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direct dial: 248.723.0521

Steve Van Beek
Attorney and Counselor

email: svb@h2law.com

June 27, 2014

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

Re: Comments on Proposed Rule on Associational Common Bonds

Dear Mr. Poliquin:

Our law firm represents credit unions throughout the country and we appreciate the opportunity to provide comments on their behalf. The comments below are intended to improve this rulemaking and ensure NCUA has clearly articulated its expectations so that credit unions can properly prepare for and comply with the field of membership requirements.

Quality Assurance Reviews

Initially, it is important to provide comments on the Quality Assurance Reviews of existing associations and organizations conducted by NCUA's Office of Consumer Protection. This approach was first publicly mentioned – in one sentence – in a Letter to Federal Credit Unions issued in September 2013.¹ The current proposed rule provides additional details on NCUA's quality assurance reviews; however, it does not sufficiently outline the process NCUA is following for these reviews.

It is important to remember that each association or organization that has been added to a federal credit union's charter has been approved by NCUA. As NCUA continues these reviews, it should provide guidance to federal credit unions on the process. Based on NCUA's brief description, these reviews appear to be extremely subjective and we strongly urge NCUA to ensure these reviews are being conducted using objective and transparent standards.

Additionally, these ongoing reviews raise a number of questions that need answers. What type of notice does NCUA provide the FCU? What type of notice does NCUA provide to the association or organization? How are associations selected for Quality Assurance Reviews? What is the timeframe for the review? How does NCUA (or a FCU) determine if an association is

¹ Letter to Federal Credit Unions 13-FCU-03 included this statement: "NCUA's Office of Consumer Protection has begun conducting quality control reviews of federal credit unions that may be improperly using associations to sign up members without a common bond."

“operating according to their official bylaws in a way that impermissibly affects credit union membership”?² Is there an appeal process? If so, is the appeal process independent from NCUA (or the OCP)?

As these questions make clear, NCUA should not rely on a proposed rule for new associations and organizations to make policy decisions regarding associations and organizations that have already been approved by NCUA. In order for credit unions to understand the review process NCUA is using – to conduct their own reviews and due diligence – NCUA should outline its process in a Letter to Federal Credit Unions, Interpretative Ruling & Policy Statement, or a separate proposed rule. Regardless of the approach, NCUA should provide credit unions and other interested parties the opportunity to comment on these Quality Assurance Reviews.

By adding transparency to the process, NCUA, credit unions, and associations would better understand the guidelines and expectations.

Threshold Requirement – Including One-Year Waiting Period

The proposed rule would add a threshold question of whether “the association has been formed primarily for the purpose of expanding credit union membership.”³ If so, NCUA would deny the application. If the association was formed to serve a separate function, NCUA would use the totality of circumstances test to review the request. Additionally, NCUA is proposing to add a corporate separateness test to the totality of circumstances test. Unfortunately, the proposal does not demonstrate the need for the separate threshold requirement. The formation question could easily be addressed in the totality of circumstances test (as it is under the current rules) and the addition of the corporate separateness factor renders the threshold analysis unnecessary. If NCUA does adopt the threshold requirement, it should also clearly outline the appeal process available to the FCU (and the association).

A particularly worrisome aspect of the proposal is NCUA’s proposed one-year waiting period before an association can be added to any FCU’s field of membership. First, NCUA buried this requirement in Footnote 17. If NCUA is serious about adding a one-year waiting period, it needs to provide sufficient notice to credit unions. A brief mention in a footnote of the preamble fails this test. A credit union reviewing the proposed language to NCUA’s Chartering and Field of Membership Manual would not receive any notification about a one-year waiting period.

The proposed one-year waiting period also brings up numerous questions. When does the one-year period start? Can a FCU submit a request during the one-year period – that would be effective after the waiting period? If a national association establishes a new local chapter, is the one year period met due to the national association’s longevity? We believe it should. Additionally, because of the lack of clarity in the proposed rule and the burden included in the one-year waiting

² 79 *Fed. Reg.* 24625.

³ *Id.*

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period, we request that – if NCUA adopts a waiting period – it make that portion of the rule effective one year after the final rule is published in the *Federal Register*. This will ensure both credit unions and associations have been provided appropriate notice of the one-year waiting period.

Comments on Burden

The proposed rule indicates that NCUA does not believe the proposed rule will create any significant burdens for FCUs. We disagree. The proposal would streamline the approval process for certain associations (which we agree with); however, it also adds to the due diligence the credit union (and the association) must conduct prior to submission to NCUA for approval.

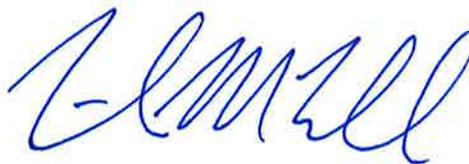
Further, as highlighted above, NCUA's Quality Assurance Reviews significantly increase the burden for credit unions and associations. As it stands currently, NCUA has not sufficiently outlined the process it will use to conduct these reviews or the steps credit unions can take to conduct their own internal reviews. We strongly recommend NCUA outline its process in a separate communication and allow public notice and comment.

We appreciate the opportunity to comment on this proposed rule and NCUA's Quality Assurance Reviews. We understand NCUA's intentions with the proposed rule, but we also understand credit unions and the unintended consequences they face when the process used by NCUA has not been fully articulated or is not transparent. Should you have any questions, please feel free to contact us.

Sincerely,



Steven M. Van Beek, Esq., NCCO
Attorney & Counselor
Howard & Howard Attorneys PLLC
450 West Fourth Street
Royal Oak MI 48067



Michael M. Bell, Esq.
Attorney & Counselor
Howard & Howard Attorneys PLLC
450 West Fourth Street
Royal Oak MI 48067