

June 30, 2014

Mr. Gerard Poliquin
Secretary to the NCUA Board
1775 Duke St.
Alexandria, VA 22314

RE: Comments on Proposed Rule: Chartering and Field of Membership Manual

Dear Mr. Poliquin:

On behalf of the Board and management of Grow Financial Federal Credit Union (“Grow”), I would like to take this opportunity to comment on the NCUA’s Proposed Amendments to the associational common bond provisions of the chartering and field of membership rules (12 CFR Part 701, Appendix B).

By way of background, Grow is a federally chartered credit union with \$2 billion in assets and proudly serves a membership of more than 179,000. Headquartered in Tampa, Florida, Grow maintains branches in Hillsborough, Pinellas, Manatee, Pasco, and Hernando counties in Florida, and one location in Columbia, South Carolina. As a federal credit union that has historically used NCUA approved associations within its current field of membership for growth and diversification purposes that have helped make Grow a safer and sounder credit union, we have serious concerns with the proposed rule and what we see as the agency’s current flawed approach toward the need of credit unions for enhancements to their field of membership in general. To that end, we would like to provide the following comments for your consideration.

I. The Current Regulation

The current rules and regulations governing the association common bond requirements as currently set forth in NCUA Rules and Regulations, Appendix B to Part 701 – Chartering and Field of Membership Manual (“Manual”) use the *totality of the circumstances* standard to determine whether a legitimate association exists for common bond purposes. The determination as to whether that standard is met is made by considering several factors which include:

1. Whether members pay dues;
2. Whether members participate in the furtherance of the goals of the association;
3. Whether the members have voting rights (to meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members’ interests);
4. Whether the association maintains a membership list;
5. Whether the association sponsors other activities;
6. The association’s membership eligibility requirements; and
7. The frequency of meetings.

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More in Return.



The seven factors outlined above are not individually determinative of whether a group has an associational common bond, and based on the nature of the standard, they do not comprise a definitive list of factors to include in the NCUA's evaluation. Accordingly, other items or situations not listed may also be considered and counted, and the benefit of such an analysis is that each association, as unique as it is, may be considered on its own merits within the boundaries of the standard.

The likelihood of all associations fitting squarely within a given set of parameters is exceptionally low because, by their nature, state laws regarding business organizations (the ways in which associations are organized and allowed to function) are infinitely varied and fundamentally different from state to state. Clearly, rules, regulations, and laws cannot be written in a way that will adequately cover all possible circumstances and scenarios. Accordingly, the agency's application of the *totality of the circumstances* standard is critically important. It must allow for necessary and broad discretion in enforcing the rule based on a flexible evaluation of how the evaluative process takes place for individual organizations, varied circumstances and the wide structural differences in legitimate associations that can (and should) benefit greatly from credit union products and services. However, based on recent reviews of associations submitted by Grow, we are convinced that reasonable discretion and an appropriate standard are not being applied in a consistent manner. As such, it is our opinion that the NCUA should provide further clarification on how the *totality of the circumstances* standard should be applied to unique and individual associations while remaining within the boundaries of the rule. We believe this should be done with clarity while at the same time recognizing the wide range of differences in associations nationwide. Likewise, we believe this should be done through NCUA guidance and not through a restrictive regulation.

II. The Proposed Regulation

The proposed amendments to the associational common bond requirements implement several changes. Among them are a threshold requirement regarding the purpose for which an association is formed, automatic approval of certain associations, corporate separateness as an additional element of the *totality of the circumstances* test, and the requirement that associations must independently exist for at least one year.

Of all of the proposed changes, the most disconcerting for Grow is the threshold requirement by which the NCUA, before applying the *totality of the circumstances* test, will arbitrarily assess whether an association was formed primarily for the purpose of expanding credit union membership. If the NCUA determines that the association may have been formed to expand credit union membership, no further analysis is done and the NCUA will deny the application.

The threshold requirement is problematic because it is a wholly subjective analysis and not at all based on any considerations that have been made public or otherwise available to federal credit unions. The absence of objective elements in the analysis of the original intent of an association's application will undoubtedly subject each association application to the personal opinion, interpretation, point of view, emotions, and judgment of the NCUA representative reviewing the application. In fact, we have seen how increasing industry pressures (such as taxation challenges from the banking lobby and complaints about competition from other credit



unions) have resulted in more haphazard and biased evaluations from the NCUA. For that reason, we believe it is an ill-suited perspective by which to apply decision-making.

Additionally, the broadly drafted requirement that "...the association must have been operating as an organization independent from the requesting FCU for at least one year prior to the request to add the group to the FCU's FOM" is not, in and of itself, proof positive that the credit union is substantially disassociated with the organization; it is arbitrary. Frankly, the addition of the one-year threshold standard is unnecessary when there is a *totality of circumstances* test in place. Whether an association has been in existence one month or ten years should not matter if the association can satisfy the *totality of circumstances* test. Therefore, we would encourage the NCUA Board to remove the one-year threshold requirement from the proposal and proceed with a guidance approach that does not include such an arbitrary time threshold.

Theoretically speaking, an association is no different than a SEG when considering a federal credit union's field of membership, and the NCUA should not treat them contrarily. Both are legal entities whose employees or members represent and work on behalf of the entity, and as business partners of the federal credit union, their affiliations both serve to secure credit union membership eligibility for their employees or members who otherwise may not have access to the great financial services, personal attention, better rates and fees, etc. that credit unions offer. How will using the threshold requirement for associations serve the current and prospective members, the federal credit unions, and the regulator any better as a means to an end? And why is that same argument not valid when SEGs are added? The bottom line is that SEGs and associations are added to federal credit unions' fields of membership to serve people, and in order to properly serve, the credit union must grow.

If the NCUA Board is intent on applying a threshold test (hopefully, in guidance rather than regulation), a more logical and equitable approach, in our view, would be to add an evaluation of the purpose of the association **not as a threshold standard, but as an additional element in the *totality of the circumstances* test.** The NCUA can then work from categories of analysis that are driven by association-specific, fact-based, measurable, and observable elements. To do otherwise will result in nothing more than a game of favorites by the regulator that will result in a sense of utter frustration with the NCUA that has driven other credit unions to exercise their options such as surrendering their federal charters.

We support the proposed changes that would grant automatic approval to certain categories of associations. However, we believe the agency can and should go further in this regard by adding more categories of associations that will be automatically approved. The members of various other groups, by their nature, consistently participate in activities developing loyalties, mutual benefits, and mutual interests to further the goals and purposes of those associations including co-operatives in general (not just electric co-operatives), fraternal organizations, groups that promote diversity, and school-sponsored organizations (e.g., parent/teacher associations and organizations).

We also believe this proposal provides the agency with an opportunity to take a closer look at how it defines "reasonable proximity" as it relates to the addition of associations and SEGs. While we clearly recognize the statutory requirement that a SEG or association be within "reasonable proximity" of the credit union, we believe that because congressional action did not



define the term “reasonable proximity” in the law, the statute therefore provides NCUA with considerable latitude in how to define it.

NCUA’s current interpretation and implementation of a 25-mile reasonable proximity standard is antiquated and overly restrictive in our view. The current definition fails to recognize the electronic and digital age we are in and assumes that credit union service can only be provided by a physical branch.

Interestingly, NCUA does not seem to apply such a rigorous standard when approving new credit union charters. In fact, there have been at least two instances in recent years where new credit union charters have been approved by NCUA without a single branch. Yet, NCUA continues to apply an outdated regulatory interpretation of “reasonable proximity” when approving SEGs and associations for well-established safe and sound credit unions seeking to add groups to their fields of membership.

Given all of the recent rhetoric by the agency about their commitment to and the need for regulatory modernization, one would think that this would be an area where NCUA could truly make an impact that would reflect how financial products and services are delivered in the 21st century. Again, we recognize the undefined statutory mandate for “reasonable proximity” standards currently in place. However, we think the agency should not merely consider geography and physical presence when applying the “reasonable proximity” standard. An individual’s proximity to their laptop and smart phone should also be considered in any regulatory definition of reasonable proximity in our view.

III. Conclusion

Grow and the NCUA have actively bantered over the last year and a half about the continuing qualification of an association within Grow’s field of membership, as well as the status of a few other association applications that Grow submitted. We appreciate the opportunity NCUA has given us to provide necessary information to further validate the integrity of the associations within our field of membership. However, through all of these evaluations and the resulting reviews, it has been evident that NCUA’s analysis of associations submitted by Grow, as well as those currently approved for Grow, have not been consistent with its own protocol and appears to be reactionary, perhaps as a result of the industry pressures mentioned above. Furthermore, it is evident that the NCUA continues to struggle with its own understanding of how to apply the current association regulations.

Although perhaps well-intentioned, the information in this proposed regulation falls short and fails to provide a more concrete approach for evaluating associations. For that reason, Grow asserts that **the proposed regulation would be better suited as a set of guidelines and not a regulation**. As guidelines they would serve to clarify the regulation and assist credit unions and the NCUA with compliance. A regulation, however, requires strict objectivity which flies directly in the face of the reigning *totality of the circumstances* standard. Grow urges the NCUA, in considering its use of the additional parameters proposed, to be mindful of whether the proposal offers sufficient criteria to manage their current and anticipated concerns.



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Thank you for the opportunity to comment on this very important proposal.

Sincerely,



Robert Fisher
President & CEO
Grow Financial Federal Credit Union

cc: Mack Brown, Chairman of the Board
Grow Financial Federal Credit Union

