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Gary A. Grinnell, President and Chief Executive Officer

February 3, 2016

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

Re: Proposed Rule on Field of Membership

Dear Mr. Poliquin:

On behalf of the Board and Management of Corning Federal Credit Union, I would like to take this opportunity to comment on the National Credit Union Administration's proposed rule to amend and revise the agency's current field of membership rules.

By way of background, Corning Federal Credit Union is a \$1.1 billion asset institution serving more than 98,000 members. As a multiple common bond credit union, we currently have numerous select employee groups (SEGs) and associational groups within our field of membership. In addition, we also serve several underserved areas in our geographic markets in New York, North Carolina, and Pennsylvania.

We commend NCUA on taking the much needed step of modernizing its rules for field of membership and for taking steps to return the rule toward the more flexible approach that was in place prior to the 2010 changes. Although NCUA can certainly, in our opinion, go further within its existing statutory authority to relieve the onerous and uncompetitive regulatory burden that credit unions are forced to bear, this proposed rule does offer several important steps that have the potential toward leveling the playing field.

To that end, we support many of the changes proposed in the new rule including:

- Expansion of the reasonable proximity definition for addition of new SEGs to include online service facilities, including Internet and mobile device channels;
- Removal of the Core Area Service Requirement;
- Authorization of Combined Statistical Areas;
- Expansion of the 2.5 million population limit to apply toward well-defined portions of a Core Based Statistical Area;
- Authorization of areas adjacent to Core Based Statistical Areas;
- Allowing Congressional Districts to meet the definition of a well-defined local community;
- Raising the population cap for Rural Districts to 1 million;

- Automatic approval of Veterans as other persons eligible for membership; and
- Inclusion of SEG contractors and office/industrial park tenants in a multiple common bond.

While we applaud NCUA's actions in proposing these changes, we feel that on balance the proposal does not go far enough in reinstating the flexibility that credit unions had prior to the 2010 rule changes. As applied to federally-chartered credit unions (especially those with multiple common bond fields of membership), the proposed revisions are not nearly expansive enough to allow for sufficient growth and expansion opportunities in the future. Even with the above improvements, it is our view that credit unions will continue to struggle to compete with other financial institutions in serving the needs of their members. In the face of heavy regulation, increasing industry consolidation, and rapidly evolving technology, we strongly feel that NCUA must do everything in its power to support the credit union industry by allowing and facilitating growth rather than being yet another barrier that credit unions face. To ensure the future sustainability of the Federal charter and the safety and soundness of the National Credit Union Share Insurance Fund, more flexibility in these rules is needed. With this in mind, we offer the following suggestions where we believe further improvement is warranted:

### **Population Caps Should Be Removed**

Despite the positive changes proposed in the new rule with the additions of Combined Statistical Areas and Congressional Districts along with the removal of the Core Area Service Requirement, they are significantly undermined by the retention of the arbitrary 2.5 million population limit, a provision that was implemented with the NCUA's changes to its Field of Membership Manual in 2010. Population size has little if anything to do with how well a credit union can adequately serve a community, especially considering the remarkable growth in application and acceptance of remote electronic banking channels in recent years.

The use of an outdated and arbitrary population cap severely hampers the ability of credit unions to serve large, contiguous community areas such as entire states. Considering that several state regulators have recently approved state-wide community areas as large as 9.8 million (in the case of a Michigan-based credit union), this 2.5 million population cap makes the Federal charter a non-starter for many state-chartered credit unions. In fact, this cap is a key reason why many Federally-chartered credit unions have considered conversion to a state charter.

The simplification of the Rural District population cap definition from 250,000 or 3% of the state population to a straight 1 million is a step in the right direction. However, this again relies on an arbitrary (and in this case smaller) population cap that severely impairs the ability of credit unions to serve rural areas that are in need of greater choice in financial services.

We strongly recommend that NCUA consider removing all population caps from the field of membership rules.

### **Apply the Revised Service Facility Test to Underserved Area Applications**

As mentioned above, we applaud NCUA's proposed revision of the service facility test for approval of SEGs to include remote electronic services such as online banking and mobile

banking. This provision, as NCUA describes in the preamble of the proposed rule, is well-reasoned and based upon numerous studies of financial service delivery trends over the past several years which show a marked change in the way that consumers transact their financial business with their primary financial institution.

However, NCUA does not go far enough. Surprisingly, in its proposal NCUA has decided to retain the antiquated physical service facility requirement for underserved areas restricting the ability of underserved consumers to have true choice in financial services. We fail to comprehend, considering the voluminous data that NCUA provides for the revision of the service facility definition, why residents of underserved areas would reflect a different trend and be more reliant on physical branch service facilities than consumers of financial services at large. If anything, this approach may lead to underserved areas becoming even more disadvantaged as credit unions utilize the revised rules for SEGs and focus on adding new groups within non-underserved areas.

Additionally, we believe that there could be safety and soundness implications by not applying the proposed definition of a service facility to underserved area expansions. Industry observers have cited examples of credit unions that have applied to add underserved areas adjacent to already existing branches. In some of these cases, it has been said that despite the close proximity of an existing branch, credit unions have been forced by NCUA to open a new branch simply to meet the underserved area physical presence requirement. Requiring an actual physical presence in an underserved area when it is clearly within close proximity to an existing branch and when the member can access their account via electronic and digital means simply does not make sense with 21<sup>st</sup> century delivery channels. Some credit unions faced with this decision have decided not to adopt the underserved area as it would be an unduly burdensome and wasteful use of capital reserves to build a new branch inside the geographic boundaries of the underserved area yet in close physical proximity to an existing facility. With the ability to take advantage of the revised definition of service facility as proposed, more credit unions would be able to extend access to affordable financial products and services to those who need it most.

### **Remove the Concentration of Facilities Test from Underserved Area Applications**

Another place where the underserved approval process can be improved is in regard to the Concentration of Facilities Test. As a credit union that has gone through the underserved area application process several times, we can attest that the CFT matrix is an extremely cumbersome and frustrating tool.

The proposed rule offers some limited relief in excluding non-depository institutions and non-community credit unions from the concentration of facilities ratio. Both of these exclusions make sense as neither of these types of institutions truly serves the underserved community at large. However, the requirement that NCUA or banking agency data be used in the underserved analysis is overly complicated and not particularly relevant to the area's status as underserved. We recommend that the US Treasury's CDFI determination be used as a simplified litmus test to determine whether an area is underserved.

Additionally, the proposed rule considers using the Consumer Financial Protection Bureau (CFPB) list of underserved counties as an alternative way to identify underserved areas. While

we support this addition, we also urge NCUA to consider using Home Mortgage Disclosure Act (HMDA) data as a tool to determine whether current lenders are meeting the needs of underserved communities as well as the persistent-poverty counties list (PPC) which is tracked by the Economic Research Service of USDA.

### **Increase the Size Test for “Streamlined” Group Processing**

In the proposed rule, NCUA indicates that it would offer a “streamlined determination of stand alone feasibility of groups greater than 3,000.” We would hope that NCUA will provide further details on how this “streamlined” process will work, especially considering the challenges we have experienced with getting significantly smaller SEGs and associational groups approved over the past several years through the Office of Consumer Protection.

Additionally, we urge NCUA to consider increasing the size limit of such groups to at least 10,000. In today’s complex technological and regulatory climate, it is virtually impossible for any single common bond credit union to adequately serve just one group as small as 3,000 potential members. A number of 10,000 (or higher) is a safer floor for a stand-alone group to consider starting up its own credit union, although even at that level the challenges a small start-up organization would face are considerable.

### **Merger Process**

Surprisingly, NCUA does not address mergers at all in the proposed changes to the field of membership rules. The industry has experienced a sustained and significant trend of consolidation for decades with an average of one merger per business day over the past 15 years. Most industry experts expect this trend will continue and even accelerate as credit unions struggle to keep pace with change and an increasing regulatory burden.

With this as backdrop, it is imperative that NCUA review the current process for approval of mergers and consider cutting red tape in several areas. For one, NCUA has a highly restrictive view toward the definition of “in danger of insolvency” for emergency mergers. In most cases, by the time a credit union reaches a level of insolvency where NCUA will allow a healthier credit union to step in, it is a highly unattractive acquisition and is very hard to find a willing partner. Depending on the size of the credit unions involved, a merger with a dangerously insolvent partner may even threaten the safety and soundness of the continuing credit union.

The rules are also highly restrictive for voluntary mergers. For instance, multiple common bond credit unions cannot merge with community credit unions regardless of whether there are sound strategic and market-driven reasons to do so. We believe that these obstructive voluntary merger rules can actually lead to emergency mergers, and we have direct experience with this scenario. Due to the needlessly restrictive rules, a credit union seeking a merger partner frequently has very limited options and is often forced to wait a long period of time to find a potential merger partner (or is unable to find one at all). In some cases, this leads to the credit union being forced into an emergency merger situation, which makes it an even less desirable merger partner and causes more risk to the National Credit Union Share Insurance Fund. This is another case of NCUA placing all credit unions in the same box with little regard for the merits or challenges of

a particular merger opportunity. These arbitrary rules are not best for credit unions or for our members.

We urge NCUA to consider creating more flexible rules for both voluntary and emergency mergers for the benefit of our members and protection of the National Credit Union Share Insurance Fund.

### **Charter Conversions**

NCUA rules currently prohibit a federally-chartered credit union from continuing to serve its existing single- or multi-associational field of membership when it converts to a community charter unless the groups are located entirely within the new community. We believe that this rule is unduly burdensome and discourages credit union growth which ultimately limits consumers' access to financial services. As part of NCUA's field of membership rulemaking, we strongly recommend that the agency evaluate allowing single- or multi-associational federally insured credit unions who convert to a community charter to retain their associational groups, regardless of their geographical location.

### **Corning FCU's Experience with the Office of Consumer Protection**

In previous comment letters and through direct communication with the Board, we have shared the ongoing challenges we have experienced working with the Office of Consumer Protection (OCP) since its inception. Although we expect that time to approval may improve in certain instances if the proposed rule is implemented as written, specifically with respect to the removal of the reasonable proximity requirement for new SEGs, we would like to take this opportunity to briefly reiterate our frustrations with the OCP and the impact that its actions have had on our ability to provide outstanding service to our membership.

Whereas prior to the establishment of the OCP, we could expect SEG approval to take 2-3 days, on average, we now experience anywhere between two and four weeks for approval, and in some cases much longer. We have continually and consistently found the Office to be slow or unresponsive to our attempts to communicate, regardless of method. This situation is unacceptable and does not meet reasonable standards of member service, especially considering that any potential member can walk into any bank branch on any given day and open up a new account on the spot without waiting for approval from a far-off and bureaucratic Federal agency. For a cooperative movement that was founded over 100 years ago and adheres to a philosophy of "people helping people," it is shameful that we must continually burden our members with this inefficient process. In short, the OCP is in itself a reputation risk to credit unions as its ongoing inefficiencies more often than not serve to prevent consumers from the ability to join a credit union.

### **Conclusion**

Thank you again for your consideration of our comments and those of others in the credit union industry as you craft the new field of membership rules. We believe that the credit union industry is truly at an inflection point, and it is imperative that credit unions have the ability to grow and thrive. We are encouraged by NCUA's willingness to modernize these rules with the objective of

making the Federal charter more competitive in today's financial services climate, but we strongly believe that much more needs to be done in order to ensure the industry is sustainable in the future. We hope this is a positive indicator of a willingness to modernize in other areas as NCUA continues its focus on regulatory relief, and we look forward to much more meaningful change in the future.

Should you have any questions or require additional information in support of the recommendations made herein, please feel free to contact me at 607-962-3144, ext. 5292.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Grinnell". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary Grinnell  
President and Chief Executive Officer

cc: The Honorable Deborah Matz, Chairman  
The Honorable Richard Metsger, Vice-Chairman  
The Honorable Mark McWatters, Board Member