

April 15, 2010

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

Re: Field of Membership Proposal (IRPS 09-1)

VIA ELECTRONIC MAIL: regcomments@ncua.gov

Dear Ms. Rupp,

The Michigan Credit Union League (MCUL) appreciates the opportunity to comment on the NCUA Board's proposed amendments to its Chartering and Field of Membership Manual (IRPS 09-1). MCUL is a statewide trade association representing 95% of the 331 credit unions located in Michigan. This comment letter was drafted in response to input received from MCUL's member credit unions.

Although MCUL does not agree with most provisions of the proposal, as outlined below, MCUL greatly appreciates NCUA's efforts to streamline the federal credit union (FCU) application process for a community charter expansion. MCUL respectfully requests that the NCUA Board takes the following letter into serious consideration when deliberating the passage of a final rule.

Discussion

Well Defined Local Communities

Single Political Jurisdictions

MCUL supports NCUA's decision to retain the current language in the Chartering Manual that provides a well-defined local community (WLDC) would be any county, city or smaller political jurisdiction, regardless of population size.

Statistical Areas (Multiple Political Jurisdictions)

Under the proposed rule, a geographically certain area would be considered a WDLC when the following four (and more objective) 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 2.5 million or less people.

With these more objective criteria, the narrative approach would be eliminated.

MCUL supports NCUA's efforts to make it easier for federal credit unions to apply for a community charter, using more objective measures. MCUL also supports the premise that a narrative approach can be burdensome for some FCUs. However, the narrative approach can also be beneficial, as it enables FCUs to establish the diverse characteristics of their respective expansion requests. Rather than eliminating this requirement, FCUs should be given the option to provide a narrative in the event their expansion request does not strictly meet the required criteria. For the reasons outlined below, MCUL strongly urges the NCUA Board to re-examine its proposed criteria.

MCUL urges the NCUA Board to eliminate the requirements that the dominant city county or equivalent with a majority of all jobs in the CBSA or in the metropolitan division, and the dominant city, county or equivalent contains at least 1/3 of the CBSA's or metropolitan division's total population. The determining factor should not be focused on how many jobs and people are in a given area. The determination should rely on whether the expansion, using the broadest definition of a WDLC possible, endangers the safety and soundness of the FCU.

While commuting patterns may reflect the social and economic integration of geographic areas, this should be part of an FCU's narrative in support of their community charter expansion. Requiring proof of commuting patterns is not only difficult to establish, it does nothing to streamline the application process.

MCUL also urges the Board to eliminate the population requirement, as such an approach would be inconsistent with NCUA's treatment of a single political jurisdiction. Additionally, it should be enough that a given area is comprised of all or part of a Metropolitan Statistical Area (MSA). The determining factor should not be an area's population. Again, the determining factor should be whether the expansion, using a broad definition of a WDLC, endangers the safety and soundness of the FCU.

The proposed rule would provide that an FCU can be approved for a portion of a multiple political jurisdiction, provided the FCU can demonstrate that this requested portion satisfies the criteria of a multiple political jurisdiction. MCUL does not understand how this would streamline the application process for FCUs. However, MCUL believes this would be much less burdensome if a broad definition of a multiple political jurisdiction is finalized by the NCUA Board.

MCUL believes the end result of this approach would be the narrowing of the community charter eligibility for FCUs. Weighing the benefits of a streamlined process versus enlarging the field of ineligible expansion areas, MCUL fervently hopes that NCUA will re-examine its approach and address the specific areas of FCU concern, rather than forcing all FCUs into a "one size fits all" approach.

The language of the Sections 1759(b)(3), (d)(3), and (g) of the Federal Credit Union Act grant NCUA wide latitude in promulgating regulations to define a WDLC. MCUL strenuously

encourages the NCUA Board to adopt the most expansive definition of a WDLC in an effort to strengthen the federal charter. Specifically, MCUL encourages the Board to strive for greater parity with state law, particularly the Michigan Credit Union Act field of membership provisions, which are as follows:

490.352 Domestic credit union; membership; composition; field of membership; application; approval by commissioner; revision; extension.

(2) The credit union board of a domestic credit union shall establish the field of membership for a domestic credit union. The field of membership shall consist of 1 or more of the following:

(a) One or more groups of any size that have a common bond of occupation, association, or religious affiliation.

(b) One or more groups composed of persons whose common bond is residence, employment, or place of religious worship within a geographic area composed of 1 or more school districts, counties, cities, villages, or townships.

(c) One or more groups whose common bond is common interests, activities, or objectives.

(3) One or more credit unions may serve 1 or more groups described in subsection (2).

(7) If authorized in the bylaws of the domestic credit union, a member that is no longer in the field of membership of the domestic credit union because the field of membership is revised under this section, or the member leaves the field of membership, may continue as a member, on the same basis as any other member, or on a different basis if the bylaws establish a different basis for that continued membership.

MCUL strongly encourages NCUA to achieve such parity, as the proposed definition of a WDLC would only serve to attract more FCUs to the state charter.

Grandfathered WDLCs

An area previously approved by NCUA as a WDLC, prior to the effective date of any amendment to the Chartering Manual in the event the subject proposed amendments are finalized, would continue to be considered a WDLC for subsequent applicants who wish to serve that exact geographic area. After that effective date, an applicant applying for a geographic area that is not exactly the same as the previously approved WDLC would be required to comply with the Chartering Manual's WDLC criteria then in place.

Though MCUL appreciates the NCUA's willingness to grandfather all previously approved expansions, MCUL finds it very troubling that in NCUA's own analysis of the sixty-one (61)

largest statistical areas in the United States, based on 2007 population estimates, only twenty-seven (27) would qualify in their entirety as WLDCs. What wasn't demonstrated in this analysis was the inability of the FCUs that received the remaining thirty-four (34) WLDC charter expansions to adequately serve the increased membership.

MCUL supports any efforts on the part of NCUA to strengthen the federal charter. However, the results of NCUA's analysis prove this proposal would have the opposite impact.

Rural District

The proposed rule would define a rural district as a contiguous area that has more than 50% of its population in census blocks that are designated as rural and the total population of the area does not exceed 100,000 persons. NCUA recognizes that the definitions of "rural district" and "single political jurisdiction" could overlap in some cases.

MCUL is concerned that the NCUA Board is proposing its own definition of what constitutes a rural area, rather than relying on the U.S. Census Bureau's official definition. The Board stated in its proposal that it believes this definition will help credit unions serve future members in areas that currently have few financial services options. However, MCUL believes that such a definition unduly narrows the ability of a FCU to serve a rural area, the effect of which would be that many, truly "rural" areas would be left unserved.

MCUL urges the Board to remove the population requirement unless a compelling reason can be demonstrated as to how an arbitrary population cap should be placed on an area that otherwise qualifies as a rural district.

Ability to Serve and Marketing Plans

The proposed rule would provide credit unions with additional guidance on NCUA's expectations regarding the Chartering Manual's marketing plan requirements. A meaningful marketing plan would be required to demonstrate the following, in detail:

- How the credit union will implement its business plan to serve the entire community;
- The unique needs of the various demographic groups in the proposed community;
- How the credit union will market to each group, particularly underserved groups;
- Which community-based organizations the credit union will target in its outreach efforts;
- The credit union's marketing budget projections dedicating greater resources to reaching new members; and
- The credit union's timetable for implementation, not just a calendar of events.

Additionally, the appropriate regional office would follow-up with an FCU every year for three (3) years after the FCU has been granted a new or expanded community charter, and at any other intervals NCUA believes appropriate, to determine if the FCU is satisfying the terms of its marketing and business plans. An FCU failing to satisfy those terms would be subject to supervisory action. As part of this review process, the regional office would report to the NCUA Board instances where an FCU is failing to satisfy the terms of its marketing and business plan and indicate what administrative actions the region intends to take.

MCUL strongly supports the additional marketing plan guidance provided in the proposed rule, as this plan enables an FCU to demonstrate how it plans to serve a larger field of membership. However, MCUL believes that the NCUA's approach is unduly rigid and vague.

First, the three-year follow-up requirement does not provide FCUs with any flexibility regarding how the marketing plan is implemented. Requiring rigid adherence to a plan that may not be in the best interest of the FCU to follow in the second or third year when circumstances change is not conducive to safety and soundness, especially in instances where safety and soundness considerations form the basis for any changes of direction in a marketing and/or business plan.

Second, it is unclear what criteria would be used by an examiner to determine whether an FCU is satisfying the terms of its marketing and business plans. It is also unclear and undefined what types of supervisory actions will be leveled against an FCU when an examiner makes the subjective decision that an FCU has failed to satisfy the terms (whatever they may be). Lastly, it is not clear what types of administrative actions a regional office would take. The proposal also fails to provide an FCU the ability to appeal any subjective decisions made by examiners and the regional office regarding the necessity for administrative action. MCUL believes this is unjust.

Third, MCUL does not support NCUA's statement that "an FCU with \$150 million in assets cannot reasonably expect to be able to serve a community of 1.5 million people." MCUL believes such blanket statements are unfortunate, as FCUs should be afforded the opportunity to demonstrate their abilities to serve expanded fields of membership on the basis of their respective applications. Applications should be judged on their individual merits by individuals without any pre-conceived biases.

Timing

NCUA will accept community charter applications based only on grandfathered WDLCs and single political jurisdictions between the issuance of this proposal on December 17, 2009 and the effective date of any final amendments NCUA adopts regarding the Chartering Manual. NCUA will accept all community charter applications, based on any permitted criteria, on or after that effective date. Those applications would be considered under the revised version of NCUA's community chartering policies as amended by this proposal.

MCUL finds this plan very troubling. First, this has the effect of finalizing the rule before it has been officially finalized. Second, no other proposed regulations have imposed this type of scheme. MCUL strongly urges the NCUA Board to consider pending community charter applications under the current rule, as these applications conform to the current requirements. Given the results of NCUA's analysis regarding the sixty-one (61) largest statistical areas in the United States, the NCUA Board has announced, in effect, that all of these pending applications have been denied. MCUL believes this is an unprecedented and unjust approach.

Emergency Mergers

Under the FCUA, NCUA may allow a credit union that is either insolvent or in danger of

insolvency to merge with another credit union if the NCUA Board finds that an emergency requiring expeditious action exists, no other reasonable alternatives are available, and the action is in the public interest. NCUA may approve an emergency merger without regard to common bond or other legal constraints, such as obtaining the approval of the members of the merging credit union to the merger. The proposed rule would define "in danger of insolvency" as:

- The credit union's net worth is declining at a rate that will render it insolvent within 24 months;
- The credit union's net worth is declining at a rate that will take it under 2% net worth within 12 months; or
- The credit union's net worth, as self-reported on its Call Report, is significantly undercapitalized, and NCUA determines that there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months.

MCUL supports NCUA's efforts to clarify the emergency merger requirements. However, MCUL believes that there are some flaws in this approach.

MCUL believes that a more effective approach is to avoid emergency mergers whenever possible. An FCU should be granted the ability to merge with another FCU before the situation becomes so dire that the FCU cannot find a willing merger partner. As a result of the rigidity of the Chartering Manual with respect to mergers, FCUs in Michigan that wish to merge with another FCU that has a different field of membership will choose to merge with a *state*-chartered credit union instead, due to the more relaxed field of membership rules (referenced above). The NCUA regulations should not place FCUs in such a disadvantage in a potential merger situation.

Additionally, there are other reasons why a credit union would be placed in danger of insolvency, such as a consistent decline in membership loss, a lack of sponsor support, an inability to replace senior management, and/or an inability to recruit board members. Recognizing these criteria would enable a relatively healthy FCU to merge with another FCU before the membership and the NCUSIF are negatively impacted.

Conclusion

MCUL appreciates NCUA's efforts to streamline the application process for community charter expansions. As a strong supporter of the dual chartering system, MCUL backs any effort on the part of NCUA to strengthen the federal charter. However, MCUL believes that the various attempts at streamlining the process are not worth the price that must be paid. Therefore, MCUL strongly urges the NCUA Board to withdraw its proposal and instead focus on the specific areas of concern for FCUs related to community charter expansions and mergers.

Specifically, MCUL encourages the NCUA Board to broaden the definition of a WDLC as much as possible by granting FCUs parity with permissive state field of membership language such as in the Michigan Credit Union Act. Failure to do so will only serve to weaken the federal charter and drive more FCUs to choose the state charter.

Mary Rupp
National Credit Union Administration
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MCUL appreciates the opportunity to provide comment on this proposed rule.

Sincerely,

Veronica Madsen
Director of Compliance & General Counsel
MCUL & Affiliates