Existing SEG based credit unions may face unexpected sponsor reductions or shut downs that would require the need for diversification. Or, of real significance in today's market, a merger offer by a community chartered credit union could be worth considering. All of these situations make this proposed rule worthwhile, if it can be improved.

This current process is much too labor intensive and costly in resources for a credit union seeking to convert to a community charter. That's why so many credit unions have to hire a consulting firm to help them navigate the process. The process should be more straightforward and based on a common sense business plan. The current process is too long, too cumbersome and unnecessarily resource draining.

However, we are concerned about several aspects of the proposed rule that seem to run counter to the stated purpose of the proposal.

It appears that, rather than streamlining the process for converting to a community charter, NCUA is proposing to single track its potential approval of a community definition. The proposal makes it clear that NCUA will automatically approve a community consisting of a single political jurisdiction or a multiple political jurisdiction with a hub city possessing at least 33% of the population and 50% of the jobs in a community. However, as there is no appeal route or opportunity to make a case for any community that falls outside of this regulatory prescribed definition, NCUA is essentially saying that only communities that meet this standard need apply. St. Louis and Kansas City, Missouri do not meet this definition even though they are the 18th and 29th largest SMSAs in the nation, respectively.

It would appear that this proposal reflects a classic example of one-size-fits-all rulemaking. Rather than easing the process for those that meet the prescribed standards and still allowing others to make their case in the traditional narrative manner with applicable documentation, NCUA is not actually streamlining the process through this proposal. On the contrary, NCUA is utilizing this proposed rule to define one, and only one, way through the process. In doing so, it is eliminating from any credit union their right to apply for a community charter in any community that does not fit in the neat box of the regulatory definition specified in IRPS 09-1.

This is not sound regulatory policy to close the door on a large portion of the communities in this country that do not fit the 50%-33% hub definition. It works against rural areas, suburban areas and geographically spread out areas even in larger metropolitan areas.

The biggest concern should be safety and soundness. If a credit union located in a community that does not fit the specified criteria finds itself in true need of membership diversification for the purposes of strengthening its financial position in the future, this proposal streamlines them out of the opportunity to consider the community charter as a viable diversification option for strengthening their long term safety and soundness position. It appears the agency is saying, "Merge if you can, or fail. But a community charter is out because your community is suburban, rural or simply has 48% of the jobs in the hub city rather than 50%". This does not seem to be good public policy, or good for the federal credit union charter.

The best approach, without completely killing the idea of streamlining the process, would be for NCUA to refine the proposed IRPS-09-1 into what it was supposedly designed to be – a streamlining process, not a single track process. That could be done by keeping in the final rule and established default community criteria, such as the proposed matrix of 50% of jobs and 33% of the population in the hub city, but utilize that formula to determine a presumed community that can be submitted without narrative documentation or additional submission of community paperwork. Those applications for a community charter which fall within the "streamlining" matrix would move straight to evaluation of the applicant credit union's business and marketing plans for serving the presumed community. This would be a true streamlined process as it would give an expedited approval process for certain communities that met the established matrix. (They would still have to submit a satisfactory business and marketing plan demonstrating how the credit union would safely and soundly serve the community, but the approval of their application would be based upon the business plan – not the community.)

However, should any federal credit union desire to submit an application to serve a community that does not meet the presumed community standards necessary to take advantage of the streamlined approach, that credit union should be allowed to do so. They would be required to make a documented narrative case that their community meets the statutory requirement as a "well defined local community." Such an application, although not streamlined, should be allowed and reasonably considered by the agency fairly and completely as such communities are evaluated today. It should not be automatically rejected or be subject to likely disapproval simply because it does not fit into the 50% - 33% matrix.

Every community in this country is different. The rules for federal chartered credit union to define a community should be flexible enough to recognize this fact. The proposed rule does not do so. We are aware of state chartered credit unions that have been provided more community service opportunities across state lines than some federal chartered credit unions have been allowed. This makes no logical sense. In fact, it is ironic that more state chartered credit unions have communities that cross state lines than do federal charters.

This proposal leaves credit unions in communities that do not qualify for streamlining out in the cold when it comes to seeking diversification through a federal community charter. They simply cannot apply unless they fall within the specified single track criteria. Unfortunately, many of these federal credit unions will be driven to the state charter or perhaps even a mutual savings bank charter in order to gain the diversification they need to survive.

NCUA should make every opportunity possible within the statutes to enable federally chartered credit unions to survive, thrive and prosper – both financially and in member service – without having to look at charter change options outside of the federal credit union charter.

One last point to reconsider about this part of the "streamlining" proposal. Any multi-county community with over 2.5 million in population is out, no matter how the 33% of population, 50% of jobs matrix works out. This population limitation of 2.5 million seems to be arbitrary.

There have been community charters granted under existing rules at the federal level with as many as 3.8 million people in the multi-county community. As we read it, the implementation of this proposed 2.5 million population cap would be applied to communities that are SMSAs or portions thereof – multi-county communities only. In other words, a single political jurisdiction could have a 7 million population and qualify as a community regardless of its 33% / 50% matrix numbers; however, a multi-county community, even if it otherwise qualifies under the matrix, is limited to 2.5 million in population.

We see no justifiable reason to establish such a set of definitive standards to qualify to become an approvable community as is proposed in IRPS 09-1 and then to set a 2.5 million population cap on top of the very tight definition for multi-county communities seems extremely arbitrary and unnecessary. According to the proposal, the 33% of population and 50% of jobs in its hub are the primary determinants of whether the interaction standard has been met for a multi-county community. If so, it should be considered met regardless of the size of the population that is considered to be interacting.

Concern #2: The three year examination process of federal community chartered credit unions' business and marketing plans is a future regulatory CRA-type approach for community charters and larger FOM credit unions.

Although there will always seem to be a likelihood that Congress could elect to bring credit unions under the Community Reinvestment Act (CRA), there has always been a reluctance among credit unions to see their federal regulator move into this arena absent a mandate from Congress to do so. The fear is that the community service evaluation will be subjective, the expectations will be unreasonable and the results could be used to lower CAMEL ratings, deny branching plans, restrict service offerings, delay waiver approvals, etc.

Without question a credit union seeking to serve a community based field of membership should make reasonable and diligent efforts to serve the entirety of the membership. Of course, as always, the key is the implementation. It is absolutely imperative that the agency, in evaluating an application for community charter, recognize that budgets, branching plans, marketing plans, product enhancements, etc. must be fluid and not rigid. For safety and soundness purposes, it may be best for one credit union to open a new branch every year; whereas, for another, it may be best to spread the branch opening over multiple years for financial, service and even property acquisition reasons.

In other words, every credit union is different just as every community is different. The subjective nature of the proposed language is troubling to credit unions who fear that it will creep, if not leap, from new federal community chartered credit unions to existing federal community charters to eventually all larger asset federal credit unions.

The proposal indicates that a credit union's failure to satisfy the terms of its business and marketing plans will subject it to supervisory action, but is silent as to what those supervisory actions may be. Will the credit union have the ability to appeal an adverse finding by the Region to the Board? Can a credit union lose its community charter status if it fails to meet the specifics of its business plan? Will exceptions be granted for extenuating circumstances such as a downturn in the local economy? Without clarification, this leaves a very open-ended set of supervisory options on the table – many of which would not be appropriate if left to local examiners to make a subjective decision.

This aspect of the proposal, within itself, could adversely impact the viability of the federal charter for community credit unions. If NCUA implements such an examination program and the various state regulatory agencies do not, there may well be few, if any, community charters remaining under the federal charter. And, if the states begin to allow broader multi-county field of membership than does NCUA, the exodus from the federal charter could be dramatic for community credit unions.

Already there are states that have aggressively begun to seek federal to state conversions among credit unions frustrated by the difficulty to get approved for a workable field of membership at the federal level. NCUA must be careful in this final rule to not tip the delicate balance of dual chartering when it comes to field of membership.

All credit unions benefit from a viable dual chartering system.

Concern #3: The proposal does not go far enough to help remove FOM differences as an impediment to needed voluntary mergers, nor does it help make emergency mergers easier to declare.

While NCUA has asked for comment on their proposed definition of a "credit union in danger of insolvency" as it relates to emergency mergers, a more appropriate question is whether their interpretation of an emergency merger is broad enough. This is important because, in an emergency merger, NCUA can wipe out the requirement that the merging credit unions have a compatible field of membership. Without an emergency declaration, a community chartered credit union cannot merge into a single sponsor or multiple group credit union. A multiple group credit union cannot merge into a community charter without giving up any SEGs outside the community, absent an emergency declaration.

The agency has been very conservative in declaring emergency mergers, thus dooming some credit unions that would like to voluntarily merge with another credit union which might have a non-compatible field of membership. Those credit unions have to wait until they are on their death bed to be declared an emergency so that the field of membership differences can be overcome. This does not make business sense for credit unions, nor safety and soundness sense for NCUA in its role of administering the NCUSIF.

Why wait until a credit union has hemorrhaged so badly that no other credit union is willing to accept it as a merger partner without NCUSIF guarantees or assistance? Members suffer. Both credit unions suffer. The NCUSIF suffers.

If those credit unions had been allowed to voluntarily merge before the financial downturn became critical, the suffering could have been mitigated. However, without the willingness on the part of the agency to waive field of membership differences in order to facilitate a merger well in advance of financial difficulties, field of membership will remain a costly stumbling block to the mergers.

We also believe that SEG credit unions converting to community charters should be allowed to retain their SEGs outside the community. This grandfathering makes reasonable business sense as the credit union, in many cases, has spent years building a strong relationship with these SEGs and the SEGs depend on the credit union for service and support. To cut off service to the SEG is a disservice to the credit union, the SEG and especially the existing members.

Community Credit Unions should also be able to serve branches or divisions of businesses within their FOM where the branch or division is outside the geographic area. Companies, regardless of size, don't want a credit union to serve only part of their employees. They want consistent service throughout their organization and not having to arrange for financial services with different credit unions in every city in which they operate. It seems only logical for a company to support only one credit union with their payroll administration and internal communication. This is also one of the hurdles that keeps some state chartered credit unions from converting to a federal charter. If a credit union has to give up its legacy nationwide corporate sponsor to obtain a federal community charter, it will hesitate to do so even though the corporate sponsor may be downsizing or having other financial problems. If a SEG's national headquarters resides within the FOM of a community chartered credit union, the credit union should be able to serve all of the employees of that SEG, regardless of their work location throughout the country, or the world.

Thank you for the opportunity to comment on these proposed regulations. Hopefully the NCUA will take these comments into consideration and modify the proposed rule to make it more reasonable and practical for credit unions to use which will allow them to grow, prosper and provide needed, low cost products and services to American citizens.

Sincerely,

J. David Osborn
CEO