

February 08, 2016

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

RE: Comments on Notice of Proposed Rulemaking for Field of Membership - RIN: 3133-AE31

Dear Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 350 credit unions and their more than 10 million members/consumers. The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on its proposal to modernize and comprehensively amend the chartering and field of membership (FOM) rules.

The Leagues applaud the NCUA for their efforts to modernize the federal charter. Our members have struggled under unnecessary constraints in the federal charter that hamper their ability to serve their communities, compete in the marketplace, and grow. We thank the NCUA for listening to the industry and taking actions to ensure federally chartered credit unions remain a viable option to consumers.

The Leagues fully support the proposed changes that will improve the federal charter and maximize, to the extent permitted by law, consumers' access to federal credit union services, ease undue restrictions in the federal charter, and advance the dual chartering system by creating competition and incentive for our state regulators to modernize as well. We respectfully offer the following comments in support of the proposed amendments and suggestions for further improvement.

### **Community Common Bond**

In general, the proposed amendments to the community common bond are common sense changes that will make it easier for community credit unions to reach more consumers and expand into areas that need quality financial services.

#### Population Limit - Core Based Statistical Area

The proposal retains the population limit of 2.5 million for a Core Based Statistical Area (CBSA), Metropolitan Division, or Combined Statistical Area (CSA). However, a population limit for a statistical area is not a Federal Credit Union Act (FCU Act) requirement. The NCUA uses this population limit by design to conform to the population parameters by which the Office of Management and Budget (OMB) recognizes metropolitan divisions with a CBSA.

A well-defined local community (WDLC) requirement is met if the area is a statistical area, single political jurisdiction, or rural district. The population limit for a CBSA or CSA creates unfair and unnecessary constraints when compared to a single political jurisdiction. For example, Los Angeles County is the most populous county in the United States and has a population of more than 10 million people. A credit union can serve the entire Los Angeles County based on a single political jurisdiction. However, a credit union wishing to serve an entire CBSA or CSA consisting of multiple political jurisdictions is limited to a population of 2.5 million people.

The Leagues recommend the population limit for a statistical area be eliminated or set to equal the most populous single political jurisdiction in the United States.

#### “Core Area” Service Requirement

Currently, when a federal credit union (FCU) applies to serve a community consisting of a portion of a Core Based Statistical Area (CBSA), that portion must include the CBSA’s “core area,” which NCUA defines as the most populated county or named municipality in the CBSA’s title [\[1\]](#).

However, serving a core area of a CBSA is not a requirement of the FCU Act. The NCUA has required inclusion of a core area to acknowledge the typical focal point for common interests and interaction among residents and to ensure newly chartered credit unions extend services to low-income persons and underserved areas, both of which are categorized as typically located in the core area of a CBSA.

The Leagues support NCUA’s proposal to remove the core area requirement. Credit unions have a mission of serving people of modest means within their community. Because of this mission and proven service to low-income persons and underserved communities, credit unions are not subject to the Community Reinvestment Act requirements. A mandate by the NCUA to serve a particular section of a CBSA is unnecessary and limiting, particularly when combined with a population limit for statistical areas.

#### Population Limit – Well-Defined Portion of a CBSA

The NCUA currently 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 the 2.5 million population limit, disregarding whether the portion a credit union seeks to serve alone meets that limitation.

The NCUA has determined this is an unnecessarily broad application of the population cap that produces unintended consequences, and the 2.5 million population limit should instead be applied to the actual community a credit union seeks to serve.

As noted above, the Leagues recommend the population limit for a statistical area be eliminated or set to equal the most populous single political jurisdiction in the United States. However, should a population limit remain for CBSAs, the Leagues agree with

NCUA's assessment that such a limit should apply only to the well-defined portion of a CBSA or Metropolitan Division a credit union seeks to serve.

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

The NCUA proposes to expand the existing single Core Based Statistical Area (CBSA) definition of a well-defined local community to include Combined Statistical Areas (CSA) as designated by OMB and subject to the 2.5 million population limit.

CSAs consist of contiguous CBSAs that complement one another according to objective measurements of social and economic integration among the area's residents. Because of the strong ties and interactions between residents of these contiguous areas, the Leagues agree and fully support the proposal for a CSA to serve as a well-defined local community. However, as noted above, we recommend the population limit for a statistical area be eliminated.

### Addition of Adjacent Areas to a Well-Defined Local Community

The NCUA Board proposes to permit the addition of areas adjacent to the perimeter of a community consisting of a Single Political Jurisdiction, Core Based Statistical Area, Combined Statistical Area, or Rural District.

The Leagues strongly support this amendment as it will allow credit unions to expand into adjacent communities that have social and economic interactions but don't fall within a single objective statistical area or rural district.

The agency proposes that a credit union would need to provide subjective evidence that residents on both sides of the perimeter interact. While we agree this standard must be met, we recommend the NCUA provide more clarity on the standards. We also suggest that the agency develop a list of categories that would serve as examples or would receive automatic approval as an adjacent area. For example, adjacent cities and unincorporated areas that share the same name, contiguous areas that may be geographically isolated from the rest of their statistical area or single political jurisdiction.

The agency proposes the expanded community would be subject to the proposed population limits for community charters (2.5 million) and rural district charters (1 million). We must again reiterate our point that a population limit for a core-based statistical area should be eliminated.

The Leagues agree with the proposal to allow a FCU seeking to add a bordering area to follow a streamlined set of business plan requirements. Adding an adjacent area compliments the existing community or rural district, for which the FCU has a proven track record of serving, with similar interests and social and economic interaction. Therefore, a streamlined plan is adequate.

### Individual Congressional District as a Well-Defined Local Community

The NCUA proposes to recognize each individual Congressional district as a Single Political Jurisdiction, thus qualifying it as a well-defined local community without regard to population. The average population of the United States' 435 Congressional districts is slightly more than 710,000; far less than the 2.5 million population currently allowed for a statistical area and far less than the largest single political jurisdiction of Los Angeles County with more than 10 million people.

The Leagues strongly support this proposal and agree that Congressional districts represent well-defined local communities with interaction and common interests among the district's constituents on matters decided at the federal level and that affect them locally.

## **Rural District Definition**

### Population Limits

Currently, there are two requirements to qualify as a well-defined Rural District: The area's total population cannot exceed the greater of either 250,000 people or 3 percent of the population of the state in which the majority of the proposed Rural District's residents would be located, and either at least 50 percent of the proposed Rural District's population resides in census blocks or other geographic area the U.S. Census Bureau designates as "rural," or the proposed Rural District's population density does not exceed 100 persons per square mile.

The NCUA proposes to increase the population limit to 1 million persons, and because the increased population limit would exceed 3 percent of a state's population in all states but California, making that alternative redundant, the proposed rule omits it. The agency also proposes to add areas designated as rural by the Consumer Financial Protection Bureau (CFPB) in addition to the U.S. Census Bureau.

The Leagues support an increased population limit of 1 million. The current 250,000 persons/3 percent population limits to qualify as a well-defined Rural District are too low. Without a population sufficient to enable credit unions to achieve operational efficiencies and economies of scale, rural areas may be left unserved. Increasing the population limit will bring credit union products and services to rural residents. We also agree with adding areas designated by the CFPB as rural.

## **Underserved Areas**

### Concentration of Facilities Ratio

The FCU Act authorizes the NCUA Board to allow multiple common bond credit unions to serve members residing in an "underserved area," provided the FCU establishes and maintains a facility in the area. One of the tests for an area to qualify as "underserved" is that it must be "underserved by other depository institutions" based on data of the Board and the Federal banking agencies."

The Leagues support the proposal to refine the data used in its "concentration of

facilities ratio” used to determine the existence of other depository institutions. We agree the ratio should exclude non-community credit unions and other non-depository institutions. We also agree with the proposed process to exclude these two data components from the ratio on a contingent basis to achieve efficiencies and conserve NCUA resources.

### Alternatives to Identifying Areas “Underserved by Other Depository Institutions”

The Leagues support the NCUA’s proposed use of an alternative method to determine whether an area is underserved. As proposed, an area will qualify as “underserved by other depository institutions” if it is designated as an “underserved county” by the NCUA. The NCUA would use the CFPB’s annual “Rural or Underserved Counties List” to produce and make available a list that identifies underserved counties exclusively. Use of the CFPB’s data is consistent with the requirement in the FCU Act that the determination be based on data of the Board and the Federal banking agencies. This alternative method will allow multiple common bond credit unions to easily determine underserved areas and serve more consumers in need of affordable financial services.

### **Multiple Common Bond**

#### Reasonable Proximity through Online Access to Services

When adding a group to a multiple common bond credit union, the credit union must have a service facility within reasonable proximity to the location of the group. Currently, a service facility for multiple common bond credit unions is defined as a place where shares are accepted for members' accounts, loan applications are accepted, or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. The current definition of service facility does not include the credit union's Internet web site or mobile banking applications.

The NCUA proposes to revise the definition of a “service facility” for multiple common bond credit unions to include online internet channels, such as a transactional website – one that meets the current transactional requirements of shares accepted for deposit, loan applications accepted, or loans disbursed.

The Leagues strongly support modernization and recognition of the various ways in which consumers now interact and transact with the credit union. We support a proposal that will expand the definition of service facility to include the availability of electronic access that at a minimum enables consumers to conduct the transactions enumerated above. To ensure advancing technologies do not outdate the regulations, the final rule should be sufficiently clear that any online internet channel that meets the transactional requirements, such as an Internet web site or mobile banking application, meets this requirement.

In today’s world credit union members can, and do, conduct transactions and apply

for loans electronically. Consumers not only use, but expect and demand online and mobile services. We believe that with the availability of online banking, mobile banking, and remote deposit capture, a physical service facility is unnecessary. Additionally, NCUA's current emergency mergers procedures set precedence for not requiring a physical service facility. NCUA permits a merging credit union to be transferred intact to a continuing credit union without regard to the service facility requirement with belief that the merging members will be well served. For these reasons, the Leagues enthusiastically support a revised definition of service facility for multiple common bond credit unions to include a transactional online internet channel.

#### Inclusion of Select Employee Group Contractors

The FCU Act requires a "common bond of occupation or association" for both single and multiple common-bond credit unions. The NCUA currently includes within the definition of a single occupational common bond the persons who work regularly for an entity that is under contract to the sponsor of the select employee group ("SEG") listed in its charter, provided the contractor has a "strong dependency relationship" with that sponsor. The presence of a "strong dependency relationship" between the SEG sponsor and its contractor establishes the "common bond of occupation" the FCU Act requires.

The Leagues fully support NCUA's proposal to extend to multiple occupational common bond credit unions the same ability to add persons who work regularly for an entity under contract to any of the multiple SEG sponsors listed in its charter. The same standard of a "strong dependency relationship" is appropriate.

#### Inclusion of Office/Industrial Park Tenants

The NCUA proposes to permit a multiple common bond credit union to include as a select employee group (SEG) the employees of a park's tenants (e.g., retail tenants of a shopping mall, business tenants of an office building or complex). The group listed in the charter would be the office/industrial park itself. Inclusion of an office/industrial park groups would be subject to two conditions: each tenant must have fewer than 3,000 employees working at a facility within the park; and, only those employees who work regularly at the park during their employer's tenancy would be eligible.

The Leagues support this alternative approach to serving persons who work in an office or industrial park as it creates efficiencies and ease, rather than individually adding and listing each tenant as a group sponsor.

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

The NCUA proposes to create a streamlined application process for multiple common bond expansions for groups between 3,000 and 4,999 potential members. While it makes sense in today's world that groups of fewer than 5,000 rarely have the capacity to form their own credit union, the FCU Act presumes a group of 3,000 or more members *can* form a credit union. Therefore, the Leagues support NCUA's proposal to require a higher burden of proof, but in a simplified approach, for groups somewhat

larger than 3,000 potential members.

NCUA proposes that for groups between 3,000 and 4,999 potential members they will accept a written statement from the group as sufficient documentation that the group cannot form its own credit union due to the group's lack of available subsidies, interest among the group's members, and sufficient resources. The NCUA will also no longer require an overlap analysis for groups of this size. The NCUA proposes that groups with 5,000 or more potential members will be subject to the existing standard application process.

As stated, the Leagues support a streamlined and simplified approach for groups somewhat larger than 3,000 potential members. However, we believe the threshold of 5,000 is too low and recommend a 10,000 potential member threshold. The NCUA noted that 80 percent of failures occurred in credit unions with fewer than 5,000 *actual* members. To achieve a sufficient number of actual members for a viable new credit union, the number of potential members must be greater. The Leagues would support a streamlined process for groups between 3,000 and 9,999 potential members.

## **Other Persons Eligible for Credit Union Membership**

### Honorably Discharged Veterans

The Leagues whole-heartedly support NCUA's proposal to include within a credit union's common bond the honorably discharged veterans of any branch of the United States Armed Forces listed in its charter, continuing their eligibility for credit union membership beyond active duty. Not only does this honor our Armed Forces veterans, it is consistent with serving pensioners or annuitants who have retired from an employment group in a credit union's charter.

## **Trade, Industry, or Profession (TIP) as a Single Common Bond**

### Inclusion of "Strong Dependency" Vendors and Suppliers in TIP Definition

A TIP is a single occupational common bond based on employment in a trade, industry, or profession at any number of corporations or other legal entities that, while not under common ownership, still have a common bond by reason of producing similar products, providing similar services, sharing the same profession or trade, or participating in the same industry. A TIP-based FOM is precluded from including third-party vendors and other suppliers and contractors based on the statutory requirement of "one group that has a common bond of occupation."

The Leagues strongly support NCUA's proposal to clarify its definition of a TIP charter to include employees of types of entities that have a "strong dependency relationship" on, and whose employees work directly with employees of, other entities within the same industry. This is similar to the NCUA's current treatment for a single occupational common bond between a select employee group (SEG) sponsor's own employees and those of its contractors, as well as the proposed treatment for multiple occupational common bonds. The presence of a "strong dependency relationship"

between the entities establishes the “common bond of occupation.”

As proposed, a TIP charter credit union must seek NCUA approval and demonstrate that an entity is “strongly dependent” on the others within a TIP and shares a narrow commonality of interest with them in order to include the entity as part of a TIP-based single occupational common bond. We recommend the “strong dependency relationship” standard be the same as is used to show a relationship between a single or multiple common bond credit unions’ SEG sponsor’s own employees and those of its contractors.

### Geographic Limitations for TIP Charters

Currently, NCUA requires a geographic limitation for credit unions converting to a TIP charter, unless the credit union already serves a national field of membership or is operating in multiple states. The Leagues recommend the geographic limitation for TIP charters be eliminated since a TIP credit union is a single occupational common bond. A geographic limitation is not a requirement for a single occupational common bond. Moreover, as discussed earlier, consumers today conduct transactions and apply for loans electronically. The availability of online banking, mobile banking, and remote deposit capture, allows credit unions to provide their members with world-class service wherever they reside. The NCUA should modernize the TIP charter by removing the geographic limitation.

### **Glossary**

#### Adequately Capitalized

##### *Proposed Definition:*

A credit union is considered “adequately capitalized” when it **meets the “adequately capitalized” definition in Part 702 of NCUA’s Rules and Regulations (previously: has a net worth ratio of at least 6 percent)**. A multiple common bond credit union must be “adequately capitalized” in order to add new groups to its charter. The Office of Consumer Protection director, with input from the appropriate regional director, may determine that a less than “adequately capitalized” credit union can qualify for an expansion if it is making reasonable progress toward becoming “adequately capitalized,” and the addition of the group would not adversely affect the credit union’s capitalization level. **(new language)**

##### *Recommendation:*

The citation should be more specific as to clearly identify it as the net worth “adequately capitalized” requirement, under 702.102(a)(2), not a risk-based net worth requirement.

#### Service Facility

##### *Proposed Definition:*

**Includes the means for a multiple common bond credit union to accept shares for a member’s account, accept loan applications from the member, or disburse**

***funds on approved loans.*** This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, ***or a credit union owned electronic facility that meets, at a minimum, these transactional requirements.*** A service facility also includes a shared branch or a shared branch network if either: (1) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. For purposes of serving an underserved area, a service facility does not include ***an informational or transactional website,*** an ATM or an interest in a shared branch network. ***(new language)***

*Recommendation:*

The definition should be more specific, by using language found elsewhere in the manual and specifically state: “This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, a credit union owned electronic facility ***or online internet channel*** that meets, at a minimum, these transactional requirements.

Correct the reference in Chapter 3, Section III-F that states, “A service facility is a place where shares are accepted for members’ accounts, loan applications are accepted ~~and~~ or loans are disbursed.”

## **Conclusion**

In conclusion, the Leagues strongly support the proposed amendments that will modernize the federal charter, maximize consumers’ access to federal credit union services, and strengthen the dual chartering system. The amendments represent common sense changes and recognize existing and advancing technologies that consumers choose to use to conduct their financial transactions. We urge the NCUA to consider our recommendations for further improvements to the federal charter and to approve a final rule expeditiously.

Thank you for the opportunity to comment on the proposal and for considering our views.

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[1]75 FR 36257

Sincerely,

Diana R. Dykstra  
President and CEO  
California and Nevada Credit Union Leagues

cc: CUNA, CCUL