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

FEB04'16 AM11:07 BOARD

FROM: Gene Brody, President/CEO  
Bay Ridge Federal Credit Union

RE: Comment Letter to the Proposed Amendments to NCUA's Field of Membership  
and Chartering Manual 12 CFR Part 701

DATE: February 2<sup>nd</sup>, 2016

Dear Mr. Poliquin:

On behalf of the Bay Ridge Federal Credit Union, we would like to thank you for the opportunity to express our views on the recent proposal by the NCUA Board addressing the field of membership (FOM) rules of the National Credit Union Administration found in 12 CFR Part 701.

The management team of Bay Ridge Federal Credit Union sincerely appreciates the opportunity to provide commentary in regards to much needed reforms to the current FOM rules. Although there are a number of positive aspects of this proposal that we support, there is also some concern that the Board did not go as far as the law allows. The agency is taking what we consider an unnecessarily restrictive view of the Credit Union Membership Access Act (CUMAA) and is missing the mark by not removing some of the unnecessary restrictions placed in the FOM rules back in 2010.

We still feel that this proposal is a significant step in the right direction that, if combined with a few changes and enhancements allowed within the CUMAA, could help provide much needed flexibility for those federal credit unions seeking to grow, diversify and better serve their members.

Therefore, we are pleased to provide our thoughts and recommendations regarding the NCUA Board's proposed amendments to federal FOM rules.

### ***Modernizing Reasonable Proximity to the 21<sup>st</sup> Century Delivery Channels***

We want to start out with a positive. Our credit union feels that perhaps the most significant and needed parts of the proposal is the revised definition of "service facility" for SEG expansion to include online, computer, tablet and mobile phone delivery channels to determine reasonable proximity for SEG expansions. This is true modernization and brings SEG expansion and service delivery recognition by NCUA into the 21<sup>st</sup> century. Good work on this one.

The old 25-mile radius for reasonable proximity to a branch for SEG expansions was not only outdated, it also prevented the extension of credit union services to a lot of businesses and associations that needed them badly for their employees and members.

Since the NCUA Board did not elect to extend the modernized view of delivery channels to credit unions seeking to serve an underserved area, this might be an opportunity to keep the old 25-mile radius in play by saying that federal credit unions can serve underserved areas if there is a branch within 25 miles of the area – perhaps even 10 miles might be workable. But, while reasonable proximity for serving underserved areas may require a physical presence to be in striking distance for the residents of such an area and total service by remote means might be unreasonable, there should not be a requirement for a credit union to open a branch in an underserved area if there is one nearby that could serve those residents.

It is not safe and sound for federal credit unions to open unnecessary branches inside underserved areas if they have branches within a true reasonable proximity. This has and will continue to deter many federal credit unions from extending needed service into underserved areas. Reasonable proximity should at least be reasonable if there is indeed proximity to the underserved area to be served.

We hope you will consider such a provision on underserved area reasonable proximity in the final rule.

### ***Population Caps Retained***

The single biggest problem with this proposal is the Board's decision to retain arbitrarily imposed population caps on communities comprised of a more than a single political jurisdiction. While the addition of Combined Statistical Areas and the removal of the "Core Area" service requirement are certainly improvements, these enhancements to the federal rules are not nearly as effective as they seem at first glance when they are still subject to an arbitrary 2.5 million population cap.

If one of the goals of the NCUA Board is to ensure that the federal charter is competitive with state charters of which very few of which, if any, have population caps, the retention of arbitrary population caps severely undermines such a goal. We are convinced that the federal charter will always be at a disadvantage as long as the population caps are maintained. These caps were put

in place in 2010, over twelve years after the passage of the CUMAA in 1998. They are obviously not required by law and should be removed from this regulation when it is finalized.

### ***Core Service Areas***

We firmly support the proposed changes that will give federal credit unions the ability to convert to a community charter or expand an existing community charter without having to serve the core area if electing to serve a portion of a Core Based Statistical Area (CBSA). This change is significant in that it provides additional flexibility to a credit union in making a true safety and soundness determination as to what part of an area it can reasonably serve and does not feel that its financial position would best be served by taking the entirety of a CBSA that would have to encompass the core area despite the credit union's marketplace footprint being focused on other parts of the CBSA.

### ***Combined Statistical Areas***

This proposal also gives credit unions the ability to apply to serve combined statistical areas subject to the existing population cap of 2.5 million. This is a needed change; however, we are disappointed that such communities are still subject to an arbitrary population cap of 2.5 million that diminishes the potential of this significant change for a number of credit unions in larger metropolitan areas.

### ***Areas Adjacent to a Core Based Statistical Areas***

This is a good addition to allow a federal credit union to apply with documentation to serve an outside area contiguous to its current Core Based Statistical Area or single political jurisdiction. Without question (even though the population cap diminishes its applicability to a number of larger communities that need access to more lower-cost financial services) this is a meaningful change that is needed.

### ***Congressional Districts***

We are in favor of the provision in the proposal that establishes a congressional district as being within a reasonable definition of a well-defined local community. While it will not be used as much as other option in this proposal, it does provide another opportunity to consider for those credit unions seeking to diversify their fields of membership through a community charter. There is no question but that a congressional district, by its nature, is well-defined and interactive among its residents.

### ***Underserved Area Concentration of Facilities Test***

We have problems with the concentration of facilities test for qualifying underserved areas. We feel that, if an area qualifies under any governmental validated metric as having unmet needs and therefore underserved, the determination by that governmental agency should be *prima facie* evidence that the area could benefit from another credit union extending its service there.

The proposed exclusion of non-depository institutions and non-community credit unions from the concentration of facilities ratio is somewhat better than the current burdensome and complex formula. However, this proposed rule still leaves the process to qualify underserved areas more cumbersome than needed for this important purpose which is so crucial to the credit union mission. Serving more underserved areas by not-for-profit financial cooperatives should be encouraged by NCUA, not discouraged. The concentration of facilities test is a major discouragement to this type of extension of service to persons of modest means.

Our thoughts are that the absolute most effective way to make the process simpler and more effective is to take out the concentration of facilities test in its entirety. If the area qualifies under any governmental standard at the federal or state level, it should be automatically considered underserved to allow more consumer choice for its residents. We fail to see where any underserved area does not benefit from more financial institutions serving its residents and providing them with additional choices.

### ***Rural District***

The proposed rule raises the population cap for Rural Districts to a 1 million population cap. In our opinion, this still makes us wonder why a population cap is needed if an area is rural and meets the other requirements such as the limits on multi-state expansion and population density tests.

### ***Inclusion of SEG Contractors in a Multiple Common Bond***

According to our reading of the proposal, this provision would add to a SEG based credit union independent contractors with a "strong dependency relationship" to the SEG. We support this provision and believe it will be helpful in qualifying potential members for a number of multiple common bond credit unions.

### ***Contractors and Office/Industrial Park Tenants in a SEG Based Credit Union***

The provision to allow a multiple common bond to serve – when applied for by the group to become a SEG – any contractor with a strong relationship with a SEG, all of the businesses in a single office complex that seeks service, any store in a mall that is a SEG or any tenant in a SEG which is an industrial park is only reasonable and should have been done years ago.

### ***Nothing on Mergers***

The proposed rule misses a great opportunity to get field of membership out of the way of solid voluntary mergers that would result in safer and stronger credit unions. NCUA has been extremely tight in defining when a continuing credit union in a merger can keep the field of membership of the merging credit union. The ability to keep the combined FOM is driving the decision of choosing the continuing credit union into it often being a state charter more times than it should. The federal charter is at a disadvantage in mergers because of this fact – the federal FOM rules are too restrictive in a merger. Our proposal would be that, if either credit union in a voluntary can be demonstrated by projections and a narrative case will likely be less

than well capitalized under PCA net worth or NCUA's risk-based capital rule, the two credit unions be allowed to merge and both FOMs remain intact in the combined entity. Such a provision is needed and, because it is largely a FOM issue, the merger question should be addressed in a final rule.

As always, thank you for the opportunity to provide our thoughts and comments. Again, we commend the NCUA Board for their willingness to address this important issue. The result should be safer, sounder and stronger credit unions.

Sincerely,

A handwritten signature in black ink that reads "Gene Brody". The signature is written in a cursive, slightly slanted style.

Gene Brody, President/CEO