

February 3, 2016

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

Re: Comments on Notice of Proposed Rulemaking Regarding Associational Common Bond – RIN 3133–AE31

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments regarding the National Credit Union Administration (NCUA) Board’s proposed changes to its chartering and field of membership (FOM) rules. CUNA represents America’s credit unions and their more than 100 million members.

To begin, we would like to thank NCUA for the process through which this proposal was created. The Board and agency staff very carefully listened to concerns credit unions have regarding the current field of membership model, and that effort is clearly reflected in many aspects of the proposal. CUNA strongly supports this modernization effort and encourages the NCUA Board to quickly adopt all of the proposed changes along with our additional suggestions, which will make NCUA’s rule even more robust.

We applaud NCUA for recognizing the stagnant nature of the agency’s FOM requirements when compared to some innovative state charters. The agency has made efforts to improve several processes for FOM expansion. This proposed rule is the first step in the process of updating NCUA’s FOM regulation. CUNA supports the proposed rule as a good first step, but acknowledges that NCUA can do even more. While we recognize that NCUA is restricted by provisions of the Federal Credit Union Act (FCUA), we believe there is additional flexibility to update these requirements so they are current with today’s economic and technological environment.

Why These Changes Are Needed

FOM reform is a top issue for CUNA and our member credit unions. CUNA’s federal and state chartered credit union members have expressed concern that the federal charter is falling behind many state charters and thus has become a barrier to the flexibility needed to operate dynamic and efficient cooperative financial institutions. CUNA remains committed to the dual charter system and advocates for the strengthening of both charters, as we believe both are necessary for a strong and vigorous credit union system.

CUNA's Federal Credit Union Subcommittee took the lead in analyzing the current FOM requirements and this proposed rule, with input from other CUNA subcommittees and individual credit union members. During 2015, two members of CUNA's Federal Credit Union Subcommittee converted to state charters as NCUA's community charter was inflexible and impaired the credit unions' ability to serve their communities. These CUNA members' decision to convert charters brought home the need for FOM reform. The number of federally chartered credit unions converting to state charters over the past decade provides even further evidence that the federal charter is oftentimes not as adaptable as state charters. Consequently, NCUA's proposed rule comes at a critical time and need for reform.

NCUA's Legal Authority

CUNA has noted that even prior to the issuance of this proposed rule, some banking trade associations questioned NCUA's legal authority to promulgate these proposed changes. Based on our review of the major provisions of the rule, and based on the Administrative Procedure Act (APA) and *Chevron* deference, the proposal by the NCUA appears to fall well within its statutory authority. The Board's interpretation of the FCUA appears reasonable and supported by the record. We are aware that some have expressed concern the proposal could allow redlining by credit unions. We find no evidence that the proposal would either allow or encourage credit unions to engage in this practice. Credit unions do not engage in discriminatory lending and are not subject to the Community Reinvestment Act (CRA) for that very reason. Further, the proposed definitions of well-defined local community (WDLC) appear to be within the scope of the FCUA for NCUA to define. The allegations of the NCUA overstepping its bounds, once an honest evaluation of the proposal is undertaken, are simply unfounded. In fact, CUNA suggests the changes are not extensive and could and should go much further.

What NCUA Should Address in a Final or Another Rulemaking

CUNA fully supports most of the changes in the proposed rule and we appreciate the NCUA for making these changes; however, we believe more can be done to put the federal charter on equal footing with most states. Before commenting on the proposed rule, we suggest the following additional improvements:

1. Merger Process Improvements

NCUA should facilitate mergers between credit unions with unlike fields of membership when there is no desire to retain the merged credit union's field of membership by establishing a process that eliminates the need for a conversion. Currently, the process first requires the charter change be approved so both credit unions have compatible fields of membership, and then the merger follows. NCUA could simplify this process by providing clear guidance stating the merged credit union can change its FOM and approve the merger in one step. An update to NCUA's chartering manual would be required for the charter conversion to be completely removed from the process. Also, NCUA should be more flexible (and quicker) to use its merger authority so a Federal Credit Union (FCU) does not have to be in steep decline before NCUA

allows a merger with another credit union, which will be less likely to be interested in the merger without assistance from NCUA.

2. FOM Type Conversions

NCUA should permit FCUs that convert to a community charter to keep approved groups in their FOMs that are outside the boundaries of their new community. Credit unions should not fear converting to a community charter and losing previously approved select employee groups (SEG). There are credit unions that have both communities and SEGs in their FOMs because of an emergency merger. This precedent could be extended to conversions so credit unions could switch to the charter that best fits the needs of the credit union while allowing it to continue to serve and add new members from an SEG. Fear of losing a SEG could possibly lead to business decisions that are damaging to a credit union in the long term.

State chartered credit unions converting to FCUs should be allowed to keep their current FOMs as well and be allowed to expand based on NCUA's FOM regulations. There is precedence through the emergency merger process for FCUs to have fields of membership that would not be normally allowed under NCUA rules. If these credit unions can keep the members and field of membership that would not otherwise be permissible, then other credit unions should have this opportunity.

In the same vein, NCUA needs to address expansion by credit unions with grandfathered FOMs that do not fit under the current or proposed rules. Some credit unions through mergers and other reasons have FOMs that keep them from expanding and serving new members. Often, these are community chartered credit unions that serve FOMs that already fit into one of the WDLC categories. For these credit unions to expand, they need to drop communities or convert to a state charter. NCUA should develop ways for these credit unions with legacy FOMs to use the new regulations without dropping their old FOMs and potential consumers that still need financial services.

3. Full Narrative Approach

NCUA should reinstate the pre-2010 narrative approach for defining a community to be used when a community cannot be adequately defined by a statistical area or political jurisdiction. The narrative approach is necessary because not all communities fit into NCUA's statistical or single political jurisdiction requirements to be a WDLC. Nonetheless, NCUA's proposed addition of an area adjacent to a Core Based Statistical Area could give credit unions most of the flexibility that was lost when the narrative approach was removed from the Chartering Manual, as long as NCUA does not impose difficult requirements on its use.

4. Process Reform and Transparency

NCUA needs to evaluate further the agency's processes for approving FOM expansion. Many credit unions have complained to CUNA that the FOM expansion applications are onerous. One common complaint is the requirement for marketing plans to demonstrate how a credit union will

serve an area. Whether to serve an area should be a business decision for a credit union and not be subject to approval.

We urge NCUA to develop methods for automatic approval for FOM expansion for all credit unions similar to what NCUA provided in the 2014 associational common bond final rule. For example, if NCUA finalized the use of Congressional districts as a community, then all Congressional districts should be automatically approved for a credit union's FOM. Statistical areas, single political jurisdictions (SPJs), and rural districts also should get automatic approval.

5. More Access to Underserved Areas for All Credit Unions

The agency needs to do more to help credit unions find and serve underserved areas. Unfortunately, the FCUA only allows multiple common bond credit unions to specifically serve an area designated as underserved. CUNA plans to work with Congress to change this restriction, as all credit unions should be able to help those who need financial services without restrictions.

Nonetheless, NCUA can do more to help all credit unions provide financial services to underserved areas. First, in accordance with the FCUA, an underserved area that is contiguous with the boundaries but outside of the boundary of a community, whether it be an SPJ, statistical area or a Congressional district, should be approved as part of the community credit union's FOM. Furthermore, as you will see below, CUNA strongly encourages the NCUA to eliminate, or at the very least, raise the population limit for statistical areas. This population limit should not apply to underserved areas as there should be no regulatory barrier that in any way could limit credit union access to the most needy Americans.

Last, as CUNA's Federal Credit Union Subcommittee discussed in a meeting with Vice Chairman Metsger, NCUA should work to develop a list of underserved areas and make the list available to credit unions. CUNA members want to serve more underserved areas but often find the process of finding and applying to NCUA to serve these areas expensive and time consuming. Pre-approved underserved areas would ensure that credit unions could direct their resources towards serving the area instead of finding underserved areas and using resources on consultants for applications when there is no certainty that NCUA will approve service to an underserved area.

Comments on Proposed Rule

Below are section-by-section comments on the proposed rule.

1. Population Limit for Well-Defined Local Community Based on Statistical Areas

NCUA should increase the population limit for a WDLC based on statistical areas beyond the 2.5 million in NCUA's current FOM regulation. CUNA recommends that NCUA eliminate the population limit, or if the agency needs a population limit, it should be based on the most populous SPJ. The use of a Core Based Statistical Area (CBSA) or SPJ to define a WDLC in itself limits the population that a credit union can serve as both are made up of finite areas.

Furthermore, CBSAs were designed to define communities, so a population limit splits these communities.

The population limit is not an FCUA requirement. It appears that NCUA based the population limit on what the United States Census defines as a metropolitan division. This is described as “smaller groupings of counties or equivalent entities defined within a Metropolitan Statistical Area containing a single core with a population of at least 2.5 million.”¹ Metropolitan divisions serve as subdivision of larger CBSAs. When a CBSA exceeds 2.5 million in population, it can be divided into metropolitan divisions.

A CBSA can serve as a proxy for a WDLC, but just like an SPJ, it does not necessarily describe or represent an entire community or a community that needs financial services from a credit union. Statistical areas are described by the Office of Management and Budget (OMB) as a “geographic entity associated with at least one core of 10,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties.”²

A CBSA does not over include, but under includes communities because of the difficulty in truly defining a community by anyone other than the members of a community. Under inclusion is exacerbated by the 2.5 million-population limit which, because of other NCUA limitations, has prohibited the use of CBSAs for community chartered credit unions in larger metropolitan areas.

The current limit serves to discriminate in favor of community credit unions in areas with large SPJs even though a CBSA or Combined Statistical Area (CSA) can better represent a community because it is not subject to political jurisdiction border limitations. For Example, Los Angeles County has a population of 10 million people and one credit union can serve that county, but a credit union could not serve an entire CBSA or CSA as proposed with a similar population.

Ultimately, the 2.5 million-population limit constrains who credit unions can serve and makes the other proposals for the use of statistical areas less useful. Furthermore, it makes the removal of the “core area” requirement necessary as that requirement, along with the population limit, restricts areas that credit unions can serve. NCUA’s current rules are designed to limit a multiple jurisdiction charter to smaller populations and land areas than enjoyed by SPJs. Instead, the chartering rules should be designed in such a way to allow multiple political jurisdiction community chartered credit unions to expand to the limits set by SPJs.

For these reasons, CUNA supports NCUA eliminating the population limit, or at the very least, setting it equal to that of the most populous SPJ, which would put community credit unions on a more equal footing. CBSAs and CSAs adequately represent communities as much as some large SPJs and thus, the population served should not be limited by an arbitrary number.

¹ See United States Census, https://www.census.gov/geo/reference/gtc/gtc_cbsa.html. 65 Fed. Reg 82227, 82236 (December 27, 2000).

² 65 Fed. Reg. 82227, 82228 (December 27, 2000).

2. Core Area Service Requirement

We support NCUA's proposal to eliminate the requirement for community chartered credit unions wishing to serve a community consisting of a CBSA to serve the "core area" of the CBSA. NCUA's current FOM regulation for community credit unions requires that credit unions that wish to serve a CBSA must serve what NCUA defines as the "core area" of the CBSA. NCUA defines the core area as the most populous county or named municipality in the CBSA's title. The requirement to serve a "core area" along with the population limitation limit the areas that a credit union can serve in a CBSA.

For example, under the current regulation, a credit union wishing to serve the Riverside-San Bernardino-Ontario metropolitan area would not be able to serve the area because the population of the area is over 4 million (see below), but if it could, it would have to serve the "core area" which is San Bernardino County, CA, as it is the named county with the largest population in the CBSA. For reference, San Bernardino County has a population of 2.1 million and is 20,056 square miles of area (an area larger than 7 states). The result is that the credit union would be forced to serve the City of Needles (population 5,000) which is 212 miles away from the City of San Bernardino, but likely could not serve the City of Riverside (population 316,000) which borders San Bernardino County, because of the requirement to serve the "core area" and 2.5 million population limitation. Another way of looking at the example is that NCUA defines the core area as an area of 20,056 square miles, but not the most populous city in the CBSA. A city 212 miles from the population center is part of the "core area," but the two most populous cities that sit a few miles apart and share the name "Inland Empire" to describe the region, which denotes a community, could possibly not be served by a community chartered credit union serving the CBSA because of the requirement to serve the "core area" and the population limit.

Serving a CBSA or "core area" is not required by the FCUA. They are a standard the agency devised for describing a WDLC that is not an SPJ (county or city). NCUA should not place limitations on service areas in statistical areas, because these limitations or requirements can divide these areas into portions that do not represent a viable community or exclude the viable portions of a community.

We have seen criticism that the elimination of a credit union's requirement to serve the "core area" could allow credit unions to "redline." The very fact that credit unions have an FOM requires they only serve select groups of people. Whether this is defined by a common bond or community, Congress places limits on who credit unions can serve in the FCUA by design.

A priority of CUNA and our member credit unions is the ability to provide service to more underserved areas. Unfortunately, the FCUA only allows multiple common bond credit unions to serve designated underserved areas. The NCUA should join CUNA and credit unions in asking Congress to amend the FCUA to allow all charters to serve underserved areas.

3. Limit as Applied to a Well-Defined Portion of a Core Based Statistical Area

CUNA supports removing the restriction that prohibits community chartered credit unions from serving a portion of a CBSA if the overall population of the CBSA exceeds 2.5 million. This limitation excludes large CBSAs from being used as a WDLC. The fact that the current regulation allows a community chartered credit union to serve a portion of a CBSA with a population of 2.5 million or less as long as the credit union serves the core area, makes the limitation superfluous.

The requirement clearly renders all CBSAs with populations that exceed 2.5 million useless for the purpose of being used as a WDLC for a community chartered credit union. Under the current FOM regulation, the Riverside-San Bernardino-Ontario metropolitan area used in the example above would not be allowed to be used as a WDLC. A credit union seeking to use this CBSA could not use it because its population exceeds 2.5 million. A community credit union seeking to serve this population center, known as the Inland Empire, would be forced to base its WDLC on a county or city, which would limit the population served to the City of Riverside with a population of 315,000, or it would be forced to serve a county with an area greater than several states, but not the true Inland Empire community.

4. Combined Statistical Areas

CUNA supports NCUA's proposal to let CSAs serve as a WDLC for community chartered credit unions. A CSA is defined by the Census Bureau as consisting of two or more adjacent CBSAs that have substantial employment interchange. The CBSAs that combine to create a CSA retain separate identities within the larger CSA. A CSA goes beyond the concept of a CBSA and yet is constituted by a combination of CBSAs. Additionally, the Census Bureau requirement for substantial employment interchange further substantiates commonality.

CUNA has used the Washington-Baltimore-Arlington DC-MD-VA-WV-PA CSA, as defined by OMB, as an example of why a CSA should be a WDLC. This area is comprised of two MSAs and some smaller urban areas with strong community ties. It has a population of 9.5 million, which is less than Los Angeles County. There are many areas in this CSA that strongly identify with both CBSAs that comprise the CSA. Furthermore, because of the strong interdependent nature of both CBSAs, families and neighbors may work or have other activities in different CBSAs but still be part of the same household or neighborhood.

Serving all or part of a CSA gives credit unions flexibility to serve an entire community that normally would not fall into a single CBSA. In addition, allowing CSAs to be WDLCs will give community chartered credit unions the flexibility to serve more entire communities that might otherwise be excluded from the current FOM regulation.

5. Addition of Areas Adjacent to a Core Based Statistical Area

CUNA supports the proposed addition of an area adjacent to a CBSA. This proposed change would allow a credit union to serve a contiguous area outside of a CBSA, CSA, SPJ or rural district if that area is within the WDLC. CUNA is concerned that NCUA may impose policy or process hurdles that make this provision less flexible. NCUA states “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, first, subjectively demonstrate a sufficient totality of indicia of interaction or common interests among residents of the expanded community, and then to establish through the credit union’s business and marketing plans its ability and commitment to serve the entire expanded community.”

As discussed earlier in this letter, credit unions should be approved to serve areas without the need for marketing plans and proving a commitment to serve. CUNA urges the agency to adopt reasonable standards for use of this provision with pre-approved areas. For example, a community credit union with an FOM based on an SPJ should be allowed to add areas adjacent to the SPJ when they share the same name. This is most evident when cities and unincorporated areas share the same name. Another example could be the automatic addition of SPJs that are split by Congressional districts.

6. Individual Congressional District as a Well-Defined Local Community

CUNA suggested to NCUA and strongly supports the addition of a Congressional district as a WDLC. A Congressional district inherently defines a community with shared interests. Congressional districts are contiguous in land area and, with an average population of slightly over 700,000, are much smaller than many SPJs. They are also less than the 2.5 million currently allowed for an MSA and the ultimate “political” jurisdiction. An FCU would recognize that the exact boundaries of a Congressional district might change every decade, but it would be able to continue to serve anyone who is a member-of-record at the time of re-districting. As CUNA’s earlier recommendations state, we think an FCU should be able to include a Congressional district combined with other contiguous communities.

7. Rural District Multistate-Expansion Limit

CUNA does not support the requirement that limits rural district credit unions to serving only those states contiguous with the headquarters. The Act gives NCUA the authority to define “rural district,” and the goal should be to bring credit union services to consumers who otherwise do not have access to these diverse services. The only limitation should be the credit union’s ability to serve the district, and with the realities of internet banking, a credit union with an acceptable level of online banking services should be authorized to provide membership to people living in rural areas of the country. A population limit serves as an appropriate check on the area a credit union can serve. Any other restrictions are redundant and make the rule less flexible.

8. Rural District Population Limits

CUNA supports raising the population limitation to 1 million people. This is the only requirement that should be placed on credit unions. We think that previously higher limits allowed under the current rule should be grandfathered in.

9. Underserved Areas

CUNA supports NCUA's amendment that would allow agency staff to recalculate the concentration of facilities ratio analyses excluding non-community credit unions and other financial institutions not open for deposit. The agency also needs to do more, as mentioned above, to remove any regulatory barrier to credit unions serving underserved areas.

10. Reasonable Proximity through Members' Online Access to Services

Under the proposal, the definition of "Service Facility" is modified to include a transactional website or mobile platform that permits – *at a minimum* – accepting shares for members' accounts, accepting loan applications or dispersing loans. CUNA supports this amendment as modern technology no longer necessitates the existence of a physical branch to enable a credit union to serve its members, nor should a physical branch be the only indicia that a credit union is within "reasonable proximity" to the location of the group. This amendment contemplates modern banking technology and brings the rule into the 21st century. Further, the rule requires a demonstration that the modern technology must be able to accept shares, accept loan applications or disperse loans. These criteria will inherently limit the ability of a credit union to broaden its geographic reach without having the capability to have a presence in the region. This amendment would thus appear to clearly fall within the auspices of the FCUA.

While we appreciate the NCUA extending the ability to demonstrate the existence of a "Service Facility" for purposes of establishing "reasonable proximity," we believe the NCUA should likewise strongly consider extending the same ability for purposes of establishing a presence in an underserved area. This would allow a credit union to target and serve an area that might otherwise be underserved.

11. Inclusion of Select Employee Group Contractors in a Multiple Common Bond

This proposal extends to *multiple* occupational common bond credit unions the ability to add persons who work regularly for an entity that is under contract to any of the multiple SEG sponsors listed in its charter, provided the contractor has a "strong dependency relationship" with the sponsor. The "strong dependency relationship" test is currently available to *single* occupational common bond credit unions. CUNA supports this amendment. In today's modern workforce, it is not uncommon for businesses to outsource work to contractors (independent or otherwise) or have groups that, although not employees, are integral to the functioning of the operation. A single occupational common bond credit union can already serve those individuals that have the strong dependency relationship to the sponsor. There appears to be no reason that a multiple common bond credit union could not also serve those that are so closely associated with

the individual sponsor, simply for the fact that the credit union is able to serve multiple common bonds.

12. Inclusion of Office or Industrial Park Tenants in a Multiple Common Bond

This proposal allows multiple common bond credit unions to include as an SEG the employees of a park's tenants in its FOM. The limitations for the SEG are twofold: 1. 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 are eligible for membership. New tenants joining the park would be eligible provided both conditions are met.

CUNA supports this method of establishing an SEG and believes it will provide some flexibility for a credit union. While the NCUA has indicated it will allow the demonstration of the presence of a tenant from an authorized representative of the park itself, CUNA suggests the NCUA provide flexibility and clarification as to what documentation will be needed to demonstrate the presence of a group in a facility. Many properties are managed in different ways. Therefore, as long as the credit union can demonstrate sufficient verifiable knowledge of a valid tenant, that should suffice for purposes of the rule. We suggest NCUA provide additional clarity as to the examiner expectation in this area.

Finally, CUNA suggests that 5,000 employees would be a better threshold for the number of employees working at a facility or industrial park. Some industrial parks can be quite large and contain large numbers of employees.

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

The FCU Act currently presumes that groups of 3,000 or more can form a credit union. However, in NCUA's experience, groups between 3,000 and 5,000 members frequently, if not always, cannot feasibly nor reasonably establish a new single common bond credit union. Currently, an overlap analysis is required for groups between 3,000 and 5,000. This proposal eliminates that analysis, and the NCUA would accept a written statement indicating the conditions that exist for why a group cannot form its own credit union.

CUNA believes the threshold of 5,000 could reasonably be increased to 10,000. Based on NCUA's own statistics, the difficulties in creating a new credit union and one that would be viable are many in this day and age. The dearth of new credit unions over the past 10 years is evidence alone of this difficulty. NCUA itself notes that 80 percent of credit union failures occurred in credit unions with fewer than 5,000 members. CUNA believes the 10,000 threshold is a better cutoff that represents the point at which a standalone single common bond credit union could reasonably have a chance at success. CUNA notes that for categories in this range, NCUA in the proposal is not eliminating the requirement of demonstration that a group cannot establish a new single common bond credit union, but is now accepting a statement in lieu thereof. NCUA can still accept or reject (and even investigate the veracity of) this statement during the application process, and it is merely adjusting the extent of the documentation that will be required. Thus, this provision appears to be well within the NCUA's statutory authority. Therefore, CUNA supports this proposal and recommends an increase in the threshold.

14. Other Persons Eligible for Credit Union Membership

This proposal will allow a credit union to include within its common bond those who have been honorably discharged as a veteran of any branch of the United States Armed Forces listed in its charter, continuing eligibility for credit union membership beyond their time of active duty. CUNA supports the NCUA honoring the service of our Armed Forces by providing access to credit union services beyond their active duty.

15. Trade, Industry or Profession (TIP) as a Single Common Bond

NCUA supports the expansion of the definition of a TIP charter to include those vendors, contractors, or other groups closely associated with a particular trade or industry. We believe this provision brings the definition current with many employment practices where an employer might outsource or use independent contractors to perform work for the company. Because of the strong dependency, it makes common sense to allow them to be served by the credit union. CUNA acknowledges the new rule implements a test that will require the credit union to show a “strong dependency” and a demonstration of the likelihood of a significant economic impact on either or both parties if one were unable to continue in its operations without doing business with the other. We trust the NCUA will use the same interpretation for demonstrating that this test will mirror that of a single occupational common bond and a SEG sponsor’s own employees.

NCUA did not propose to eliminate geographic limitations for TIPs as CUNA suggested last year. A geographic restriction is not required by statute since a TIP is a single common bond FCU. Moreover, NCUA’s own policy does not apply the geographic restriction “for credit unions currently serving a national field of membership or operating in multiple states.” Therefore, it is logical to remove this mandate allowing other credit unions to explore the desirability of operating with a TIP charter. Modern technology certainly allows a credit union to address any membership service concern that NCUA may have had when it first imposed this geographic limitation.

Conclusion

CUNA fully supports the NCUA’s proposed FOM rule. If you have questions or would like to discuss our comments in more detail, please contact Ryan Donovan, Chief Advocacy Officer, Elizabeth Eurgubian, Deputy Chief Advocacy Officer for Regulatory and Executive Branch Relations and Senior Counsel, or me.

Sincerely,



Jim Nussle
President & CEO