



California
CREDIT UNION LEAGUE

NEVADA
CREDIT UNION LEAGUE

VIA E-MAIL: regcomments@ncua.gov

April 15, 2010

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

RE: Comments on Proposed Rule IRPS 09-1
Chartering and Field of Membership of Community Credit Unions

Dear Ms. Rupp:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on NCUA's Chartering and Field of Membership Manual, which would make changes to the Agency's policies on federal community credit union application and field of membership (FOM) expansion. By way of background, the California and Nevada Credit Union Leagues (Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

The Leagues commend NCUA for its efforts to standardize and simplify some of the more arbitrary criteria used in its community charter application process. We understand that the use of more objective and quantifiable criteria may help insulate the Agency from criticism or legal action regarding perceived inconsistencies in approving community charters. And we thank NCUA for extending the comment period on this proposal during such a busy regulatory time so that credit unions had more time to absorb and assess it.

However, the Leagues believe that the proposal falls short in several key areas, particularly in demonstrating that the new proposed statistical criteria for multiple political jurisdictions will lead to a more consistent, less burdensome process for any community chartering applicant. We believe that these shortcomings—which we will address in the balance of our letter—warrant a further extension of the comment period, perhaps up to 90 days. Such an extension would not only give credit unions more time to fully assess its potential impact, but would permit NCUA to more fully research and analyze how many statistical areas would meet the proposed requirements for multiple political jurisdictions.

Single Political Jurisdictions

The Leagues agree that the definition of a single political jurisdiction should be left unchanged. A single political jurisdiction less than a state (or a defined portion thereof), regardless of geographic size or population, should automatically meet the definition of a well-defined local community (WDLC).

Multiple Political Jurisdictions

Under the proposal, when multiple political jurisdictions are the basis for the community application, an area will be considered to be a WDLC if all of the following four requirements are met:

1. The area is a recognized core-based statistical area (CBSA), or in the case of a CBSA with Metropolitan Divisions, the area is a single Metropolitan Division;
2. The area contains a dominant city, county or equivalent with a majority of all jobs in the CBSA or in the Metropolitan Division;
3. The dominant city, county or equivalent contains at least 1/3 of the CBSA's or Metropolitan Division's total population; and
4. The area has a population of no more than 2.5 million people.

While we understand and appreciate that such an approach can be easier, quicker, and less expensive for some applicants, it is inflexible and unreasonable for others by excluding areas that are plainly understood by residents to be WDLCs. For example:

- The Central Coast region of California, which includes Santa Barbara, San Luis Obispo, and Ventura Counties, is referred to locally as the Tri-County area. The area shares a bond involving agriculture and tourism, maintains common development partnerships, and demonstrates connected traffic and commuting flows. However, as each county is part of a separate CBSA, the proposed criteria would make this area an impermissible as a single WDLC.
- The Coachella Valley area in Riverside County, California is located within the Riverside-San Bernardino-Ontario CBSA and contains nine cities and various unincorporated areas within it, the populations of which range from 5,000 to 85,000. The area demonstrates many characteristics of a WDLC, including traffic and commuting flows, shared water and school districts, economic development partnerships, and newspapers. While the proposal permits a credit union to apply for a portion of a CBSA (in this case, Coachella Valley

within the Riverside-San Bernardino-Ontario CBSA), the portion requested must meet the jobs and population requirements on its own. However, no one city in Coachella Valley is a dominant city with a majority of all the jobs and at least 1/3 of the CBSA's total population, making this obviously well-defined community ineligible to be served by a credit union.

These are just two examples in California of the type of “community blind spot” created by using statistical data in this fashion. It appears from the comments that the Agency has received to date that there are many other communities throughout the country that don't meet these statistical definitions of a WDLC. No doubt this is the primary reason why the Office of Management and Budget cautions against using CBSA data to develop and implement Federal, state, and local non-statistical programs and policies without full consideration of the effects of using these definitions for these purposes (see OMB Bulletin No. 04-03, released February 2004).

In fact, the results of NCUA's own analysis provided in the proposal belie the efficacy of using this statistical standard as the only method for determining the existence of a WDLC (p. 22-23 of the proposal):

To put this in perspective, NCUA analyzed the sixty-one largest statistical areas in the United States, based on 2007 population estimates, to determine how many would qualify as WDLCs under the proposed policy changes. Eleven of those statistical areas contain metropolitan divisions. Of the sixty-one statistical areas, twenty-seven would qualify in their entirety. Of the remaining thirty-four statistical areas that would not qualify as WDLCs as a whole, NCUA found virtually all of the areas encompass smaller segments that would include a majority of the statistical area's residents by virtue of: 1) having a large single political jurisdiction within the statistical area; 2) having been previously approved as a WDLC by the NCUA Board; or 3) containing a metropolitan division that would qualify as a WDLC on its own.

The Leagues have serious concerns with this analysis, as well as NCUA's accompanying assumption. First, sixty-one statistical areas account for only 16% of the 366 areas in the U.S. Clearly, this constitutes a too narrow, skewed group (i.e., the largest areas only) upon which to base a significant policy change. Further, NCUA makes the assumption that the remaining 34 areas that don't qualify as WDLCs as a whole are still potentially promising areas to be served because they encompass smaller segments which include a majority of the area's residents. We believe this argument—in essence, an argument based on population only—overlooks the issue of WDLCs that aren't defined by purely statistical methods (as we discussed above), and also neglects underserved areas, which tend to be not as heavily populated.

Therefore, we urge NCUA to conduct much more extensive research as to how many statistical areas would qualify as WDLCs. Ideally, this information should be issued as supplementary information to the proposal. As mentioned earlier, we believe that such additional analysis and information warrants a further extension of the comment period, perhaps up to 90 days. Also, the Leagues urge NCUA to establish a dedicated website accessible from its home page that includes resources on all field of membership issues, including but not limited to a field of membership “calculator” that will allow credit unions to determine if the area for which they have applied would qualify or has been grandfathered.

In addition, the Leagues offer the following recommendations and comments regarding the proposed changes:

- While the narrative approach should not be used as the primary community chartering process, we believe it is apparent from the discussion above that it should be retained for those situations where a proposed community does not meet the statistical definition, particularly for areas covering more than one political jurisdiction. A narrative, case-by-case option would retain the flexibility and fairness to permit a credit union to demonstrate to NCUA that a community exists.
- We support NCUA’s grandfathering approach to permit future applications to be approved based on areas NCUA has already permitted. This should be allowed for rural as well as for urban areas.
- Rather than requiring community credit unions to meet all four of the criteria for a multiple political jurisdiction, the NCUA should consider requiring credit unions to meet any two of the credit union’s choosing. For example, an area that is a CBSA and has a population of 2.5 million or less could qualify as a community.
- Alternatively, NCUA should consider eliminating or reducing the requirements that the dominant city or county contain a majority of all the jobs in the core or at least 1/3 of the area’s population.

Rural Districts

NCUA is proposing to define a rural district as a contiguous area that has more than 50 percent of its population in census blocks that are designated as rural and the total population of the area does not exceed 100,000 persons. We believe this definition is too limiting and does not sufficiently take into account areas where the population is

spread out over large areas. Further, the population cap of 100,000 appears arbitrary, as it is not based on caps used by other executive branch agencies (e.g., Census, OMB) for defining what is rural in the U.S. As an alternative, the Leagues suggest that NCUA define a rural district as contiguous areas within a state that is outside a WDLC, or is non-urban and has a population of less than 500,000.

Underserved Areas

While NCUA is not proposing to change the definition of “underserved communities,” per se, it is proposing to amend the language in the Chartering Manual’s underserved communities section which contains the “local community, neighborhood, or rural district” requirement to conform it to the new proposed definitions of WDLC and rural district. The Leagues believe that such an approach is detrimental to the goal of expanding service to the underserved. Underserved areas should not have to qualify as WDLCs, as that approach is not required by the FCU Act. We support allowing credit unions to submit narrative information in applying for an underserved area.

Marketing Plans

Under the proposal, the appropriate NCUA regional office will follow-up with an FCU every year for three years after it has been granted a new or expanded community charter, and at any other intervals NCUA believes appropriate, to determine whether it is satisfying the terms of its marketing and business plans. An FCU failing to satisfy those terms will be subject to supervisory action.

While the proposal attempts to clarify what will be expected in an acceptable marketing plan, the Leagues believe it goes too far by implementing what appear to be Community Reinvestment Act requirements, overlooking the numerous longstanding voluntary efforts of many credit unions in serving the underserved throughout the country. More importantly, the proposal does not take into account that credit unions may need to change their marketing and business plans, especially when embarking on an effort to serve a new underserved area, or when economic or demographic conditions change. We believe that a much greater degree of flexibility should be granted in this area. If NCUA does adopt review provisions, we urge the Agency to give a credit union at least two years to work on implementing its marketing and business plans for the new area.

Emergency Mergers

The proposal would amend NCUA's field of membership provisions on emergency mergers to state that in order to be merged the credit union must either be "insolvent or in danger of insolvency." The current language provides that NCUA may approve such a merger if the credit union is "insolvent or likely to become insolvent."

The proposal would define a credit union “in danger of insolvency” for purposes of an emergency merger as one that has:

- Net worth declining sufficiently to render it insolvent in 24 months;
- Net worth that will be at 2% within 12 months; or
- Net worth of 2-4%.

The Leagues support permitting credit unions with dissimilar fields of membership to merge in these situations. However, we believe these criteria are too limited, and should go beyond capital adequacy to identify other “in danger of insolvency” situations. For example, an adequately-capitalized credit union may be in danger of failure if:

- It suddenly loses its primary sponsor group (e.g., to bankruptcy);
- There is inadequate support in the community or an inability to attract volunteers;
- It is the subject of a negative decision in litigation; or
- It experiences a sudden termination in management.

The Leagues believe that the insurance fund would be best served by proactively addressing these types of situations before they become threats to a credit union’s capital adequacy. Therefore, we respectfully recommend that NCUA explore a broader approach in this area.

In California and Nevada, as in many other states, state-chartered credit unions are generally not limited in their community charter efforts in the fashion that NCUA’s proposal anticipates. We fear that the inflexible and unreasonable elements of this proposal—not the least of which is the use of statistical definitions to the exclusion of well-recognized publicly recognized areas of community—could serve to weaken the appeal of the federal charter.

The Leagues thank the NCUA for the opportunity to share our views on these proposed changes. We appreciate your consideration of our comments.

Sincerely,



Bill Cheney
President/CEO