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June 16, 2014

The Honorable Debbie Matz, Chairman
The Honorable Rick Metsger, Board Member
The Honorable Mark McWatters, Board Member
Gerard S. Poliquin, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: 12 CFR Part 701
RIN 3133-AE31
Chartering and Field of Membership Manual

On behalf of the management and Board of San Antonio Federal Credit Union (SACU), I am writing in response to NCUA's proposed changes to the Chartering and Field of Membership Manual as published in the Federal Register on May 1, 2014. We see this as an extremely important topic to the future of the federal credit union (FCU) charter and we're grateful to the NCUA Board for being open to input for us to express our views.

SACU believes strongly in the Congressional mandate for FCUs, as expressed by the Federal Credit Union Act (FCUA) and amended by the Credit Union Membership Access Act (CUMAA), to provide financial services to people of modest means. The overwhelming Congressional support in 1998 for the codification of the multiple common bond concept, as sanctioned by the CUMAA in the face of substantial banking industry challenges, is a clear directive for FCUs to expand services to people of modest means so that they, too, will have entrée to the enhanced way of life offered by access to affordable financial products and services that other institutions are often not willing or able to adequately provide. We view this as a clear directive to expand services to a population all too often ignored, under-served, and/or charged fees far beyond their capability to pay by traditional banks and other financial service providers.

FCU Mission More Important Than Ever

The trend of growing income disparity in the United States indicates that this public service mission is even more critical today than it was when the FCUA was originally passed in 1934. And, the passage of the CUMAA in 1998 by a landslide margin continues to legitimize and reaffirm FCUs and their role in serving this mission in society.

We believe that it is generally people of modest means who have the greatest need to bond together around a common purpose but have the least resources for formal administrative

processes. At SACU, our primary interest in associational common bonds is in the financial services access they afford to the very people FCUs are charged to serve, the same people who typically are seen as undesirable or unprofitable to traditional for-profit banks. We see a societal need to help such people understand the long-term implications of their financial decisions, particularly as it relates to the wise use of credit. The FCU ownership structure allows us, unlike for-profit institutions, to put the interest of people over profit. One would be extremely hard pressed, in our view, to find examples of conversations about the wise use of credit cards, for example, occurring in the for-profit banking world that seeks to maximize profit and shareholder value.

Let me take a moment to share with you the demographics of an SACU member. The average age of an SACU member is 53. Our estimated average household income is \$65,454, and with an average household size in our operational area of 2.75 people, this converts to per person income of approximately \$24,000. Our average member has a savings balance of \$9,228 and an average loan balance of \$18,746. These are not the target demographics sought by for-profit banks. In fact, as Congress and regulators continue to limit fees that for-profit banks can charge, most will find ways to “fire” unprofitable customers who do not bring in enough revenue to pay for their services. Most of these will be people of modest means. As for-profit banks compete more and more aggressively for “high-end customers”, people of modest means will either become unbanked or be required to settle for lower quality service and higher cost access to financial products and services.

As an example of what we believe is symptomatic of the for-profit banking industry’s migration to the “high-end” customer, I share with you some excerpts from the prospectus of a for-profit community bank similarly sized to us in a city with similar demographic population of people of modest means:

“Our primary lending focus is to serve **commercial and middle-market businesses and their executives, high net worth individuals, not-for-profit organizations and consumers with a variety of financial products and services**, while maintaining strong and disciplined credit policies and procedures . . . We target our business development and marketing strategy primarily on **businesses with between \$500,000 and \$50 million in annual revenue**.

Our retail consumer real estate lending products are **offered primarily as an accommodation to our commercial customers, and their executives and employees . . .**

We offer consumer loans as an accommodation to our existing customers, but **do not market consumer loans to persons who do not have a pre-existing relationship with us.**¹

In a time in US history where more middle class families are slipping down the socioeconomic ladder, we believe it is quintessential that the FCU mission and charter thrive so that people of modest means have access to commensurate financial services. The risk, if we as an industry falter in this commitment, is that more people of modest means could become “unbanked”. All barriers to serving society need to be removed to allow FCUs to operate to the full extent permissible under the law.

¹ First NBC Bank Prospectus filed pursuant to Rule 424(b)(4), May 10, 2013, pp.41-42, emphasis added

Proposed Regulation Limits FCU Charter

We acknowledge and affirm the position that NCUA serves as the regulatory authority statutorily charged with carrying out the intent of Congress expressed by the FCUA as amended by the CUMAA. We further acknowledge the difficulty that you, as regulators, face in dealing with a litigious banking industry that would like nothing more than to subvert the intent of the overwhelming Congressional majority that supported CUMAA in 1998. That said, we exhort you to fully recognize and support, through your regulatory actions and interpretations, the intent of an overwhelming majority in Congress to expand, rather than limit, the much needed services of FCUs.

We view this proposed regulation as without clear basis and as a continuation of ever-expanding barriers that inhibit FCUs to operate to the full extent permissible under the law. Furthermore, we believe these proposed regulations clearly violate Congressional statutes and intentions.

Presented below for your consideration are a few specific examples where we believe the proposed rule and planned administration of it is in direct conflict with the FCUA and the CUMAA:

The planned administration of the proposed rule conflicts with CUMAA

The Credit Union Membership Access Act of 1998 grandfathered all members and groups within a FCU's field of membership (FOM) as of August 7, 1998, the effective date of the CUMAA.² The grandfather provision also permits such existing groups to continue adding new members to such groups after August 7, 1998.³ It is clear from the Congressional Record that once a person becomes a member of a FCU, Congress intended that person to remain a member until the person chooses to withdraw from the membership of the FCU.⁴ Congress also intended for any new member of such group to be allowed to later join the FCU.⁵ In other words, Congress intended such groups to be permitted to continue accepting new members.⁶

The grandfather provision contained in the CUMAA was enacted to prevent persons and organizations from being forced out of FCUs as a result of the Supreme Court's decision in the *National Credit Union Administration v. First National Bank & Trust* case.⁷ The House of Representatives explained that a member may retain its membership until the member chooses to withdraw or the FCU uses provisions in applicable law to remove the member.⁸ Nowhere in the Congressional record did Congress express or imply any intent for the NCUA to have the authority to remove a member or an association from a FCU or to prevent a new member of any such group from being able to later join that FCU.

While we recognize NCUA's intent to grandfather already existing members, the administration of a rule that allows the removal of a previously allowed association would contradict the Congressional intent behind CUMAA. This would result not only in existing groups being removed from FCUs but

² 12 U.S.C. § 1759(c)(1)(A).

³ *Id.*

⁴ S. Rep. No. 105-193 at 3-4 (1998).

⁵ *Id.* at 7.

⁶ H.R. Rep. No. 105-472 at 11 (1998).

⁷ *National Credit Union Admin. v. First Nat'l. Bank & Trust Co.*, 118 S.Ct. 927, 931-32 (1998).

⁸ H. R. Rep. No. 105-472 at 19 (1998).

also new members of such groups being denied entry into that FCU. At a minimum, all existing NCUA-approved associations should be grandfathered completely, with any new standards applying only for new associational select group submissions going forward.

The planned administration of the proposed rule violates FCU and members'/potential members' due process rights

FCUs and their members have clearly established property interests. FCUs have a property interest in the associations that make up the FCUs and the members of these associations have an interest in the financial services the FCUs provide to their members. The NCUA should not be permitted to rescind existing associational and FCU property interests. The fact that NCUA has approved an association should be *prima facie* evidence that it meets all applicable regulatory field of membership (FOM) requirements. Removal from the FOM violates the due process rights of FCUs, their existing associational members, and their potential future associational members by forcing FCUs to breach contracts with their associations that had been previously approved.

The proposed rule and/or administration of it would negatively impact the viability and growth of FCUs

The viability and growth opportunities for FCU's could be negatively impacted by the proposed rule. The removal of or the threat to remove previously approved groups from their FOMs will adversely impact the ability of FCUs to execute existing business plans, possibly forcing them to downsize. This would create serious managerial administrative challenges and cause compliance and operational resources to be spread more thinly. At best, attention would be diverted from providing financial services to consumers and, at worst; the long-term sustainability of the FCU could be impacted. Unnecessarily tight restrictions on approval of new groups will clearly impair the ability to serve the growing needs of people of modest means, negatively impacting the sustainability of FCUs. While unintended, this would be inconsistent with CUMAA's stated purpose of providing increased access to financial services for people of modest means and could also have a negative impact on the share insurance fund.

The proposed rule limits access, for people of modest means, to a broad array of financial services

The Congressional Record for both the House and Senate indicates that a major goal in enacting the CUMAA was to provide access to financial services for low income earners. Congress saw this as a way to make FCU access available to groups that would have been too small or without access to enough resources to organize their own FCU.⁹ Additionally, CUMAA was seen not only as providing access to financial services for consumers who would have otherwise been unable to obtain such services, but also as increasing the choices in financial services available even to consumers who previously had access to financial services, but may have been limited in the range of options available. The Office of Management and Budget (OMB) report confirms that CUMAA would permit Congress to provide more choices in financial services without added costs.¹⁰

Many associational groups are unable to form their own FCU, thus denying their members access to the financial services that are provided by FCUs. It simply may not be practical for an association to form a new credit union because the group may be too small to support the cost and other resources necessary. Thus, by implementing the proposed rule, the NCUA would be denying effect

⁹ S. Rep. No. 105-193 (1998); H.R. Rep. No. 105-472 (1998).

¹⁰ 144 Cong. Rec. E1333 (Statement of Rep. Kanjorski).

to Congress' expressed intent that when chartering a separate FCU is not practical or consistent with standards of safety and soundness; an additional group should be allowed to join as members of an existing FCU¹¹.

The threshold and corporate separateness requirements, combined with the existing totality of circumstances test creates significant and unnecessary burdens and barriers to membership for people affiliated by a common purpose who are in need of the services offered by a FCU and will create a chilling effect on serving people of modest means. This is in direct opposition to Congressional intent in the passage of CUMAA: to reach consumers who would not otherwise have access to financial services.¹² Groups composed of people of modest means with common bond have little time or capacity to maintain by-laws, membership lists, collect dues, etc. Allowing FCUs to help with those administrative functions can enable these groups to form and receive the FCU services that they need and that Congress intended that they have. An association should not be precluded from a FCU's FOM merely because the FCU chooses to help them with administrative functions. Members of organizations that perform good works in their communities, for instance, should not be precluded from the benefits of FCU membership because they chose to devote their time to service versus organizational housekeeping. The proposed totality of circumstances test simply misses the mark as a filter on common bond of people of modest means.

The proposed rule ignores existing federal expertise in determining socially desirable entities

The Internal Revenue Service (IRS) has been charged by Congress to set forth rules for the effective establishment of entities that meet social needs and are deserving of tax exempt status. They have established processes to determine and monitor the legitimacy of non-profit entities, including associations. Furthermore, these entities who seek a favorable non-profit tax determination under section 501(c) of the Internal Revenue Code are required to file annual informational or tax returns. The IRS has developed and implemented comprehensive rules and procedures for evaluating non-profit entities. These entities are subject to rigid requirements in order to maintain their tax exempt status. NCUA should rely on the expertise of the IRS processes and unconditionally accept any association that is tax exempt under chapter 501(c) of the Internal Revenue Code as one of the pre-approved groups in addition to the ones enumerated in the rule.

The proposed rule restricts the potential to serve the public interest as expressed by the CUMAA

Our industry is going through consolidation as technology and member needs evolve. It would be easy to conclude that small credit unions are being unfairly harmed by larger credit unions as they expand their ability to serve. While the goal is always to perpetuate the ability of small credit unions to thrive, any intention in this proposal to restrict FCUs, regardless of size, from serving the larger good is clearly against CUMAA as it expressly states, "any potential harm that the expansion of the field of membership of the credit union may have on any other insured credit union and its members is clearly outweighed in the public interest by the probable beneficial effect of the expansion in meeting the convenience and needs of the members of the group proposed to be included in the field of membership".¹³ The primary focus of NCUA FOM regulations should be based on serving the greater good. Expansion criteria for associations should be adjusted to focus on the needs of the potential consumers to be served, especially those of modest means, rather than on the administrative details surrounding the group's formation and maintenance.

¹¹ 12 U.S.C. § 1759(f)

¹² S. Rep. No. 105-193 (1998); H.R. Rep. No. 105-472 (1998).

¹³ 12 U.S.C. § 1759(f)(2)(D).

Today, more than ever, it is critical for our industry to ensure that people of modest means are provided the opportunity to be served well, at an affordable price, and in a way that dignifies, informs, and empowers them.

To be clear, we certainly understand and appreciate the role the NCUA has in ensuring that FCUs are both regulatory compliant and operate within well-established parameters of safety and soundness. However, the proposed rule in its current form does very little to promote safety and soundness in our view. Indeed, it is our strong position that if implemented the rule will have an adverse effect on safety and soundness and on the industry itself. While we agree that there may be some isolated instances where additional FOM scrutiny may be appropriate, we do not believe that it rises to the level of requiring additional regulation. Most of the concerns noted by NCUA as basis for the proposed regulation could be addressed on a case-by-case basis or through guidance in Letters to Credit Unions.

To that end, we urge the Board to remove this proposal in its entirety and encourage you to return to the spirit and the letter of the FCUA as amended by the CUMAA in 1998. We hope you regard the common bond, as do we, as a flexible and adaptive tool that binds people of common interest and is based on the realities of how these bonds are formed.

Thank you for your service to our country and for enabling the full expression of FCUs to their full potential under the law.

Sincerely,



Steve Hennigan
President and Chief Executive Officer
Member Since 1993