



January 24, 2016

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Re: Comments on Revised Field of Membership Rule

Thank you for investing significant time to draft this thoughtful proposal and for the opportunity to comment on the revised field of membership rule. Below please find Affinity Federal Credit Union's recommendations. Please do not hesitate to contact me at [donnal@affinityfcu.com](mailto:donnal@affinityfcu.com) or 908-860-3910 if you have any questions.

### **Multiple Common Bond Charter**

#### Expand the Definition of "Reasonable Proximity"

We commend the NCUA for proposing that a credit union's ability to provide online financial services be included as a definition of a service facility. However we recommend that this proposal, through inclusion in the final rule, not be limited to a specific geographic area within which a credit union can apply the online financial services "branch" definition. By way of example, Affinity has about 75% of its members residing in NJ and 25% spread among the other 49 states and many countries. That means more than 32,000 members already access Affinity remotely to do all their financial transactions. Therefore we recommend that there be no restriction on where to apply this new reasonable proximity service facility definition.

We also recommend that this provision be extended to underserved areas that, under the current proposal, will still require a physical branch to be placed within the underserved area. Not addressing this discrepancy implies that residents of a low income area cannot or should not be able to access financial services via a laptop or a mobile device. Today nearly two thirds of Americans own a smartphone<sup>1</sup> and that number is quickly growing. As a result, many of the transactions that previously required a visit to a bank branch can now be done anytime, anywhere. This new reality has allowed consumers of all income levels to think differently about the necessity of having a branch close by. According to research conducted by Novantas<sup>2</sup> nearly half of consumers regularly transact via electronic channels. Therefore, reasonable proximity should be redefined as the ability of members to transact on their accounts within a

<sup>1</sup> <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>

<sup>2</sup> <http://www.prnewswire.com/news-releases/novantas-consumer-research-reveals-a-growing-opportunity-for-thin-branch-strategies-with-46-of-consumers-no-longer-dependent-on-branches-300003950.html>

reasonable period of time via all available channels. As a result, NCUA should consider applying this new facility definition to underserved areas and not to deny the residents of these communities the additional lower cost financial services that more credit unions can offer.

#### Streamlined Determination of Stand Alone Feasibility of Groups Greater Than 3,000

We agree that 3,000 employees or association members is not the right threshold for an organization to start its own credit union. Competing in the financial services arena requires a minimum economy of scale and 3,000 employees, not all of whom history has clearly shown will actually join the credit union, is not sufficient. Therefore we recommend that the proposal be enhanced to include a new threshold. We believe the threshold should be set at 10,000 to allow for the fact that not all employees will join the credit union.

On another related point, if a large employer states that they don't want to start their own credit union, they should not be forced to explain why. The existing practice of requiring an organization with just a few thousand employee/members to consider starting its own credit union runs counter to NCUA's safety and soundness policies. A letter from the owner or president of the organization stating that the organization does not want to start its own credit union should suffice.

#### Inclusion of Contractors and Other Persons Eligible

We agree with the proposal that contractors with a "strong dependency relationship" to an existing SEG be eligible to join the credit union. There have been cases at Affinity when large SEG contractors are so embedded (literally) into the SEG that credit union staff see and work with the contractors as frequently as the SEG employees.

We also agree with the inclusion of honorably discharged veterans. To provide positive reinforcement for this provision, there is a veterans' hospital just a few miles from Affinity's headquarters. There is a related non-profit on that campus called "Community Hope/Hope for Vets"<sup>3</sup> which specializes in housing and supporting homeless vets, many of whom have substance abuse issues. These men and women need more than traditional financial services support and we are proud to say that Affinity provides much of that support through the Affinity Foundation. However Affinity had to go through the process of justifying this organization's eligibility, and only vets who are involved with "Hope for Vets" are eligible. To allow any honorably discharged veteran to avail themselves of the additional support a credit union can provide is the right thing to do.

#### Inclusion of Office/Industrial Park Tenants

We agree that this provision will help strengthen the sponsor-based charter. This provision will also allow branch and business development staff to use their "face-to-face" time more

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<sup>3</sup> <http://www.communityhope-nj.org/veterans-programs-hope-for-veterans.php>

efficiently since staff could schedule enrollments and relationship building meetings for specific days, reducing the number of visits to a particular office park.

## **Community Charter**

### Switching to Community Charter

Affinity appreciates the community charter provisions in the proposal. However we recommend some additions.

Regarding the ability to serve combined statistical areas - we feel the population cap, 2.5 million is arbitrary and the removal of a cap altogether should be considered. Either the area qualifies as a community or it does not, regardless of the cap. A single county is exempt from the population cap and could have 6 million residents, but a combined statistical area of 2.6 million need not apply. This makes little sense. In addition, the existence of caps will likely prevent a state chartered credit union from even considering a federal charter because we know of no states that have a population cap on their community charter. It could therefore be said that arbitrary caps are preventing a more robust, attractive federal charter. As you know, state regulators have historically approved credit unions for much larger communities than NCUA, even some allowing state-wide community charters. This fact is one of the reasons that many state charters are attractive to federal credit unions looking for greater FOM diversification and the enhanced safety and soundness that comes with a less concentrated membership base.

A healthy credit union system would allow viable chartering options that all credit unions could consider. Unfortunately for many credit unions with large numbers of SEGs, switching from a multiple sponsor charter to a federal community charter is not really an option because of the current rule that prohibits new hires at existing SEGs' outside of the community from joining the credit union. It would be unreasonable to believe that an employer would continue working with a credit union that could only serve existing employees but not new employees.

In New Jersey, for example, federal community chartered credit unions have at most access through NCUA's existing rules to a two-county community charter. Even choosing the two counties in which Affinity has the most SEGs, Affinity would still lose more than 50% of the SEGs it currently serves. As a result the mutually beneficial relationship between the credit union and those SEGs would be severed.

Many state charters allow community credit unions to add SEGs outside of the credit union's community. We realize that NCUA's interpretation of federal law does not allow this. However, we believe NCUA has the authority to recognize the SEG's property right legal interest in their credit union affiliation. Affinity recommends that the NCUA enhance its FOM proposal to grandfather those SEGs that fall outside of the community and are already in the credit union's field of membership when that credit union switches from a multi sponsor charter to a community charter.

### Underserved Areas – Concentration of Facilities Test

Revising the concentration of facilities test is a small step in the right direction, but eliminating that test altogether is Affinity's recommendation. Many underserved areas consist of just a few census tracts. Some of these areas would meet underserved criteria except for the existence of a few bank branches. Payday lenders and check cashing outlets can have a facility on every corner, but a credit union's application may be denied because of this outdated concentration of facilities restriction.

Either the area qualifies as underserved by CDFI standards, regardless of the number and type of financial institutions already in the area, or it does not. We would also recommend that NCUA include other governmental, either federal or state, standards in addition to the CDFI standards be considered for designating qualified underserved areas.

Affinity would like to include some other recommendations not addressed in the NCUA's revised FOM rule. One of the central missions of the credit union movement is to serve people of modest means. In the spirit of encouraging more financial institutions to serve underserved areas, several changes should be made to NCUA's chartering policy. For example a community chartered credit union should be allowed to add an underserved area outside of its community. This was allowed by previous NCUA interpretation for over two decades from 1994 until the agency's interpretation of the law changed in 2005. No law was changed in 2005. No court decision finalized such a change in interpretation. It seemed to be an arbitrary tightening of the agency's own interpretation of the law. Since the NCUA has interpreted the statute in two different ways since 1994 and even since the passage of CUMAA in 1998 (and there has been no legal decision rendered against NCUA for the broader interpretation it had until 2005), the ability of community chartered credit unions to add an underserved area outside of its community should be restored to NCUA's 1994-2005 interpretation of the law.

Also, we feel strongly that all active duty and retired military personnel should count in the underserved low income calculation, and underserved areas should be allowed to be defined by political subdivision data - and not just limited to census tract data.

### **Constraints in Voluntary Mergers**

Although mergers were not a topic addressed in NCUA's proposal, we strongly recommend that NCUA make it easier for credit unions with unlike fields of membership to merge.

It is in the best interest of the NCUA and credit unions to create merger rules that allow for the broadest possible field of merger candidates for credit unions to consider. Forcing credit unions to only consider merger candidates that happen to have similar fields of membership eliminate many otherwise viable candidates from the merger options list. Credit union leaders want to do what is best for their members and their employees and considering a merger with a credit union that can bring management expertise, a broader list of product and services or a wider branch network should not be eliminated solely because the two credit unions have different fields of membership.

Affinity strongly encourages NCUA to consider ways to make it easier for credit unions with unlike fields of membership to merge. The current practice requires a credit union to become in danger of insolvency before an emergency merger can be declared and the FOM differences set aside. This relaxing of merger rules could be accomplished by simply reinterpreting the definition of "danger of insolvency." The share insurance fund will benefit when credit unions are allowed to merge while they are healthy.

Thank you for the opportunity to comment on NCUA's revised FOM proposed rule. We look forward to working with you to strengthen the diversification prospects of the credit union industry and, in doing so, the long term financial stability of credit unions as a whole.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "John T. Fenton". The signature is fluid and cursive, with the first name "John" being the most prominent.

p.p.

John T. Fenton

President & Chief Executive Officer