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**Kirk Kordeleski**  
President and  
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March 17, 2010

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

Re: Proposed Amendments to Chartering and Field of Membership Manual  
(IRPS 09-1)

Dear Ms. Rupp:

On behalf of the Board and Management of Bethpage Federal Credit Union, we would like to take this opportunity to provide our official comment for the record on NCUA's proposed changes to its Chartering and Field of Membership Manual (IRPS 09-1) as it relates to the process for documenting and approving community charter requests.

The process to convert to a community charter is an option afforded to every federal credit union under the Federal Credit Union Act. It should not and does not have to be a cumbersome process. Although the current field of membership rules contain a number of presumptions and components that are intended to streamline the documentation process for proposed communities, the threat of banker's lawsuits in recent years, regulatory preference and narrow interpretation of the rules has, unfortunately and unnecessarily, resulted in what is often a costly, time consuming and labor intensive undertaking for many credit unions seeking to diversify their field of membership by converting to or expanding a community charter.

While we do not agree with every aspect of the proposal as currently presented, we believe the proposed rule's stated purpose is indeed timely and are quite appreciative of the NCUA Board's efforts to streamline the community charter approval process by making it simpler and less burdensome. To that end, we are pleased to offer the following comments on the proposed rule.

*Well-Defined Local Communities*

We support the agency's position that a single political jurisdiction less than a state or a defined portion of that single political jurisdiction should automatically

be approved as a community regardless of geographic size or population. This definition would also seem to imply that a smaller portion of a single county or city would likewise qualify as a presumed community. This is as it should be.

Clearly, if a single political jurisdiction such as a city or county can be presumed to be a well-defined local community, then logic would dictate that a smaller portion of that presumed community should qualify under the presumption as well. As this seems to be the intent of the Board in this proposal, we support such a view and would urge the Board to clarify this interpretation in the final rule so that there can be no confusion.

The proposal would establish a statistical definition of a well-defined local community in cases involving multiple political jurisdictions. While we can appreciate the Board's desire to streamline this determination by assigning a statistical definition to a well-defined local community comprised of multiple political jurisdictions, we are concerned that the proposed definition is too restrictive, fails to take into account the individual characteristics of a proposed community and will result in a "one-size-fits-all" regulation. Rather than impose this narrow definition for communities comprised of multiple political jurisdictions, we believe a better approach would be to simply presume that an area comprised of a Metropolitan Statistical Area (MSA) or a defined portion of that MSA automatically constitutes a well-defined local community.

However, if the agency is intent upon retaining the proposed methodology for determining a well-defined local community, we would suggest a number of revisions to the proposal. If the proposed statistical definition will be used to qualify an area as a well-defined local community we are perplexed as to why the agency finds it necessary to restrict the size of the community based on its population. Either the proposed area qualifies under the statistical definition or it does not.

An arbitrary population cap of 2.5 million residents for a multiple political jurisdictional community seems overly restrictive and is inconsistent with how the agency treats single political jurisdiction communities under the current rules and this proposal. Simply stated, the population of a proposed community should not be the qualifier or disqualifier for a credit union desiring to serve a particular community. The test should be the credit union's ability to serve that community. Therefore, we would encourage the Board to remove from the proposal the 2.5 million population cap on communities comprised of multiple political jurisdictions.

The proposal also states that a credit union can be approved for a portion of a multiple political jurisdiction provided that the credit union successfully demonstrates that the portion of the statistical area independently satisfies the proposed statistical criteria for multiple political jurisdictional communities. As the purpose of this proposed rule is to streamline the process, we believe this

requirement is unduly restrictive and would propose that this requirement be eliminated from the final rule.

As in the case with a single political jurisdiction, if a community consisting of a recognized Core Based Statistical Area that meets all of the criteria set forth in the proposal can be successfully demonstrated, it seems logical that a smaller portion of that well-defined local community should also be presumed a well-defined local community.

Seeing that the data has already been compiled in conjunction with the proposal and in an effort to avoid confusion and to further enhance streamlining of the community charter application process, it would be helpful, in our view, if the agency would post on the NCUA website a listing of all multiple political jurisdictional communities that will qualify under this rule.

It is also our opinion that additional efficiencies and streamlining can be achieved by removing the time consuming step of awaiting NCUA Board action and delegating field of membership decisions and determinations to the five respective NCUA Regional Offices. The Regional Offices, the Office of General Counsel and the Office of Examination and Insurance should review each application for compliance; however, if the application meets the regulatory and statutory requirements, it should be approved in the most efficient and expedient manner possible without the necessity of waiting for a NCUA Board meeting.

We also believe that a multiple common bond credit union converting to a community charter should be permitted to retain any SEGs that may fall outside the boundaries of the proposed community, especially if the proposed population cap is to remain in the final rule that will establish an absolute limit on community size. If this cannot be accomplished by regulation, then we would urge the Board to make this a leading legislative priority in their dealings with the Congress.

### *Narrative Approach*

The proposed rule eliminates the use of a narrative statement with documentation to support the credit union's assertion that an area containing multiple political jurisdictions meets the standards of interaction and common interests to qualify as a well-defined local community. This is a positive step, and the Board deserves commendation on their efforts in this regard.

If the proposed criteria for establishing an area as a well-defined local community are adopted and implemented by the Board, the need for narrative statements will largely be eliminated. However, there will be instances where a proposed community will not meet the statistical definition included in the proposal. In those cases, we believe a credit union should have the option to submit additional documentation, if they so choose, to support their assertion that the proposed area should be classified as a well-defined local community.

While we applaud the Board's efforts to streamline the community charter documentation and application process, we do not believe these efforts should deny a credit union of its ability to utilize other verifiable criteria to demonstrate that an area meets the definition of a well-defined local community. Every community is unique and although many will be able to meet the proposed criteria, provisions should be included in the rules that will allow a case to be made for that significant number of communities that do not fit precisely in the proposed statistical definition of a multiple political jurisdictional community.

### *Grandfathered Well-Defined Local Communities*

We support the "grandfathering" of previously approved communities and the ability of credit unions to apply for all previously approved communities.

### *Ability to Serve and Marketing Plans*

Given the proposed streamlining measures along with the suggested revisions we have included in this comment letter as they relate to establishing well-defined local communities, we believe the proposal will ultimately result in a greater emphasis on a credit union's ability to serve a community. We agree that this is an appropriate area of focus for the agency and are generally supportive of measures that will clarify the Board's expectations for marketing and business plans associated with community charter applications.

Whereas there are distinct differences in communities that make a "one size fits all" list of community documentation standards problematic, there are certain financial and service extension commitments that should be a part of any community charter application. Although this is required under current rules for any credit union seeking to convert to a community charter, there is some value for credit unions to know in regulation what those requirements are.

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 openings over multiple years for financial, service and even property acquisition reasons.

In assessing the adequacy of a business and marketing plan the agency should analyze each credit union's ability to serve on an individual basis. Unfortunately, as currently drafted, the proposal implies that the asset size of a credit union and

the population of a particular community are, in and of themselves, determinant in assessing whether a credit union has the ability to serve the community (*i.e.* “a credit union with \$150 million in assets could not be reasonably expected to serve a community of 1.5 million people”). We believe the agency should refrain from such statements and instead evaluate the credit union’s ability to serve on the merits of its business plan and general principles of safety and soundness.

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 in what will by its nature be a subjective examiner decision.

In our view, the proposal negates the objectivity in the application process that the Board seeks from streamlining the community validation requirements by imposing a subjective standard for determining whether a credit union has satisfactorily met its business and marketing plan. We would urge the Board to reconsider this aspect of the proposal by clarifying the parts that are too subjective.

### *Timing*

We are concerned about the Board’s decision not to accept any multiple jurisdictional community charter applications (except those that have been previously approved) until the proposed rules have been finalized. Even though the agency employed similar action in its most recent proposal regarding the process to adopt underserved areas, this is a significant departure from recognized agency practice that fails to cite a compelling reason as to why such drastic action is justified.

When a credit union makes a good faith decision to proceed with an application under existing rules, we feel strongly that the edicts of fair play dictate that the application should be honored as long as those rules remain in place. The current moratorium placed on multiple political jurisdictional approvals flies in the face of the historical practice of NCUA and other regulatory bodies to permit institutions facing potential rule changes to operate under existing rules until those rules have been changed or modified. No one would argue that applications submitted after the effective date of the rule change must be in compliance with the new rules; however, suspending those existing rules through what could be an elongated promulgation process for new rules is unfair to those

credit unions that are in the process of preparing an application to convert to a community charter.

Not only does the proposed moratorium on these approvals violate the practices of regulatory good faith with those who operate under the existing rules approved by the agency, the decision to defer approvals until the end of the rulemaking process diminishes the importance of the comment period by presuming a particular outcome before all of the comments have been considered. This process of negating a final rule that has been in place for years through a proposed rule that has not yet received comments seems to be inconsistent with the spirit, if not the letter, of the federal Administrative Procedures Act.

### *Emergency Mergers*

We support the clarifications included in the proposal on what constitutes a credit union in "danger of insolvency" for purposes of determining whether NCUA may permit an emergency merger to occur and would take the proposal a step further as it relates to mergers in general.

It is our opinion that community credit unions should be allowed to voluntarily merge with any credit union when the merger results in better member service and a stronger financial position for the combined credit union. Whether the merger partner might be a single sponsor, multiple common bond or community credit union, the ability of the combined credit union to safely and soundly serve all of the members should be the determining factor.

When a credit union is in emergency status, NCUA rightly waives field of membership restrictions in order to facilitate a merger with the best possible merger partner. That same standard should be applied when the merger arises from two credit unions that do not wish to ever find themselves in emergency status. The best way to avoid declining financial performance is often a strategic voluntary merger. As a safety and soundness regulator, NCUA should help facilitate these voluntary mergers when the two credit unions agree that a merger is in their members' best interests.

With this in mind, it is our view that NCUA should continue to look for ways to be more flexible with interpretation and determinations of what constitutes an emergency merger and should approve voluntary mergers as long as they are within the service area of the continuing credit union and it has the financial wherewithal to serve the membership.

In closing, we again commend the Board for its efforts to streamline the process for converting to a community charter and would like to thank you in advance for your consideration of our thoughts and comments on the proposed changes. I would be happy to discuss any of our positions and concerns at your convenience. Bethpage Federal Credit Union does indeed acknowledge and

appreciate your challenging responsibilities and diligent efforts, as a safety and soundness regulator and insurer, to protect and defend America's credit unions and their members.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kirk Kordeleski', written in a cursive style.

Kirk Kordeleski  
President and CEO

cc: Chairman Matz  
**Board Member Fryzel**  
**Board Member Hyland**