

February 4, 2016

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

Re: Field of Membership Proposed Rule

Dear Mr. Poliquin:

On behalf of Ascend Federal Credit Union and its Board of Directors, a \$1.8B federally chartered credit union serving over 157,000 members, I am writing to you regarding the National Credit Union Administration's (NCUA) proposed rule amending the Chartering and Field of Membership (FOM) Manual, incorporated as Appendix B to part 701. I appreciate NCUA's initiative in this rulemaking to provide meaningful regulatory relief to credit unions and welcome the opportunity to provide comments on this proposal. The credit union industry has long advocated for FOM reform and I appreciate the NCUA Board's support on this issue.

Summary of Key Points:

- Though legislation is necessary to resolve certain limitations on FOM rules, this proposal represents a modernized approach to keep pace with changes in state laws and technology. It will provide much needed regulatory relief by streamlining NCUA's chartering and FOM procedures, as well as removing many non-statutory constraints on FOM chartering and expansion.
- Due to the expansive growth of technology and digital communication platforms, today's credit union members and potential members are spread across diverse geographic areas. Consumers and federal credit unions should not be penalized for adopting the use of these technologies to serve and grow their memberships. Therefore, I strongly support NCUA's initiative to incorporate online financial services into the definition of "service facility."
- To improve the ability of a credit union to evidence why an area is underserved, I suggest the NCUA consider other metrics, such as *Home Mortgage Disclosure Act* (HMDA) data or local economic factors, including poverty rates, unemployment rates and median area family income.
- While I appreciate NCUA's initiative in this rulemaking to streamline the determination of stand-alone feasibility, I firmly believe that NCUA should only require overlap analysis and the standard application process when federal credit unions' business plans expect more than 5,000 *actual* members, rather than merely the *potential* for 5,000 members.

Reasonable Proximity through Online Access to Services

“Reasonable proximity” is considered when determining whether a group can be added to a charter. NCUA’s rules base “reasonable proximity” on the location of a “service facility” of the credit union. A “service facility” is currently defined as 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. In order to qualify as a “service facility,” a group’s members must be able to deposit funds, apply for a loan or obtain funds on approved loans.

Recognizing the advent of technology and its impact on commerce and consumer behavior, the proposal would amend the definition of a “service facility” to extend it to members of occupational select groups and pre-approved associational groups who have access to the credit union’s products and services through an “online internet channel,” such as a transactional website. The proposal explains that the “online internet channel” must be capable of accepting deposits for the member’s accounts, accepting loan applications from the member, or disbursing loan proceeds to the member.

However, it is important to note that the “service facility” definition change would **only** apply to the “reasonable proximity” requirement of a multiple common bond credit union and its select occupational and associational groups. The amended definition of “service facility” would **not** apply to the requirement that a credit union serving an underserved area “must establish and maintain an office or facility in [the underserved area].”

I strongly support this aspect of the proposal. Due to the growth of technology and digital communication platforms, today’s society is ubiquitous and widespread. Credit union members can form a cohesive bond and be integrally related regardless of geographic location because modern technology provides platforms on which individuals can connect to one another from anywhere in the world. In today’s modern world of teleconferences and webinars, credit unions members can participate in activities developing common loyalties, mutual benefits, and shared interests without geographic restriction. Consumers and federal credit unions should not be penalized for adopting the use of these technologies to serve and grow their memberships. Therefore, I strongly support NCUA’s initiative to incorporate online financial services into the definition of “service facility.”

Underserved Areas

Unlike the other federal charter types, a multiple common bond credit union can include in its field of membership an “underserved area.” To determine whether an area is “underserved,” NCUA uses a “concentration of facilities ratio,” which compares the concentration of depository institution facilities among the population within the non- “distressed” portions of the proposed area against the concentration of such facilities among the population of the area as a whole.

The new proposal would make two key changes to this ratio analysis. First, to prevent the ratio from being diluted or distorted by over-inclusive data, the proposed rule would exclude non-depository institutions and non-community credit unions from the “concentration of facilities ratio,” since neither would be able to serve the general public of the underserved area.

Second, the proposal would offer two additional alternatives for an area to qualify as “underserved.” The first alternative is to use the designation of “underserved counties” by the Consumer Financial Protection Bureau (CFPB). The second alternative would be a metric of the credit union’s own choosing, based on the “data of the Board and Federal Banking agencies,” that it would submit as evidence of underservice in a proposed area. The agency specifically asks for comment on additional ideas for a metric to determine “underserved areas,” including specifics on why and how.

I support this aspect of the proposal because the revisions would more accurately analyze the effectiveness of financial institutions in a particular area. To improve the ability of a credit union to evidence why an area is underserved, I suggest the NCUA consider other metrics, such as:

- HMDA, which requires banks, savings and loan associations, and other financial institutions to publicly report detailed data on their home lending activity. Data from HMDA can be used as a tool to determine whether current lenders are meeting the needs of those in minority, low-income, and otherwise underserved communities.
- PPCs, tracked by the Economic Research Service of USDA, are counties with recorded poverty rates in excess of 20% in each of the last three decennial census reports. According to the USDA, there are currently 353 PPCs in the United States, comprising 11.2% of all U.S. counties. PPCs need additional attention and focus from financial institutions.
- Other local economic factors, including poverty rates, unemployment rates, and median area family income. Each of these factors can be indicative of “underservice” in an area, even in spite of a proliferation of depository institutions in that area.

SEG Contractors

Under NCUA’s current rules, multiple common bond credit unions cannot add individuals who regularly work for an entity that is under contract to the sponsor of the Select Employee Group (SEG) listed in its charter. Instead, the agency only presently allows a *single* occupational common bond to add these SEG contractors, so long as the contractor has a “strong dependency relationship” with that sponsor.

Acknowledging that there is no distinction between single and multiple common bond credit unions in this area, the proposal would extend to *multiple* occupational common bond credit unions the ability to add individuals who regularly work for an entity that is under contract to the sponsor of the SEG listed in its charter, so long as the contractor has a “strong dependency relationship” with that sponsor.

I strongly support NCUA’s initiative to allow multi-SEG credit unions to serve independent contractors. 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.

Office/Industrial Park Tenants

The proposal would permit a multiple common bond credit union to include as a SEG the employees of an office or industrial park tenant, such as the retail tenants of a shopping mall or business tenants of an office building. This inclusion would be subject to two conditions:

1. Each tenant within the group must have fewer than 3,000 employees working at a facility within the park, and
2. Only those employees who work regularly at the park *during their employer's tenancy* would be eligible for FCU membership.

The proposal notes that a credit union would not need to individually list each tenant in its charter as a group sponsor, but could instead list the office/industrial park itself. Through this streamlined approach, a multiple common bond credit union would not need to obtain letters from each tenant requesting credit union services. In the preamble, NCUA explains that a multiple common bond credit union could serve the tenant employees by obtaining a letter from an authorized representative of the park itself, such as a leasing agent.

I strongly support NCUA's initiative to allow multi-SEG credit unions to serve the employees of an office or industrial park tenant. Similar to the inclusion on SEG contractors, this proposed amendment will allow multi-SEG credit unions to reach potential members who want and need affordable financial services.

Determination of Stand-Alone Feasibility

The Federal Credit Union Act presumes that a group of 3,000 or more can form their own, single association federal credit union, unless the group presents sufficient information for NCUA to determine that it cannot, due to either practicability or safety and soundness concerns. Historically, these groups have been required to fully describe their inability to create their own credit union. NCUA proposes to look at whether a group of more than 3,000, but less than 5,000, lacks available subsidies and has an overall lack of sufficient resources to feasibly or reasonably establish a new single common bond credit union, simply accepting a written statement asserting as much.

While I appreciate NCUA's initiative in this rulemaking to streamline the determination of stand-alone feasibility, I firmly believe that NCUA should only require overlap analysis and the standard application process when federal credit unions' business plans expect 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% of failures occurred in credit unions with fewer than 5,000 actual members, and the number of potential members of those credit unions was significantly larger. Therefore, if 5,000 actual credit union members were deemed to be the minimum number needed to charter a viable new credit union, the number of potential members needed to reach 5,000 actual members would be much larger. Accordingly, I recommend that NCUA finalize a rule that considers the number of *actual*

members as determining factor for the streamlined determination of stand- alone feasibility.

Thank you very much for the opportunity to comment on this proposed regulation. I applaud the agency's willingness to amend the Chartering and FOM Manual to provide much-needed relief for the credit union industry. While I strongly support this proposal, I encourage the agency to consider the recommendations outlined above, as I believe these suggestions will meet the needs for credit unions. If I can be a source of any further information on this comment letter, please do not hesitate to contact me at cgabriel@ascendfcu.org or by phone at (931) 454-1396.

Kind regards,

A handwritten signature in cursive script that reads "Caren C. Gabriel".

Caren C. Gabriel
President/CEO