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December 28, 2015

Gerard S. Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke St.
Alexandria, VA 22314-3428

Re: Comments on Notice of Proposed Rulemaking – Chartering and Field of Membership

Dear Mr. Poliquin:

Please accept these comments on the noticed of proposed rulemaking (NPR) concerning NCUA's chartering and field of membership (FOM) rules, issued by the NCUA Board at its open meeting on November 19, 2015.

My comments address three aspects of NCUA's FOM rules and are based on my recent experience working with credit unions on applications and other FOM issues pending before NCUA.

Inclusion of Entities with a "Strong Dependency Relationship" in TIP Charters

The NPR proposes to revise the definition of a Trade, Industry or Profession (TIP) charter to include employees of entities that have a strong dependency relationship with other entities in the TIP. The NPR indicates these entities may be included "on a case-by-case basis" but provides no details on how this will be implemented.

As an example, a TIP charter serving the airline industry may wish to include employees of entities that provide inflight food services to airlines, or entities that provide baggage-handling services. I assume NCUA intends to process this kind on application on an entity-by-entity basis for TIP charters, not an airline-by-airline or airport-by-airport basis. Thus, if "ABC Food Services" contracts with three different airlines at 4 different airports that are all within the scope of the TIP charter, the TIP FCU would simply apply to bring employees of ABC Food Services into the TIP FOM, and would not have to make a separate application for each airline or each airport. While I believe this is the intent of the NPR, clarification of this point in any final rulemaking would be helpful.

Also, with respect to all “strong dependency relationship” charter amendments (whether for a single bond, multiple group or TIP charter), it would be helpful if the rule included the specific factors NCUA considers in determining whether the necessary relationship exists. This would provide both a better understanding of what is expected in an application and a greater level of assurance that the rule is applied in a consistent manner.

Streamlined Business Plan Requirements for Community Expansion

The NPR proposes streamlined business plan requirements for existing community FCUs, where the community is based on a single political jurisdiction and the FCU applies to expand into a bordering area. It is essential that the Board clarify that streamlined expansion procedures also apply to community FCUs that apply to expand their boundaries within their existing jurisdiction.

Take the example of a low-income community FCU whose geographic boundaries encompass most of a city or county, but with certain portions having been excluded at NCUA’s insistence at the time the FCU converted to a community charter because the FCU did not have branches in those portions. Given the technological advances in today’s financial world, the FCU may now serve members throughout the city or county, including those who live outside the FCU’s boundaries but work or worship within the boundaries or have a family relationship or other affinity-based membership. The FCU may even now have branches within or bordering on the excluded geographic areas. It makes perfect sense for such an FCU to be able to expand its boundaries to the entire county, either as a housekeeping change or at most a very simplified amendment.

Nonetheless, under NCUA’s current rules, this FCU must follow the detailed business plan requirements of Section V.A.3 of Chapter 2 of the Chartering Manual. In addition, the FCU is required to provide extremely detailed information in 15 different categories as a result of the application of NCUA letter 11-FCU-03 to community charter expansions. These requirements might have some validity for an FCU converting to community charter but they make no sense for an existing community FCU that is already effectively serving a political jurisdiction and simply wishes to expand its boundaries to include the entire jurisdiction and reflect the service it already provides.

This is not intended as a criticism of NCUA staff. They follow the rules and procedures that are in place and do so with professionalism and care. And in fact, NCUA can address a significant part of this problem by immediately revising Letter 11-FCU-03 so that it does not apply to community expansions. The stated intent of the letter is to “help minimize the burden associated with serving a community.” The letter has exactly the opposite effect in the case of an existing community FCU that simply wishes to expand its boundaries within a single-jurisdiction. The letter is not part of NCUA’s regulations and can and should be changed to address this issue without awaiting action on the NPR.

Additional Latitude for Low-income Community FCUs

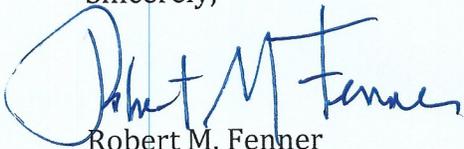
Chapter 3, Section II.E of the Chartering Manual authorizes low-income designated community FCUs to serve “persons who participate in programs to alleviate poverty or distress, or who participate in associations headquartered in the community.” This language is unclear as to whether “headquartered in the community” modifies only associations or whether it also applies to programs to alleviate poverty or distress. It seems on the one hand that NCUA may not want to authorize membership in a program that has no connection whatsoever to the community, i.e., an anti-poverty program operating only in an entirely different location. On the other hand, an anti-poverty program may provide services in a community even though the program is headquartered elsewhere. Persons participating in such a program should be allowed to join the low-income FCU, even though the program is not headquartered in the community.

NCUA staff has in practice addressed this issue by authorizing service to persons who participate in programs to alleviate poverty or distress “which are located in the community.” This is a good solution, but it should be addressed in the regulation so that there can be no doubt or confusion. Also, it should be made clear that the program need not have its sole location in the community. If the program has a presence and provides service in the community, then all persons who participate in the program at any of its locations should be permitted to join the FCU. This too should be made clear in the regulation. Program participants from outside the community can be expected to be largely savers if they join the FCU (thus providing needed funds that can be put to good use making loans in the community), and NCUA’s periodic application of its geocoding software will ensure that the FCU maintains its low-income qualification.

Closing Comment

The NCUA Board and staff are commended for this timely effort to update and improve the field of membership and chartering rules. I hope that my comments are helpful in arriving at the best possible final rule. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert M. Fenner". The signature is stylized with a large initial "R" and "F".

Robert M. Fenner
President, RMF Consulting LLC

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