



MISSOURI CREDIT UNION ASSOCIATION

June 30, 2014

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428
www.regulations.gov

RE: Don Cohenour - Comments on NCUA's Notice of Proposed Rulemaking Regarding Associational Common Bond

Dear Mr. Poliquin:

On behalf of the 1.3 million credit union members, the Missouri Credit Union Association (MCUA) would like to take this opportunity to express our views on the Proposed Rulemaking Regarding Associational Comment Bond, which appeared in the *Federal Register* May 1, 2014. The proposed rule would update 12 CFR part 701, Appendix B, which details the process that federal credit unions (FCU) must follow when adding associations to their fields of membership (FOM). MCUA generally supports the agency's efforts to clarify these provisions.

Under the proposal, groups listed in proposed Appendix B would be automatically approved. We understand that NCUA's list of pre-approved groups in the proposed rule is not meant to be exhaustive, and we recognize it is difficult to envision every type of group that might fit the parameters of this approach. For this reason, MCUA requests that NCUA develop a mechanism for adding groups outside of the rulemaking process. Under such a process, we think that FCUs should be able to add associations without prior approval that have a purpose comparable to that of an association already on the pre-approved list. Credit unions could notify the agency after the fact and NCUA could compile a list on an annual basis of all the associations that fit the pre-approved criteria.

In the meantime, we urge that NCUA add the following to the list of pre-approved groups:

- Cooperative associations, such as farm and electric cooperatives and others with similar purposes and structures;
- Associations designed to advance historically disadvantaged groups;
- Associations such as animal welfare leagues or humane societies;
- Membership societies, such as historical societies; and
- Any other legitimate association that has been functioning for at least five years.

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The Board states that “in order to prevent abuses of the membership system, NCUA is currently reviewing the way associational groups are formed and operated.” We agree that NCUA should establish a clear rule regarding associational common bonds and apply this rule uniformly to all FCUs. However, we oppose any retroactive application of a new rule, which is an outcome some credit unions fear would result from the proposal. In general, it is our view that absent official evidence of illegal activity, once an association is approved, it should be part of a credit union’s FOM without further reviews by the agency.

Threshold

Under the proposal, when considering a new application, the agency would apply the threshold test first and determine whether the association was “organized primarily for the purpose of expanding credit union membership.” Once an association passes the threshold test, whether it may be added will then be based on the totality of the circumstances factors in the rule. If it does not pass the threshold, the agency’s inquiry ends and the association may not be added.

MCUA is concerned about the application of the threshold test and its proposed use to disqualify associations automatically. In that connection, we would like to propose a modification to the proposed approach.

We urge the agency to revise the first paragraph under Section III. A. 1.a. “Threshold Requirement ...” to state the following:

As a threshold matter, when reviewing an application to include an association in a federal credit union’s field of membership, NCUA will coordinate with the credit union and association to determine if the association has been formed *solely* for the purpose of expanding credit union membership. Even if NCUA makes such a determination, the association may be added if it is a separate organization, distinct from the credit union, and the credit union meets the totality of the circumstances test. If, after careful review and ample opportunities for the credit union and association to provide information to support the view that the association should be added, NCUA determines that the association is ineligible to be included, the credit union may appeal the decision to the NCUA Board. The totality of the circumstances test consists of the following factors

We believe this approach is consistent with the Federal Credit Union Act. We also urge the agency to spell out what process it will use to determine whether the threshold test has been met and include all factors that the agency will use in determining compliance with the threshold requirement. A clear process for how credit unions should appeal an adverse ruling should also be addressed.

We want to be clear that we believe a credit union should be allowed to help form an association. Even if the association was formed with a purpose of expanding a credit union’s membership, we believe that should be permissible as long as the association meets the agency’s requirements. We can foresee instances in which a credit union might want to reach a certain group of consumers who share a common trait or life situation, but are not organized and do not fit into an existing FOM. A credit union should be able to sponsor such an association that it helped form and be allowed to provide membership to the association.

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Footnote 17 in the supplementary information states that an organization should be operating independently from the requesting FCU for at least one year prior to the request to add the group to the FCU's FOM. We do not support this approach unless waivers are permissible. Another approach would be to allow associations in existence for one year that attest they meet NCUA's standards to be automatically approved. In addition, we think that issues like this should be addressed in the rule.

Totality of the Circumstances

MCUA supports the totality of the circumstances test to determine if an association qualifies for a FOM. This test determines whether the association is valid.

The proposed rule would change the wording of factor 4 of the test, to read, "whether the association's membership eligibility requirements are authoritative." This factor needs further explanation. The meaning of "authoritative" is unclear in this application, and the ambiguity could lead to confusion and possible inconsistent application by NCUA staff.

We support the proposed separateness factor and think that it should be used in the threshold test as long as it is clear credit unions may help groups form associations under the parameters discussed above.

Also, we think providing space and other support to groups should not mean a credit union cannot add the group as an association common bond. As you know, credit unions are cooperatives that typically lend support to many community interests and causes. Space and assistance to community groups to operate their associations should not mean credit union service should be denied to a group that furthers the goals of the spirit of the credit union.

Grandfathering in Associations

The Board states that NCUA will grandfather in existing members from all qualified associations currently part of an FCU's memberships. We support this and also urge all existing associations currently being served by FCUs be grandfathered.

The Board further states that "NCUA will consider if there are any associations in an FCU's FOM that need to be removed because they no longer meet the totality of circumstances test on a case-by-case basis." We are concerned with any possible removal of associations and urge the agency to only apply this approach to associations added after the rule takes effect, following an ample phase-in period.

Geographic Limitations

We also think that NCUA should not consider geographic limitations for associational common bond matters. As we all know, with the development of electronic delivery methods for financial services, geography, location and physical branches become less and less important. Most credit union members can access their accounts electronically and have a vast network of shared branches and ATMs at their disposal for the times when only a physical branch will

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do. Geographic requirements only serve to limit credit union access to consumers and curb innovation.

Advertising

NCUA has warned credit unions not to advertise that “anyone, without limitation, is able to become a member” of a credit union in Letter to Federal Credit Unions 13-FCU-03. While a statement that membership is “open to anyone” may not be true, credit unions should not be limited in how they advertise the process of joining an association to their FOM.

Credit unions should not be precluded by Section 740.2 of NCUA’s Accuracy of Advertising rule from advertising the method and process for a consumer to join a credit union. We understand that certain groups attack credit unions using associations to give more consumers access to credit union services. However, these complaints should not limit credit unions’ abilities to advertise accurately the process to join an association and become a credit union member.

As always, we appreciate the opportunity to respond. We will be happy to respond to any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Don Cohenour". The signature is written in a cursive style with a large initial "D" and "C".

Don Cohenour
President

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