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June 30, 2014

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

RE: Comments on Notice of Proposed Rulemaking for Associational Common Bonds

Dear Mr. Poliquin:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing regarding the National Credit Union Administration's (NCUA) request for comment on the proposed rule on the associational common bond requirements in the Chartering and Field of Membership Manual.

General Comments

NAFCU would like to, first and foremost, express our appreciation for NCUA's work to propose changes to its chartering and field of membership regulations. Over the past several years, NAFCU has requested that NCUA improve the process for expanding a federal credit union's field of membership. The proposed rule constitutes an important step to achieving the goal of improved field of membership rules. However, as discussed in detail in this comment letter, NAFCU cannot support aspects of the rule as proposed.

NAFCU has always supported the ability of federal credit unions to add associations to their fields of memberships within the purview of the Federal Credit Union Act (FCU Act). NAFCU has some members that serve associations and wish to include more within their fields of membership, as well as some members who have not and will not add associations within their fields of membership. We believe that credit unions are strong because of such diversity.

The proposed rule under consideration follows NCUA's Office of Consumer Protection's September 2013 Letter to Federal Credit Unions, which highlighted the agency's concern about advertisements stating federal credit unions' fields of membership are "open to anyone." Through this letter, the agency clarified its associational common bond and advertising requirements, as well as explained the consequences for failing to comply with these requirements. NAFCU supported this action because we believe that credit unions should operate and grow legitimately within the established field of membership guidelines.

NCUA, however, has chosen to proceed with a rulemaking that could hinder credit unions' legitimate growth. The proposal would establish a threshold requirement before application of the "totality of the circumstances" test to determine whether or not an association was primarily formed for the purpose of expanding credit union membership. If NCUA makes such a determination, the association would be denied inclusion in the federal credit union's field of membership without applying the totality of the circumstances test. Additionally, the proposal's preamble highlights NCUA's existing efforts with regards to associational group quality review.

NCUA's stated reason for pursuing this rulemaking is the agency's concern that federal credit unions have been adding associations to their fields of membership that may not fully satisfy the intent of the associational common bond rules. Also, in order to prevent abuse of the membership system, NCUA has proposed this rule and implemented a Quality Assurance Review process to monitor previously-approved associations.

NCUA's concern is understandable, but its proposed action is not justifiable. Freedom of association is a fundamental right under the United States Constitution. While NAFCU supports NCUA's efforts to ensure that only groups who meet the current associational common bond requirements are added in a federal credit union's field of membership, we do not believe it is appropriate for a regulator to substitute its own judgment for the association's stated motive for formation. Further, NAFCU questions whether NCUA is in keeping with both the letter and the spirit of the FCU Act as the Quality Assurance Review enables NCUA to remove associations from a federal credit union's field of membership without due process.

Threshold Requirement Regarding the Purpose for Which an Association is Formed

The proposal would establish a threshold requirement before application of the "totality of the circumstances" test to determine that an association was not primarily formed for the purpose of expanding credit union membership. If NCUA makes such a determination, the association would be denied inclusion in the federal credit union's field of membership without applying the "totality of the circumstances" test. Further, the threshold requirement would also mandate that the association has been operating as an organization independent from the requesting federal credit union for one year prior to the application to add the group to the federal credit union's field of membership.

NAFCU strongly opposes this aspect of the proposal. Because NCUA's Chartering and Field of Membership Manual currently requires the agency to evaluate an application by the totality of the circumstances, NAFCU believes that adding a step before this evaluation is unnecessary.

NCUA should not look at certain factors in a vacuum and create a mere administrative bar. Additionally, the requirement that an association be in existence for at least one year is arbitrary and unnecessary. NAFCU and our members believe that it should not matter how long the association has been in existence, only that it serves its members and meets the criteria of the "totality of the circumstances" test.

The purpose of an association lies in its substance. To test the purpose of an association, therefore, one must evaluate the holistic nature of the association. Such an evaluation must consider whether members participate in furtherance of the goals of the association, whether the association sponsors other activities, the association's membership eligibility requirements and the frequency of an association's meetings. These are all considerations already evaluated under NCUA's current "totality of the circumstances" test. Accordingly, NCUA's existing rules provide an appropriate and sufficient mechanism for identifying and disqualifying associations that do not serve a purpose independent of expanding credit union membership. Therefore, NAFCU urges NCUA to not incorporate the proposed threshold determination.

While NAFCU does not support any threshold determination requirement, should NCUA move forward with such a requirement, we ask that the agency develop specific factors for determining when the threshold requirement is met. Including objective standards would provide credit unions with needed clarity to effectively meet this threshold determination requirement.

Addition of Corporate Separateness Criterion to the "Totality of the Circumstances" Test

The proposal would also expand the "totality of the circumstances" test by adding an additional criterion regarding corporate separateness. Specifically, NCUA proposes to review if there is corporate separateness between the association and the federal credit union. NAFCU supports this test. Under the proposal, NCUA will consider several factors in determining if corporate separateness exists between an association and a federal credit union. These factors include a consideration of whether an association maintains a separate physical location, which does not include a P.O. Box or other mail drop or on premises owned or leased by the federal credit union.

While NAFCU does not object to the addition of a corporate separateness criteria, we question whether the proposed methodology is appropriate. NAFCU believes that it is inappropriate to measure the independence of an association by evaluating whether it maintains a separate physical location. NAFCU continues to hear from our members that a physical presence is not necessary for all associations. Further, there are circumstances where a separate physical location is impractical. One example of this would be a federal credit union which has an association comprised of the tenants of a building that the federal credit union owns. In such circumstances, where the association exists to foster the common bond of the tenants, it would be impractical to require the association to have a separate physical location outside of that building.

Under the proposal, the mere fact that association maintains no physical location, or shares the physical location of the federal credit union would indicate a lack of corporate separateness.

NAFCU disagrees. The physical location of an association has no bearing on its separate corporate existence from the federal credit union. Like the purpose of an association, the corporate identity of an association lies in its substance, not its mailing address. NAFCU and its members believe that leasing space to an association which the credit union serves does not indicate a lack of corporate separateness.

Automatic Approval

The proposal would provide for automatic approval of certain associations for inclusion in a federal credit union's field of membership. These associations would automatically be deemed to have satisfied the association common bond requirements and would not be subject to the threshold determination, or the "totality of the circumstances" test. Specifically, the proposal provides automatic approval for certain associations, such as alumni associations and labor unions, which NCUA has historically and regularly determined satisfy the association common bond requirements.

NAFCU supports NCUA's proposal to provide automatic approval for certain associations for inclusion in a federal credit union's field of membership, and appreciates the agency's efforts to streamline this part of the field of membership expansion process. While NAFCU agrees with the groups the agency included in the proposal, we also suggest that NCUA provide automatic approval for parent-teacher associations, fraternal organizations, military-affiliated associations and 501(c)(3) nonprofits. Due to their structure, practices and functions, these organizations should be recognized as valid associations based on the associational common bond requirements.

Quality Assurance Review

Outside of the proposed rule's changes to the Chartering and Field of Membership Manual, the preamble section of the proposal highlights NCUA's Office of Consumer Protection's ongoing Quality Assurance Review process. The agency notes that the program reviews associational groups on a case-by-case basis to determine their compliance with the current associational common bonds requirements, and if the agency finds that these associations no longer meet the "totality of the circumstances" test, it will remove them from the federal credit union's field of membership.

NAFCU has concerns and questions with this program. Because NAFCU supports the ability of federal credit unions to add members in accordance with the FCU Act, we have concerns regarding NCUA's process for conducting these reviews.

NAFCU believes these reviews could usurp the rights of associations who have been previously approved in accordance with the Chartering and Field of Membership Manual as the Quality Assurance Review enables NCUA to remove associations from a federal credit union's field of membership without due process. In this regard, NAFCU notes that the agency fails to cite or reference the statutory authority on which it relies in conducting these reviews. NCUA has also previously failed to provide sufficient notice to associations or federal credit unions that the

agency will continue to monitor the association's membership qualifications, and could divest a previously approved association from a federal credit union's field of membership.

The FCU Act fundamentally provides that "once a person becomes a member of a credit union...that person or organization may remain a member of that credit union until the person or organization chooses to withdraw from the membership of the credit union" 12 U.S.C. §1759(d)(3). Under this fundamental right, NCUA does not have the authority to remove a person or group from a credit union's field of membership. In this spirit, NAFCU believes that NCUA also lacks the direct authority to remove an association from a federal credit union's field of membership. The Quality Assurance Review, however, potentially does exactly that- it allows NCUA to divest a previously approved association from a federal credit union's field of membership. To be clear- NAFCU is not supporting associations that to not comply with the FCU Act, but we believe that credit unions should be afforded due process.

Geographic Limitation

In highlighting its Quality Assurance Review, NCUA also noted concerns with the geographical limitation of associations.

In 1998, NCUA established that an associational common bond does not include a geographic definition and can operate nationally[1]. NAFCU and our members believe that it is critical that NCUA's chartering policy continue to not include a geographical limitation.

Geographic proximity is no longer a significant factor for the formation and purpose of an association in today's environment. Due to the explosive growth of technology and digital communication platforms, today's society is ubiquitous and widespread. Association 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, association members can participate in activities developing common loyalties, mutual benefits, and shared interests without geographic restriction.

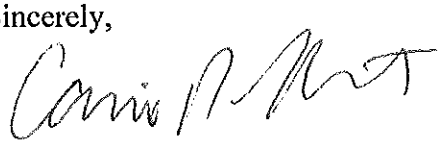
Associations and federal credit unions should not be penalized for adopting the use of these technologies to serve and grow their memberships. Growth of an association from a local membership to include multiple states or regions is a logical step, and presents no risk to the associational common bond relationship because advancing communication technologies provide associations the ability to serve larger memberships. Therefore, NAFCU urges NCUA to maintain its current chartering policy and not impose a geographical limitation on associational common bonds.

We look forward to continuing to work with the NCUA to address ways that the agency could streamline and refine existing regulations in order to more effectively grow and support the dynamic credit union industry. I look forward to hearing from you regarding this important

[1] IRPS 99-1, 63 Fed. Reg. 71997 (Dec. 30, 1998).

matter. Should you have any questions or would like to discuss these issues further, please feel free to contact me by telephone at (703) 842-2234 or by e-mail at chunt@nafcu.org or Alicia Nealon, NAFCU's Regulatory Affairs Counsel at anealon@nafcu.org or (703) 842-2266.

Sincerely,



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