PENNSYLVANIA CREDIT UNION ASSOCIATION

4309 North Front Street
Harrisburg, PA 17110-1618
800-932-0661 • 717-234-3156 • Fax 717-234-2695

February 5, 2016

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

Re: Comments on Chartering and Field of Membership Manual, RIN: 3133:AE31

Dear Mr. Poliquin:

The Pennsylvania Credit Union Association (PCUA) appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposed amendments to 12 CFR Part 701, the Chartering and Field of Membership Manual. PCUA is a statewide advocacy organization which represents a majority of the credit unions located in the Commonwealth of Pennsylvania.

Field of Membership (FOM) regulations are so critical that PCUA consulted with its Board of Directors, Government Relations Committee, Regulatory Review Committee and State Credit Union Advisory Committee in order to provide comments on the proposal. This group of credit union leaders consists of credit union CEOs and senior management staff who represent credit unions of all asset sizes. The comments contained in this letter reflect the input of Pennsylvania's credit union leadership and PCUA staff.

Summary of Comments

NCUA's proposed amendments to the Chartering and Field of Membership Manual (FOM Manual) are the most significant effort to update chartering opportunities undertaken in many years. PCUA appreciates the Agency's steps to modernize FOM regulations. It is fundamentally sound public policy to develop FOM rules that enable as many consumers and small businesses to obtain financial services from credit unions. The credit union structure and mission afford consumers and small businesses the best terms and conditions for services. And, consumers and small businesses don't just receive a transaction account or loan when they join a credit union; they become owners of a democratically controlled financial cooperative. Accordingly, we encourage NCUA and state regulators to demonstrate creativity in implementing FOM regulations.

The proposed FOM Manual is a vital first step in enhancing access to credit unions. PCUA supports the entire proposal. After careful review, we maintain that the proposal is entirely consistent with NCUA's authority to craft FOM regulations pursuant to the Federal Credit Union Act (FCUA). The following discussion offers rationale for our support of the rule and constructive suggestions for the final rule. In addition, our comments include suggestions for even more robust chartering options.

Community Chartered Credit Unions

a. "Core Area" Service Requirement

Presently, when a federal credit union (FCU) applies to serve a community that consists of a Core Based Statistical Area (CBSA), NCUA requires the credit union to serve the CBSA's core area. NCUA defines the core area is the most populated county or named municipality in the CBSA. The proposed FOM Manual will enable FCUs to serve a portion of a CBSA without having to serve the core area. PCUA supports this measure. It is a reasonable interpretation of the community chartering provisions of the FCUA. It recognizes the unique characteristics of a smaller area within a CBSA that can be demonstrated to be a well-defined local community. The change affords flexibility to an applicant FCU to define an area that is can serve efficiently and on an appropriate scale. In sum, the measure is a creative means to enable more consumers and small businesses to find an avenue to join a credit union. It permits chartering opportunities for FCUs consistent with safety and soundness.

b. Combined Statistical Area

Current rules limit FCUs to a statistical area no larger than a Metropolitan Statistical Area (MSA) or metropolitan division with a population limit of 2.5 million persons. The proposed FOM Manual will permit FCUs to serve Combined Statistical Areas (CSA) as defined by the Office of Management and Budget. The 2.5 million-person population limit applies to serving a CSA. We support this option to community chartering. A CSA certainly qualifies as a well-defined local community demonstrated by the employment exchange between such areas.

c. Population Limits

Existing FOM rules cap CBSAs at 2.5 million persons and the proposed rule maintains a 2.5 million person limit for CSAs. We note that the FCUA does not establish population limits for determining whether an area constitutes a well-defined, local community. We view the population limit as an unnecessary limitation imposed on the community charter. Where a community charter application demonstrates interaction and common interests, we fail to see how or why the size of a given population is determinative of whether an area is a well-defined, local community. Population limits do not make sense where a single political jurisdiction, such as Los Angeles County, qualifies as a well-defined local community, but when different geographic boundaries are drawn, population is given heightened relevance. Accordingly, population limits should be eliminated from the final rule in connection with service to CBSAs, CSAs or subsets of such areas.

d. Adjacent Areas and Narrative

NCUA recognizes that areas adjacent to the perimeter of a well-defined local community consisting of a single political jurisdiction, a CBSA, a CSA or a rural district may not have credit union service or sufficient access to financial services. However, the residents on both sides of the perimeter may routinely interact or share common interests. Therefore, NCUA proposes to permit an FCU to serve an area adjacent to an existing well-defined, local community upon a showing, by subjective evidence, that residents on both sides of the border of such a community have common interests and interact. The FCU would demonstrate interaction and common interests through narrative.

We support the ability for FCUs to add a community that is adjacent to a well-defined, local community. The measure extends credit union service to consumers and small business. The proposed rule is valid recognition that some areas have a strong connection to an MSA or similar type of community, but fall just outside of the boundaries. For example, in 2009 a Pennsylvania FCU was prohibited from serving a school district because it overlapped adjacent MSAs. Evidence submitted by the FCU, such as commuting patterns, shopping patterns and media usage demonstrated that this small area had significant interaction with the MSA served by the FCU. The proposed rule wisely rule accommodates situations such as this.

In the proposal's summary, NCUA stated, "The more expansive the adjacent area, theoretically even surrounding the original community's entire perimeter, the more challenging and burdensome it may be for a credit union," to demonstrate interaction or common interests among residents and the ability to serve the expanded community. 80 FR 76750. We have concerns over whether this statement may impact the operation of the rule.

The proposal indicates that an FCU may submit narrative to prove that interaction and common interests exist. NCUA's comment suggests, like the population limits that apply to CBSAs, that the size of the proposed area somehow undercuts evidence that the area is a reasonable annexation to a well-defined, local community. We maintain that the size of the area is irrelevant. This is particularly true in light of the factors articulated in the proposal that include consideration of an economic hub, population center, quasi-governmental agencies, government designations, shared public services, or colleges and universities. 80 FR 76772. NCUA's list of factors for the narrative bears no relation to the size of the proposed adjacent area. Therefore, we recommend that the final rule include no mention of the size of the geographic area and NCUA recant the statement in the summary to the final rule.

NCUA will permit an FCU to use narrative to demonstrate that residents of a proposed adjacent area have common interests and interact with the original community. We welcome this approach. Further, the record for any community charter application should include narrative in support of satisfying the requirements for a well-defined, local community. The current FOM Manual is over-reliant on definitions found in federal law or regulations to support the existence of a community. This has stifled efforts to draw up well-defined, local communities that are consistent with the demographics of a state, county or, groupings of smaller units of local governments. Reinstatement of narrative in connection with all community charter applications encourages creativity and opens more possibilities for consumers and small business.

Reliance on narrative requires developing a thorough administrative record. The FOM litigation, American Bankers Association v. National Credit Union Administration 513 F. Supp. 2d. 190 (2007), illustrates that a complete record articulating all the reasons for a final decision is critical. As the adjudicator of a community charter application, it is incumbent on NCUA to build an adequate record. We ask NCUA to take note of the Federal Reserve Bulletin. The Federal Reserve issues written rulings on matters such as bank holding company mergers that are supported by findings of fact and conclusions of law. NCUA should adopt a similar approach when rendering decisions on community charter applications. It provides a credit union with finality. In the event a final ruling is challenged by outside parties, there is a clear and robust record for a reviewing court.

Since NCUA is considering the means to serve areas outside of community boundaries, we urge NCUA to consider complete grandfathering of select employee groups (SEGs) when a multiple group common bond credit union converts to a community charter. Currently, when a multiple group credit union converts to a community charter, it can continue to serve members of record at the time of conversion. However, if the SEG falls outside of the community boundaries, the credit union cannot serve new members from that group. We think this result shatters an established connection with a group. Continued service to a group that qualified for membership does not erode the community because it is very likely the group had reasonable proximity to the credit union's service facilities in the first place. We recommend that the final rule regarding adjacent areas be expanded to state that SEGs that fall outside of community boundaries on a conversion to a community charter remain eligible for service.

e. Congressional District

NCUA proposes to recognize and individual Congressional district as a well-defined, local community. We support this rule. Residents within a Congressional district have common interests, notably representation at the federal level. Policies such as funding for transportation, infrastructure or education are additional examples of common interests among residents and businesses within a Congressional district. The final rule should clarify continuity of service and options to convert to new boundaries if the lines of a Congressional district are redrawn. An FCU that is serving such an area should be able to

continue with the existing boundaries if it so chooses. An FCU should also have the option to convert to the new boundaries.

f. Rural District

NCUA proposes to increase the population limit to 1,000,000 regardless of the state in which the majority of the district's population is located. In addition, the district's boundaries can extend into adjacent states. We support this additional flexibility in connection with defining a rural district. In preparing the final rule, we urge NCUA to consider state or local definitions of rural district. A more local focus would likely result in increased consumer access to credit unions and yield results that are more appropriate for each state. For example, the Center for Rural Pennsylvania defines a rural district based on population density. Population density is calculated by dividing the total population of a specific area by the total number of square miles of that area. Applying that definition, Pennsylvania has 48 rural counties and 19 urban counties. That's a startling contrast to the approach used by the Consumer Financial Protection Bureau (CFPB) in connection with higher-priced mortgage loans. Pursuant to CFPB's definition of rural, only 16 of Pennsylvania's counties qualify as rural. CFPB's result fails to account for the demographics and rural nature of significant pockets of the Commonwealth.

In sum, the ability for a rural district to cross state lines is a positive. The increase in the population limit is desirable as well. However, we point out that the size of a population should not be the sole determining factor in whether an area is a rural district. The final rule should accommodate definitions of rural districts adopted by state or local governments. Such definitions offer additional flexibility and capture local conditions.

Underserved Areas

a. Concentration of Facilities Ratio

Under the proposal, NCUA will recalculate the concentration of facilities ratio by excluding any non-depository institutions or non-community credit unions. This is a prudent measure. Non-depository institutions cannot meet the deposit or transactional needs of persons who live in an underserved area. Non-community credit unions, while some can apply to serve an underserved area, would not necessarily be serving an area subject to a pending application. Therefore, their exclusion from the concentration of facilities ratio is a rational interpretation of the FCUA.

b. Alternatives to Identify Areas Underserved by Other Depository Institutions

NCUA asks for comment on alternative methods for determining whether a proposed area is underserved by other financial institutions. However, NCUA stipulates that such analysis rely on data from NCUA or other federal banking agencies. We welcome this opportunity to present alternatives. The limitation that data come from NCUA or another banking agency is discouraging.

The ability of an FCU to serve an underserved area reflects an important public policy of extending credit union service to poor areas and persons of modest means. That public policy could be further advanced by completely redrawing the criteria for service to underserved communities and simplifying it. The current construct of serving underserved areas rests entirely on the Community Development Banking and Financial Institutions Act of 1994. The legislation and its implementing regulations are overly complicated and obstruct service to underserved areas. We observe that calculating concentration ratios combined with the expense of placing a service facility in an underserved area deter Pennsylvania's credit unions from applying to serve these areas. So, when NCUA asks for comments on alternatives but starts with a mandate that any alternative has to be supported by NCUA's data or data from another banking agency, NCUA's position defeats the purpose of asking for comments.

Nevertheless, simple data on family income versus definitions of poverty is a much more practical way to develop a means by which credit unions can increase their outreach to persons of modest means and underserved areas. The FCUA and NCUA regulations should provide the opportunity for FCUs to utilize state criteria for determining whether an area is underserved and the criteria should not rest solely on the

existence of financial institutions. Also, if a given area has inadequate access to other services, such as healthcare, that should be an indicator that it is underserved. For example, Pennsylvania identifies areas that have a shortage of access to healthcare providers, Health Professional Shortage Areas. An HPSA is a distinct geographic area including a county or a grouping of census tracts, townships or boroughs and the population in such an area falls below certain poverty levels.

The point is, while serving an underserved area is noble, the application process for serving it is too complicated. If the goal is that more underserved consumers should have access to credit on fair terms and deposit accounts that meet their needs, it's time to open the FCUA and develop an inclusive set of rules that enable all types of charters to accommodate the underserved. The analysis should not stop at definitions found in federal law. Rather, reasonable and well-defined criteria found in state law or other sources should be included with the aim of maximizing opportunities for credit unions to serve such areas.

Multiple Common Bond

a. Reasonable Proximity, Service Facilities

The proposed FOM Manual amends the definition of "service facility" to include a transactional website or mobile platform. At a minimum, the transactional website must accept shares, accept loan applications, or disperse loans. As a result, when a multiple group FCU applies to add a group to its FOM, it can meet the requirement of having a service facility within reasonable proximity to the group. We are highly supportive of this change. Many of Pennsylvania's multiple group credit unions have transactional websites and membership groups in multiple states. The new rule will increase their ability to reach out to new groups as well as groups that are related to the SEG such as contractors or tenants as discussed below.

NCUA states that the transactional website would not qualify as a service facility for the purpose of serving an underserved area. We urge NCUA to rethink its determination. The expense of maintaining a service facility is a deterrent to credit unions that might otherwise choose to serve an underserved area. Outreach to a given census tract or neighborhood via transactional website can be just as effective as a physical presence. We reiterate our argument that federal laws and regulations should facilitate service to persons of modest means, not create barriers to access.

b. Select Employee Group Contractors

A multiple group credit union would be permitted to add persons who work regularly for an entity that is under contract to any of the select employee group sponsors listed in the charter. The contractor must have a strong dependency relationship with the sponsor group. We support the flexibility afforded by the proposed rule. Extending service to contractors is consistent with multiple group common bond policies based on the relationship between the companies. NCUA should adjust the regulatory language requiring a strong dependency relationship between the sponsor group and the company. It may be very difficult to prove dependency. Information such as contracts, shared management officials, or marketing may be proprietary. The test for contractors should be a rational relationship evidenced by a letter from the sponsor company or the entities' organization chart.

c. Office or Industrial Park Tenants

A multiple common bond credit union will also be permitted to include in its FOM employees of an industrial park's tenants, such as retail tenants of a shopping mall or business tenants of an office building or complex. Inclusion of such groups is subject to two conditions: 1) each tenant within the group must have fewer than 3,000 employees; and 2) only those employees who work regularly at the park during their employer's tenancy would be eligible for membership. Documentation of tenancy must be supported by a letter from the mall or office park.

We support including the employees tenants of an office park or mall in a multiple group FCU's FOM. It is a natural extension of the multiple group charter. We do not understand why such a group must have

fewer than 3,000 employees. We believe that a larger group could be added to an FOM pursuant to the exceptions to the numerical limits from multiple common bond credit unions. 12 U.S.C.A. 1759(d)(2). With respect to documentation, we believe it would be unduly difficult to obtain a letter from the leasing agent of the industrial park or mall. Documentation from the tenant, such as a summary of the lease and address information should be sufficient to demonstrate that the employees work in the park or mall.

d. Groups Greater than 3,000

NCUA proposes to streamline the process for determining whether a group between 3,000 and 4,999 members would be unable to form its own credit union. NCUA will accept a written statement from the group that displays evidence of lack of subsidies and lack of interest to form a separate credit union. We support this measure noting that forming a de novo credit union is an enormous task. We agree with the safety and soundness rationale that NCUA articulated in the background and summary to the proposed rule.

NCUA asked for comments as to whether a number larger than 5,000 would be appropriate. NCUA correctly noted in the background and summary to the rule that, if 5,000 actual members are needed to charter a viable new credit union, the number of potential members must be substantially larger than 5,000. Accordingly, we believe the threshold could be as high as 10,000 potential members.

e. Other Eligible Persons

The current FOM policy permits a single common bond or a multiple group common bond credit union to serve active duty or retired US Armed Forces personnel if they are listed as a group in the FCU's charter. The proposed rule will permit an FCU to include within its FOM, the honorably discharged veterans of any branch of the US Armed Forces listed in its charter. We support the proposal, recognizing this move continues credit union service to veterans. The measure is consistent with NCUA's policies on affinity relationships.

Single Common Bond

a. Trade Industry Profession (TIP), Strong Dependency Vendors

NCUA proposes to expand the scope of a TIP charter to include employees of entities that have a strong dependency relationship with other entities within the same industry. The term "strong dependency" hinges on the likelihood of a significant economic impact on one or both parties should one discontinue its operations. We support the additional flexibility for the TIP charter. Requiring a "strong dependency" relationship may be too difficult to prove in an application, however. We understand there should be a sufficient connection between the entities. Similar to our analysis for contractors of multiple group charters, the test should be a rational relationship between the entities evidenced by factors such as common ownership, contractual relations, corporate organization, or similar facts that show a connection but would not be deemed proprietary by the entities desiring credit union service.

Part 2, Future Needs

The current proposal is an excellent first step to increasing the availability of credit union services to consumers and small businesses. We appreciate that NCUA Chairman, Debbie Matz, created an FOM Internal Task Force whose work was instrumental in crafting the proposed rule. We appreciate that Vice Chair, Rick Metsger, opened important dialogue on FOM issues during the 2015 CUNA Governmental Affairs Conference and he continues that conversation. In fact, Vice Chair Metsger noted creative approaches undertaken by state regulators on FOM matters. The proposed rule, while very attractive and consistent with the FCUA, does not include options available to some state-chartered credit unions. We want to continue the dialogue with NCUA on the means to achieve federal FOM rules that are competitive with state rules offering significantly more favorable charters.

Consistent with developing a competitive federal charter, we suggest that NCUA adopt rules that create hybrid charters, as discussed below. In addition, an overhaul of the current merger regulations, specifically the treatment of FOM in merger transactions, will foster strategic combinations between willing credit unions.

a. Hybrid Charters

During PCUA's discussion with its board and committees, the most significant improvement to chartering rules that NCUA could make is creating what we describe as hybrid charters. Our vision of hybrid charters would enable an FCU to have any combination of chartering options included in the FCUA. Accordingly, a hybrid charter would include elements of the community charter, multiple group charter, or the TIP. For example, if a community chartered credit union were approached by an employer group for service, that credit union could add the employer group to its charter. If a TIP-chartered credit union could prepare a satisfactory business plan to serve a well-defined, local community that is within reach, the FOM rules should permit such activity. The hybrid charter would truly enable an FCU to reach out to groups, communities or TIPs consistent with its ability to serve such areas or groups. So, the concept affords growth opportunities and permits FOM expansion in a manner commensurate with the FCU's resources.

b. Mergers

Consolidation is a reality within the credit union system. In 2014 and 2015, NCUA approved 262 and 239 mergers respectively. The trend will continue. We do not wish to over-accelerate the pace of consolidation, but prudent public policy dictates that the credit union community, in conjunction with NCUA and state regulators, improves the means for credit unions to complete strategic combinations. The FOM of credit unions exploring a merger should not determine whether the parties can merge. A merger should be approved on the basis of the resulting business plan and what is in the best interests of the members.

We understand that several Pennsylvania credit unions are exploring merger opportunities. In some cases, they cannot choose a partner of their liking because the FOMs do not align. This should not be a barrier. Worse, the rules should not compel credit unions to wait until the financial condition of one erodes until emergency merger rules apply. We urge NCUA to examine its merger regulations and inject as much flexibility with respect to FOM as possible.

Conclusion

The PCUA applauds NCUA for developing a well-reasoned proposal to amend its FOM regulations. The proposed changes fall within the scope of NCUA's rulemaking authority pursuant to the FCUA. The proposed rule is a logical first step toward developing more modern and flexible chartering options that increase the access of consumers and small business to credit union services. We would be happy to discuss our comments in detail at your convenience.

Sincerely,
PENNSYLVANIA CREDIT UNION ASSOCIATION

Richard T Wargo

Richard T. Wargo Jr
EVP/General Counsel

RTW:llb

cc: P. Conway
Board of Directors
Government Relations Committee
Regulatory Review Committee
State Credit Union Advisory Committee