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B. Dan Berger
President & Chief Executive Officer

February 5, 2016

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

RE: Comments on Notice of Proposed Rulemaking Regarding Field of Membership and Chartering

Dear Mr. Poliquin:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the proposed rulemaking on field of membership (FOM) and Chartering for federal credit unions. *See* 80 FR 76748 (December 10, 2015). NAFCU and our members have long advocated for NCUA to modernize Appendix B to Part 701 to recognize the advent of technology and its impact on commerce and consumer behavior. This proposal constitutes an important step towards achieving that goal, and we applaud NCUA's extensive outreach with stakeholders in developing more modern FOM rules that will provide much-needed relief, while adhering to the *Federal Credit Union Act*'s fundamental provisions. In this spirit, NAFCU would like to offer our comments and suggestions that we believe would strengthen the rule and urge NCUA to consider even more changes.

The Industry Needs Relief Now

First and foremost, NAFCU would like to express our strong support for the proposal. As the credit union industry continues to suffer growing consolidation, credit unions need the tools and mechanism to reach new consumers. These changes mark an important step towards enabling credit unions to progress. Without these changes, NAFCU and our members are concerned that credit unions will be left unnecessarily and unjustifiably hindered in their ability to bring their institutions into the 21st century and compete in today's modern financial services marketplace. NAFCU believes that regulatory changes

are pivotal for a credit union's survival in today's ever-evolving financial sector, and are crucial to a credit union's ability to reach the modern consumer.

As NAFCU outlined in our "Top Ten" list of regulations to eliminate or amend, NAFCU continues to hear from our members that NCUA's FOM Rules and Regulations unnecessarily inhibit their ability to grow and serve their communities. Additionally, NAFCU and our members believe that the federal charter must keep pace with changes in state laws, technology, and the financial services industry. We firmly believe that this proposal constitutes constructive regulatory relief because it will streamline NCUA's current chartering and FOM procedures in keeping with the statutory framework of the *Federal Credit Union Act*. Accordingly, NAFCU and our members would like to express our appreciation to Vice Chairman Metsger for leading this project, and to Chairman Matz and Board Member McWatters for their leadership in engaging in numerous discussions with NAFCU, credit unions and industry representatives on how to modernize Appendix B to Part 701 to achieve such flexibility, while adhering to the agency's statutory mandates.

Credit Unions Need More Regulatory and Legislative Reform

NAFCU has long championed relief for the unnecessary and overly restrictive aspects of credit union FOM rules. While legislative changes to the *Federal Credit Union Act* may ultimately be needed to address aspects of credit union FOM requirements not addressed in this proposal, NAFCU appreciates the agency's continued support for such reform. In particular, NAFCU strongly supports credit unions of all charter types being able to add underserved areas to their fields of membership. We appreciate NCUA's commitment to developing NCUA-supported legislative initiatives that would provide much-needed relief from the outdated aspects of the *Federal Credit Union Act*. NAFCU looks forward to working with the agency to achieve legislative changes on FOM that will eliminate unnecessarily restrictive requirements that currently unfairly curtail American consumers' access to credit union services.

NAFCU's detailed comments on NCUA's proposal are outlined below.

Community Charters

Tailored Application of the CBSA Population Limit

Under its current FOM rules, NCUA permits a well-defined portion of a Core Based Statistical Area (CBSA) to qualify as a "well-defined local community" provided the population of the CBSA as a whole does not exceed a population limit of 2.5 million. This population limitation is applied to the whole CBSA irrespective of whether the specific portion of the CBSA a credit union intends to serve falls below the population cap. In an effort to tailor the 2.5 million population limit to the community a credit union actually seeks to serve, the proposal would modify the "statistical area" definition to specify that "a Core Based Statistical Area, Metropolitan Division or Combined Statistical Area, *or the*

portion thereof, must have a population of 2.5 million or less people."[1] This change would ensure that the portion to be served qualifies as a "well-defined local community" if it falls below the population limit, even if the CBSA's population as a whole exceeds 2.5 million.

NAFCU and our members appreciate NCUA's initiative in this rulemaking to tailor the population cap's application to the area a credit union intends to serve, rather than the entire CBSA. Under the current rule, credit unions often suffer the unintended consequence of being denied a portion of a CBSA because the entire population of the CBSA is above the cap. As the NCUA Board recognized in the preamble to the proposal, community charter requests are often denied because "the population of the whole [statistical area] exceed[s] the cap" even though the area requested is under the limit. This trend clearly illustrates that the current rule is an unnecessarily broad application of the population cap. Credit unions believe that a change is necessary to more accurately analyze the population of the area that a credit union seeks to serve. NAFCU and our members strongly support the proposed modification to the definition of "statistical area" to specify that a CBSA, Metropolitan Division or Combined Statistical Area, or well-defined portion of either one, must itself have a population of 2.5 million or fewer people.

Core-Based Statistical Area Population Limit

While credit unions are supportive of the proposal's effort to tailor the application of the CBSA population cap, NAFCU and our members recommend that NCUA take this opportunity to couple a tailored application with a substantial increase in the 2.5 million population limit. The *Federal Credit Union Act* does not require the application of rigid population limits, core areas, or geographical boundaries in establishing a "well defined, local community." A proposed area should not be disqualified as a "well defined, local community" simply because it exceeds a particular population size. In fact, the population cap was added at the discretion of NCUA in 2010, based on the subjective belief that it becomes more difficult to demonstrate common interaction indicative of a community as population levels increase.

Contrary to this belief, there are many areas of the country that unmistakably demonstrate levels of common interaction indicative of a community but are automatically disqualified due to the use of a capricious population limit. For example, in its 2010 FOM rule, NCUA cited the Office of Budget and Management's finding that Metropolitan Divisions often function as distinct social, economic, and cultural areas. However, many of the 31 Metropolitan Divisions, defined as smaller groupings of counties or equivalent entities within a metropolitan statistical area containing a single core with a population of at least 2.5 million, have populations in excess of 2.5 million and would be arbitrarily excluded as a result of the cap. Therefore, credit unions believe that so long as a Metropolitan Division, or any defined area, regardless of size, shows evidence of commonalities, such as shared routine interactions, work experiences, and interests essential to supporting a strong credit union, such proposed areas should not be so disproportionately denied simply because they

[1] *See* 80 FR 76748, 76772 (December 10, 2015).

exceed 2.5 million people. NAFCU and our member credit unions recommend NCUA increase the CBSA population limit to match either the greatest population of any Metropolitan Division, which is currently the 11.7 million person population of the New York–White Plains–Wayne, NY–NJ Metropolitan Division.

Periodic Re-evaluation of the CBSA Population Limit

Most importantly, regardless of the population limit, NAFCU believes that NCUA should establish a system for indexing and periodically re-evaluating the population limit on a specified timeline. Credit unions do not benefit from, and are potentially harmed by, a CBSA population cap that remains static for years in the face of ever-increasing populations. To this end, NAFCU and our members believe NCUA should adopt a mechanism to index any population limit and reassess whether an increase to the limit is necessary. NCUA has adopted a similar approach in regards to the definition of "small entity" for the purposes of the *Regulatory Flexibility Act* (RFA). During the RFA rulemaking, the agency increased the asset threshold for a "small entity" to $100 million while also establishing a three-year review cycle for the NCUA Board to consider adjustments to the threshold. NAFCU and our members recommend the agency follow the sound logic it articulated during the RFA rulemaking and finalize an FOM rule that ensures the population cap can be easily increased, when appropriate, on a predictable schedule.

"Combined Statistical Area" as a Well-Defined Local Community

Under its current FOM rules, NCUA only considers a Core Based Statistical Area (CBSA), a Metropolitan Division within a CBSA, or a well-defined portion of either one as a well-defined local community. The proposal would endorse Combined Statistical Areas (CSAs) as an additional statistical area fitting the definition of a "well-defined local community," subject to the 2.5 million population limit.[2]

The proposal recognizes new ways that credit unions can evidence why a particular area is "well-defined" and "local" in applying for charter changes. These new avenues track other federal government recognition, such the Office of Management and Budget (OMB). OMB has recognized 169 CSAs that reflect "objective measurements of social and economic integration among an area's residents." Therefore, while NCUA is merely recognizing areas that are already classified by OMB, it would be of substantial assistance to credit unions for CSAs to qualify as a "well-defined, local community." Additionally, and perhaps more importantly, the proposal would permit many federal credit unions to serve more potential members who want and need affordable financial services. NAFCU and our members strongly support the addition of CBAs to the class of statistical areas meeting the definition of a "well-defined local community."

[2] *See* 80 FR 76748, 76749 (December 10, 2015).

Congressional Districts as a Well-Defined Local Community

Under current FOM regulations, NCUA does not recognize an individual Congressional District as meeting the definition of a "well-defined local community." The proposal would recognize these individual Congressional Districts meet the definition of a "Single Political Jurisdiction," thereby qualifying each district as a well-defined local community without regard to population.[3] In the event of redistricting, the proposal explains that a federal credit union that was approved to serve a Congressional District would be grandfathered to continue serving the area.[4] However, the original Congressional District would no longer be available to be served by any other federal credit union.

NCUA's recognition of additional communities that are long-recognized and codified by the United States government will assist community chartered credit unions that are looking for growth opportunities. Also, it will enable federal credit unions to reach potential members who want and need affordable financial services within a well-defined community. By providing more avenues for community charters to grow, the proposal will not only increase consumer choice in the marketplace but it will also increase access to affordable financial services.

Adjacent Areas to a Well-Defined Local Community

The proposal would permit the addition of adjacent areas to a community consisting of a Single Political Jurisdiction, CBSA, CSA, or rural district, upon a showing by subjective evidence that residents on both sides of the perimeter interact or share common interests. The proposal would also require a credit union seeking to add a bordering area to establish: (1) a "sufficient totality of indicia of interaction or common interests among residents of the expanded community" based on subjective evidence, and (2) an ability and commitment to serve the entire expanded community through the credit union's business and marketing plan.[5] NCUA will base decisions on a number of factors with respect to the proposed service area in its entirety, such as economic interconnectedness and government designations. It is important to note that the expanded community would be subject to the proposed population limits for community charters (2.5 million) and rural district charters (1 million).[6]

NAFCU and our members strongly support this aspect of the proposal because it will allow credit unions to add adjacent communities without dropping existing communities. Growing within a community is a natural and necessary aspect of business development. NCUA's current rules unnecessarily curtail a federal credit union's ability to mature within their communities without having to sacrifice existing services. Because the current rules inhibit a federal credit union's ability to add adjacent areas without discontinuing service

[3] *See* 80 FR 76748, 76772 (December 10, 2015).
[4] *See* 80 FR 76748, 76772 (December 10, 2015).
[5] *See* 80 FR 76748, 76773 (December 10, 2015).
[6] *Id.*

to some of the communities they currently serve, NAFCU believes the proposed amendment is pivotal regulatory relief. Community charters, especially those that serve small metropolitan statistical areas, are unjustly limited in their ability to grow under the current rules, and this proposal will allow them to expand into adjacent counties within the confines of the *Federal Credit Union Act.*

Rural Population Limit

Since 2013, NCUA's Rules and Regulations define a "rural district" as (1) a district that has well-defined, contiguous geographic boundaries; (2) the total population of the district does not exceed the greater of 250,000 or 3 percent of the population of the state in which the majority of the district is located; *and* (3) the district meets one of two other population requirements. The district *either* (a) does not have a population density in excess of 100 people per square mile, *or* (b) more than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the U.S. Census Bureau.

The proposal would modify this definition to increase the population limit to 1 million persons and eliminate the 3 percent alternative. In addition, the proposed rule would amend the options for an area to qualify as a rural district, allowing an area to be defined as a "rural district" because it is either: (1) among the "rural counties" identified by the CFPB's annual "rural counties" list, *or* (2) the area has a population density of no more than 100 people per square mile.

While NAFCU appreciates NCUA's initiative to amend the rural definition and increase the population threshold, we continue to have concerns about its unnecessarily restrictive impact on credit unions who are trying to serve consumers in rural areas. The population density threshold is far too low and the person-per-square-mile limitation should not be part of the formula in determining a "rural district." NAFCU and our members strongly recommend that the population limit on rural areas be eliminated.

Narratives to evidence Well-Defined Local Communities

Currently, NCUA defines a "well-defined local community" on the basis of two objective geographic units – a Single Political Jurisdiction or a US Census Bureau-designated Core Based Statistical Area (CBSA), both of which are subject to a 2.5 million population limit. Under either option, a credit union must provide statistical evidence why a desired area fits within the geographically objective definition.

NAFCU strongly recommends that NCUA couple its current statistical based approach with an alternative *de novo* narrative approach completely independent of the restrictions and limitations inherent with rigid definitions of Core Based Statistical Areas, Combined Statistical Areas, Metropolitan Statistical Areas, Metropolitan Divisions, and Adjacent Areas, subject to population caps. While objective statistical definitions often provide incontrovertible evidence of a "well-defined local community," there are situations when the characteristics that connect individuals as a community may be better explained

through the use of narratives. NAFCU encourages the agency to permit credit unions to present an independent case as to how they may serve a community in situations where rigid statistical areas and population caps unfairly curtail their ability to demonstrate why a particular area meets the spirit of a "well-defined local" community outlined in the *Federal Credit Union Act*.

Multiple Common Bond Charters

Adding Underserved Areas

NAFCU and our members strongly support the agency's proposed modification of its methodology to identify "underserved" areas. This improvement will do much to help the lives of those in "underserved" communities, especially the 28 percent of this country's un-banked and under-banked households. NAFCU believes the agency should use as many tools as possible to identify underserved areas in order to help these unbanked and underbanked Americans.

Currently, the agency's main tool in identifying underserved communities is the 'concentration of facilities ratio' (CFR). The CFR calculates the number of financial institutions in a given area. However, as the agency noted in the proposed rule's preamble, the current CFR is over-inclusive and counts institutions that cannot serve the community's financial needs, such as non-depository institutions. This can lead to some communities being erroneously identified as adequately served, despite having a low number of institutions that can actually serve the members of that community. By excluding non-depository institutions and non-community charter credit union from the CFR methodology, NAFCU believes the agency's proposed adjustments will help lead to more communities being rightly identified as "underserved."

As an additional way to identify underserved areas, the proposed rule also considers utilizing the Consumer Financial Protections Bureau (CFPB) list of underserved counties. NAFCU and our members support the agency's proposed addition of the CFPB's list as a way to ensure that no community is overlooked. NAFCU strongly supports making sure that all communities have access to affordable financial services.

Service Facility

NAFCU and our members have long maintained that NCUA needs to either eliminate the service area requirement or alternatively revise the definition of service area to include "facilities that are accessible to groups within the FOM through online services." While we believe this proposal constitutes an important step towards achieving relief, NAFCU hopes that NCUA considers further action to streamline the service area requirement in the final rule, including extending the proposed changes to meet the requirement of establishing a presence in an underserved area.

As required under the *Federal Credit Union Act*, NCUA uses "reasonable proximity" as

an essential factor in determining whether a select group can be added to a multiple common bond credit union. The agency bases "reasonable proximity" on the location and availability of "service facilities." Currently, "service facility" includes a credit union branch, a shared branch, a mobile branch that visits the same location on a weekly basis, or a credit union-owned electronic facility. The proposal, however, would revise the definition of "service facility" to include a credit union's products and services offered to members through an online internet channel, so long as it's capable of accepting shares and loan applications, or disbursing loan proceeds.

NAFCU believes NCUA's current definition of "service facility" has not kept pace with modern technology because it fails to contemplate American usage of mobile and online services, which have dramatically increased over the last few years. For example, as of 2Q 2015, 45 percent of Americans use transactional websites. Further, a 2015 American Banking Association study found that 41 percent of Americans list online or mobile banking channels as their favorite way of conducting their financial business. As technology continues to become more advanced, it is only more likely that consumers and businesses will grow to become even more reliant on such technology.

NAFCU applauds the agency's proposed revision of "service facility" to include a credit union's online products and services capable of accepting shares and loan applications. We believe these proposed changes are necessary for today's credit unions to continue to meet their members' needs and expectations. Due to the explosive growth of technology and digital communication platforms, today's society is ubiquitous and widespread. Now, through the use of technology, consumers can be in close contact regardless of geographic restriction. Consumers can likewise use modern technology platforms to get pivotal services from their financial intuitions. Consumers and federal credit unions should not be penalized for adopting the use of these technologies to serve and grow their memberships within today's ubiquitous society. Recognizing the advent of technology, the proposed definition will no longer penalize credit unions and American consumers that have adopted the use of such technologies.

While we support the proposed revised definition, NAFCU and our members also recommend that NCUA broaden its application to all aspects of multiple common bond requirements. NAFCU is concerned that limiting its application to just the "reasonable proximity" criteria for select occupational and associational groups misses a chance to provide necessary regulatory relief for all multiple common bond credit unions. Updating the definition with a broader interpretation will ensure that NCUA will not need to constantly amend the definition as mobile banking services continue to develop. Furthermore, NCUA's current physical service facility requirement mandates that credit unions must spend resources on outdated service portals, which prevents credit unions from providing access to otherwise eligible members within its FOM. Accordingly, NAFCU recommends that NCUA either remove the service facility requirement entirely, or, at minimum, finalize an amended provision that allows online services to demonstrate the existence of a "service facility" for the purposes of "reasonable proximity," as well as for the purposes of establishing a presence in an underserved area.

Streamlined Determination of Stand-Alone Feasibility of Groups Greater than 3,000

Currently, NCUA conducts a "stand-alone feasibility test" to determine whether a group lacks available subsidies or sufficient resources to feasibly or reasonably establish its own, single association credit union. The proposed rule would streamline this feasibility test for groups of 5,000 or less. Specifically, the proposal would allow groups between 3,000 and 5,000 members to submit a written statement evidencing a lack of available subsidies, interest and resources. This statement would be deemed sufficient documentation that the group cannot form its own credit union.

While credit unions appreciate NCUA's initiative in this rulemaking to streamline the determination of stand-alone feasibility, NAFCU and our members firmly believe that the agency should broaden the application of this streamlined test to groups that are much larger than 5,000. We suggest that NCUA should only require a full overlap analysis and standard application when FCUs expect new associations to generate more than 5,000 *actual members*, rather than merely the *potential* for 5,000 members.

As the NCUA Board acknowledges in the preamble to the proposal, 80 percent of failures occurred in credit unions with fewer than 5,000 actual members.[7] Therefore, if 5,000 actual credit union members were deemed to be the minimum number needed to charter a viable new credit union and obtain economies of scale, the number of potential members needed to reach 5,000 actual members would be much larger. Accordingly, credit unions would need to pull from a much larger pool of potential members to obtain 5,000 actual members. Though an association might have tens of thousands of members, it stands to reason that not all members will join a credit union, and yet even fewer will be active members. Therefore, NAFCU believes that the eligibility for using the streamlined test should not hinge on the association's total number of people, but should rather hinge on the likely number of *actual* members of the credit union. Specifically, NAFCU recommends that NCUA raise the threshold for the streamlined "stand-alone feasibility test" to 10,000 members.

NAFCU believes 10,000 better reflects the number of actual members that will join in the near term—a time period when a newly charted credit union's viability is the most crucial. We fundamentally believe that the viability of a newly charted credit union hinges on its potential membership pool. In developing the threshold for the streamlined "stand-alone feasibility test," NAFCU urges NCUA to consider the safety and soundness implications for these new institutions should the agency arbitrarily restrict their potential membership pool. Further, we ask NCUA to consider the potential impact to the National Credit Union Share Insurance Fund (NCUSIF). As the agency is aware, credit union failures pose a significant risk to NCUSIF, and as such, much should be done to help every credit union survive. To protect the viability of newly chartered credit unions and the safety and soundness of the NCUSIF, NAFCU strongly recommends that the agency raise the

[7] *See* 80 FR 76748, 76754 (December 10, 2015).

threshold for the streamlined "stand-alone feasibility test" to 10,000 potential members. With this recommendation, NAFCU notes that a credit union or a group of consumers above this threshold can evidence how and why they meet the "stand-alone feasibility test" by submitting more detailed information than the streamlined approach would require.

Inclusion of Select Employee Group Contractors

NAFCU welcomes NCUA's proposal to allow multiple common bond credit unions to add employees of contractors with a "strong dependency" on the Select Employee Group (SEG) sponsor. NAFCU hopes that this amendment will pass along credit union benefits to employees of contractors that have long track records and strong affinities with sponsor SEGs, thereby making affordable financial services available to more American consumers.

Prior to this proposed rule, NCUA's rule only recognized the "strong dependency" relationships between SEGs and contractors within a single common bond credit unions' FOM. The NCUA Board aptly notes in the preamble to the proposed rule that this change will now recognize that there is no distinction between a single and multiple common bond credit union for purposes of recognizing occupational affinity between a SEG sponsor's own employees and those of each sponsor's contractors.[8] As Vice Chairman Metsger recognized in his remarks during the November 2015 NCUA Board meeting, the fact that there were independent contractors who had worked for a particular employer for decades and yet were not eligible for membership in the entity's multi-select employee group credit union illustrates the necessity of this proposed amendment.

Inclusion of Office/Industrial Park Tenants

NAFCU supports the agency's proposal to permit, under certain circumstances, a multiple common bond credit union to include the employees of industrial park tenants as a SEG. A number of NAFCU's members have indicated that industrial parks are very common in their communities, and the ability to serve multiple businesses within that park would allow those credit unions to leverage their resources and provide more value back to the membership.

As the NCUA Board explains in the preamble to the proposed rule, a credit union would not need to individually list each tenant in its charter as a group sponsor, nor obtain letters from each tenant requesting credit union services, but could instead list the office/industrial park itself.[9] NAFCU believes this improved process will allow federal credit unions to more efficiently offer services to employees of small businesses.

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[8] *See* 80 FR 76748, 76754 (December 10, 2015).
[9] *Id.*

Other Persons Eligible for Credit Union Membership

As the NCUA Board notes in the preamble to the proposed rule, the agency has historically recognized a variety of person, why by virtue of their relationship to a common bond, have been entitled to credit union membership eligibility.[10] Often these persons are referred to as affinity groups because their close relationship to the common bond qualifies their inclusion in the federal credit union's FOM. Currently, NCUA's rules only recognize immediate family or household members of the primary credit union member, spouses of deceased credit union members, current credit union employees, pensioners and annuitants who have retired from credit union employment, and persons who perform volunteer work for a credit union.[11]

The proposed rule would recognize honorably discharged veterans of any branch of the United States Armed Forces listed in a federal credit union's charter as an affinity group, and thereby eligible for FOM inclusion. NAFCU strongly supports NCUA's effort to honor the contributions of those serving in the United States Armed Forces. By permitting a federal credit union's common bond to include the honorably discharged veterans of any branch of the United States Armed Forces listed in its charter, NAFCU believes this amendment would recognize the affinity honorably discharged veterans share with their active duty branch of service. Accordingly, NAFCU and our members strongly support this aspect of the proposal that seeks to continue a veteran's eligibility for membership beyond active duty. NAFCU and our members deeply respect the members of the Armed Forces, and our credit union members look forward to serving those individuals, regardless of their status of active or inactive.

While NAFCU agrees with the group the agency included in the proposal, we also suggest that NCUA recognize retired federal employees and retired teachers as affinity groups. Due to their close relationship with their active counterparts, these groups should be recognized as affinity groups so that they may have the benefit of access to credit union services throughout their lives following tenured service to the federal government or school district.

Trade, Industry or Profession (TIP) Charters

The proposal seeks to clarify NCUA's definition of a Trade, Industry of Profession (TIP) to include employees of vendors, suppliers, and contractors that have a "strong dependency" relationship on and work directly with other entities within the same industry. The proposal explains that a credit union would need to demonstrate that an entity is (1) "strongly dependent" on the others within a TIP, and (2) shares a narrow commonality.[12] In the preamble to the proposed rule, the NCUA Board explains that the existence of a "strongly dependent" relationship would hinge on the likelihood of a significant economic impact, on either or both parties, if one party were unable to continue operations without

[10] *See* 80 FR 76748, 76755 (December 10, 2015).
[11] *See* Appendix B, Ch. 2, Section IIA.2 .
[12] *See* 80 FR 76748, 76760 (December 10, 2015).

doing business with the other party.[13]

NAFCU and our members appreciate NCUA's initiative in this rulemaking to allow TIP-charters to serve employees of "strong dependency" vendors, suppliers, and contractors. As NCUA acknowledges in the preamble to the proposal, the agency's current rules already recognize a single occupational common bond between a SEG's own employees and those of its contractors, provided there is a "strong dependency." NCUA's effort to extend that consideration to TIP-charters is welcomed, common-sense regulatory relief that will allow TIP credit unions to reach potential members who want and need affordable financial services.

Retaining Select Employee Groups

Under NCUA's current rules, a single- or multi-associational chartered federal credit union is prohibited from continuing to serve its existing FOM when it converts to a community charter, unless the associational and occupational groups are entirely within the new community.[14] NAFCU continues to hear from our members that this limitation is unnecessarily restrictive and unfairly curtails American consumers' access to credit union services. Further, NAFCU's members have indicated that this restriction deters them from expanding their single- or multi-associational charters because they do not want to lose their existing FOMs. As a result, rather than expanding their services to wider range of individuals, many of NAFCU's members are forced to miss growth opportunities within their communities. Accordingly, NAFCU recommends that NCUA allow single- or multi-associational chartered FCUs who convert to a community charter to continue to serve their previous associational and occupational groups, regardless of geographical boundaries.

Credit Union Mergers

In general, NCUA will not approve a voluntary merger unless the FOM for the two credit unions meet stringent standards.[15] In an emergency merger situation, however, NCUA can approve applications without regard to FOM requirements, the 3,000 numerical limitation, or other legal constraints.[16] To waive FOM restriction, NCUA must first determine (a) an emergency exists, (b) other alternatives are not reasonably available, and (c) the public interest will best be served by approving the merger.[17]

NAFCU continues to hear from our members that they have declined merger requests from struggling credit unions because NCUA rarely utilizes its emergency merger authority to waive FOM constraints under the *Federal Credit Union Act*. In particular, NAFCU's members have indicated that NCUA often waits until a credit union is irreparable

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[13] *See* 80 FR 76748, 76755 (December 10, 2015).
[14] *See* Appendix B, Part 701.
[15] *See* Appendix B, Part 701.
[16] *Id; see also* 12 U.S.C. § 1759(d)(2)(B).
[17] *See* Appendix B, Part 701; *see also* 12 U.S.C. § 1785(h).

economic distress before it will authorize an emergency merger. While NAFCU acknowledges that the FCU Act prescribes certain criteria, as noted above, we firmly believe that the NCUA should be able to more broadly apply its emergency merger authority for waiving FOM constraints if no other alternative exists. NAFCU and our members recommend that the agency revisit its emergency merger guidelines, and consider ways it could more broadly and efficiently authorize mergers.

Procedural Recommendations for Approval Process

NAFCU's members continue to raise questions about NCUA's Office of Consumer Protection's policies and procedures, particularly in the process of applying for FOM expansions or conversions. A number of NAFCU's members have indicated that it takes up to 18 months before their field-of-membership expansion requests are approved or denied by NCUA. While NAFCU appreciates the steps the Office of Consumer Protection (OCP) has taken over the course of 2015 to improve its efficiency and transparency, we suggest the following procedural changes to further improve the FOM expansion and conversion process:

Require Deadlines for FOM Amendment Requests

Under NCUA's rules and procedures, there is no established time period in which the agency must respond to a request. Because federal credit unions are unable to anticipate a reliable timeline for agency review and approval of a request, NAFCU recommends that NCUA adopt a maximum 30-day window for the Office of Consumer Protection to approve requests.

Increase Transparency in the Decision Making Process

NCUA's current process for reviewing a FOM-related application fails to provide federal credit unions with notifications or updates on the status of their request except for the final decision. This lack of transparency and communication during the amendment process increases uncertainty and limits the federal credit union's ability to undertake prudent future business planning activities. NAFCU believes NCUA could eliminate this unnecessarily cumbersome, lengthy, and confusing process by providing definitive directions on OCP's application expectations and the timeframe for agency action. We recommend that NCUA establish a formal notification process with the federal credit union, requiring regular status updates to the federal credit union about pending applications.

Conclusion

NAFCU applauds NCUA's willingness to amend its FOM and Chartering rules to provide the requisite relief for credit unions trying to compete in the 21st century economy, as well as for the millions of American consumers who want affordable financial services. We reiterate: the industry needs relief now. While we strongly support this proposal, NAFCU and our members encourage the agency to address the recommendations outlined above, as we believe these suggestions will achieve true regulatory relief for credit unions.

We look forward to continuing to work with NCUA to address more ways that the agency can streamline and refine existing regulations in order to more effectively grow and support the dynamic credit union industry. Should you have any questions or would like to discuss these issues, please contact me by telephone at (703)-842-2215, or Carrie Hunt, NAFCU's Executive Vice President of Government Affairs and General Counsel at (703)-842-2234 or chunt@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO

cc: The Honorable Debbie Matz, Chairman
The Honorable Richard Metsger, Vice Chairman
The Honorable Mark McWatters, Board Member
Mr. Michael McKenna, General Counsel
Mr. Matthew Biliouris, Deputy Director of the Office of Consumer Protection
Mr. Todd Harper, Director of the Office of Public and Congressional Affairs