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B. Dan Berger
President & Chief Executive Officer

December 8, 2016

Gerard S. Poliquin
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Chartering and Field of Membership Manual
RIN: 3133-AE31

Dear Mr. Poliquin,

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the proposed changes related to the National Credit Union Administration's (NCUA's) chartering and field of membership (FOM) manual. NAFCU appreciates NCUA's responsiveness with respect to our members' concerns, and believes that the increased population cap and reintroduction of the narrative approach for defining well-defined local communities (WDLCs) will grant immediate relief to community charter credit unions and allow them to serve more consumers. As not-for-profit member owned cooperatives, credit unions provide provident credit to our nation and Congress has recognized the important purpose credit unions serve in the economy.

Background

In response to the agency's November 2015 proposed FOM rule, NAFCU submitted comments requesting that the Board implement improvements that credit unions had requested over the past several years. In particular, NAFCU urged NCUA to modernize FOM regulations as a minimum requirement to maintain competiveness with state chartering authorities, and encouraged the agency to fully utilize its statutory authority to provide relief to FCUs.

At the October 2016 Board meeting, NCUA finalized a modernization of the FOM rule that included many of our recommendations. Although several of our recommendations were not included in the final rule, NAFCU welcomes the agency's decision to revisit those recommendations in its proposed FOM rule.

NAFCU appreciates the fact that NCUA adopted these provisions, as they will provide the requisite tools for our members to provide even more financial services to the consumers that need them most. The proposed rule would (1) reintroduce the narrative approach for establishing a WDLC; (2) raise the WDLC population cap from 2.5 million to 10 million for core based statistical areas (CBSAs) and combined statistical areas (CSA); and (3) permit credit unions to serve portions of a CBSA without regard to metropolitan division borders.

With respect to the new population cap, NAFCU appreciates that NCUA's proposal substantially mirrors our recommendation that the population cap for a WDLC should approximate the size of the most populous Metropolitan Division (currently the 11.7 million person population of the New York–White Plains–Wayne, NY–NJ Metropolitan Division).

NAFCU and our members also see encouraging signs in the population cap alternatives presented by the Board; specifically, the idea that NCUA staff might adjust the population cap as needed, with the Board retaining the ability to authorize increases where appropriate. Although the proposal does not go into details, the Final FOM rule issued in November found "merit" in the idea of tying the population cap to a framework of controls, such as a periodic reevaluation, which NAFCU suggested in its February 2016 comment letter. In lieu of a total elimination of the population cap—described in detail below—NAFCU requests that NCUA adopt a framework of periodic review, which would complement NCUA's approach for evaluating the definition of "small entity" for the purposes of the *Regulatory Flexibility Act*.

Although NAFCU strongly supports each of the proposal's provisions, we would like to provide several recommendations that would make the proposal even more impactful and further minimize regulatory burden. However, before discussing the substance of recommendations, NAFCU believes it worth mentioning that the proposed rule falls well within the agency's legal purview.

The proposed rule is supported by ample legal authority.

In passing the *Credit Union Membership Access Act* (CUMAA), Congress amended the *Federal Credit Union Act* (FCU Act) and specifically delegated to the Board the authority to define by regulation the meaning of a WDLC. The FCU Act directs the Board to establish applicable criteria limiting membership in a community credit union to persons or organizations within a well-defined local community, neighborhood, or rural district and gives the Board broad discretion to define a well-defined local community for the purposes of making any determination regarding a community credit union, and to establish [such] criteria.

The Act does not require the application of rigid population limits to establish a "well-defined, local community." A proposed area should not be disqualified as a WDLC simply because it exceeds a particular population size.

NAFCU firmly believes that NCUA's proposed amendments to the Field of Membership (FOM) rule are within its legal authority and supports the Board's interpretation of the Act. Further, NAFCU believes that the Board is operating within the guidelines of the Act to facilitate consumer access to credit unions and to enhance their delivery of services and upholds the Act's objectives. This proposed rule would provide relief from undue burdens and restrictions on a FCU's ability to provide services to consumers who are eligible for FCU membership.

Reintroduction of the narrative approach will grant immediate regulatory relief to community charter credit unions.

NAFCU supports NCUA's decision to reintroduce the narrative approach for community charter credit unions. This decision will better serve those credit unions whose optimal service area does not otherwise fall within the bounds of a statistical area, or "presumptive community."

In 2010, when NCUA removed the narrative model for community chartering, it thought that additional flexibility in this process would confuse and burden credit unions, despite well over half of commenters responding that they opposed elimination of this incredibly useful approach.[1] NAFCU welcomes NCUA's change in thinking. Granting credit unions the opportunity to describe the ideal boundaries of their community charter, regardless of arbitrary statistical divisions, will deliver immediate and tangible relief. Ultimately, the viability of community charters is best served when FCUs are not bound by a narrow menu of presumptive community options.

NCUA's decision to frame its chartering rules in terms of the actual needs of credit unions, as opposed to the risk of potential confusion also represents a more promising paradigm for future modernization efforts. In 2009, when NCUA raised concerns regarding the feasibility of the narrative approach, its concerns may have been shaped by the then ongoing financial crisis.[2] Now that the crisis is over, it is appropriate for NCUA to adopt a growth-oriented perspective. In short, NCUA's narrative model is just one component of the regulatory reform needed to ensure the long term viability of community charter credit unions of all sizes.

NAFCU also asks that NCUA clarify some aspects of its proposal. For example, will narrative criteria receive similar weight under a totality of the circumstances test, and will credit unions have an opportunity to request a formal explanation of any deficiencies in a rejected application. Additionally, how will criteria be adapted to reflect changes in consumer economic behavior? As consumers migrate to online services for both television and shopping, will NCUA correspondingly deemphasize these factors or interpret them more expansively? Clarification on these points would help credit unions effectively collect and assemble the documentary evidence needed to support a new or modified community charter.

NCUA should allow credit unions to demonstrate the existence of a WDLC by identifying commonalities shared over web-based mediums. The description for proposed criteria #9 ("Community Newspaper") anticipates that local interaction may occur online via the website of a newspaper.[3] NAFCU believes that NCUA should interpret other criteria (e.g., "shopping," "local television and radio stations," and "entertainment and sporting events") in a similar fashion—in other words, by recognizing that shared interests may exist online. Such an interpretation would align with NCUA's recent efforts to determine whether an online, transactional website might satisfy the reasonable proximity requirement for multiple common bond credit unions.

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[1] *See* 75 Fed. Reg. 36257, 36260 (2010).
[2] *See* 74 Fed. Reg. 68722, 68723 (2009).
[3] *See* Chartering and Field of Membership Manual, 85 Fed. Reg. 78748, 78755 (2016).

In general, NAFCU believes that the thirteen criteria described in the proposal are reliable indicia of a WDLC and appreciates NCUA's decision to adopt a relatively open-end framework for identifying the presence of a local community. Additionally, NAFCU hopes that refinement of this framework can facilitate future modernization efforts.

Proposed 10 Million Population Cap

The FCU Act does necessitate the use of a population cap to delineate a WDLC.

NAFCU and our members fully agree with NCUA that increasing the population cap for WDLCs from 2.5 million to 10 million will improve the viability of community charter credit unions. NAFCU also appreciates NCUA's decision to adopt a population cap substantially similar to the one described in our February 2016 comment letter, which suggested a cap tied to the most populous Metropolitan Division. To be clear, NAFCU and our members believe that increasing the cap to the proposed threshold of 10 million is paramount. However, the agency is well within its statutory authority to remove any population cap from consideration of a WDLC. There is no statutory requirement that compels the Board impose this restraint. Furthermore, the largest Board-approved single political jurisdiction (SPJ) in Los Angeles County (home to a population of 10.17 million) has "not experienced adverse safety or soundness consequences attributable to its population size."[4]

NAFCU and our members believe that population levels are not indicative of the existence of a WDLC and are not necessary to offset safety and soundness concerns. Instead, indicia such as common commutes, shared interaction, and other factors included in a CSA and CBSA are more descriptive and useful for the purpose of determining a credit union's capacity to serve its local community. Since neither the Office of Management and Budget (OMB) nor the United States Census Bureau (Census Bureau) limit the population size of such statistical areas, NCUA should reconsider the utility of a population cap.

The underlying rationale for a population cap is no longer relevant.

Before NCUA revised the FOM rule in 2010, the agency did not place a population limit on WDLCs, but rather focused on whether the proposed area had strong indicia of a community, including common interests and interaction among residents.

When the Board implemented population caps, its rationale hinged on the *minimum* population for a metropolitan division. The Board explained that, "as the population and geographic area increase and multiple jurisdictions are involved, it can be more difficult to demonstrate interaction and/or shared common interests... [t]his often causes some confusion to the applicant about what evidence is required and what criteria are considered to be most significant under such circumstances."

While that rationale might have served as the basis for a population cap in 2010, the "difficulty" of establishing a WDLC should no longer hold true because the Board's recently finalized FOM rule finds certain statistical areas as *presumptive* WDLCs. This means that a credit union will no

[4] Id. at 78751.

longer have the burden of proof to show common interests, and therefore will not create undue "confusion."

Furthermore, in 2010, the Board noted that when statistics can demonstrate the existence of such relevant characteristics (i.e., "commonality of routine interaction, share and related work experiences, interests, or activities") it is appropriate to presume that sufficient interaction and/or common interests exist to support a viable community based credit union. NAFCU believes that with the introduction of presumptive WDLCs, credit unions no longer have the burden to prove common indicia that would have otherwise plagued credit unions under previous interpretations of the FCU Act.

The statistical clarity of CSAs and CBSAs is compromised when population limits are introduced.

While NAFCU commends NCUA for using CBSAs and CSAs as objective and presumptive measures of community boundaries, we urge NCUA to avoid layering arbitrary and unnecessary population limits onto these statistical definitions. Neither the Census Bureau nor OMB have relied exclusively upon population size when defining CSAs or CBSAs. On the contrary, these statistical terms are defined *primarily* in terms of social and economic integration between a "core" area and its connected communities.[5] In fact, the 2010 NCUA Board agreed with OMB's extensive scientific methodology employed in defining a CBSA and its corresponding conclusion that the existence of a CBSA demonstrates a high degree of social and economic integration in a particular geographic area.

OMB has traditionally avoided the use of arbitrary data inputs when calibrating definitions for CBSAs or CSAs. After OMB reviewed the CBSA definition in 2000, it explicitly cautioned that Metropolitan and Micropolitan Statistical Areas (the constituent parts of a CBSA) "are not designed as a general purpose geographic framework for nonstatistical activities."[6] Furthermore, in 2010, OMB found that "the universe of combined statistical areas is heterogeneous and incomplete," and recommended new *statistical* rules to alleviate the incongruities that arose from using subjective, local opinion to assess the significance of commuting patterns.[7] In general, OMB has sought to define CBSAs and CSAs primarily in terms of quantifiable, *socioeconomic* interactions—a fact that should give NCUA pause before it attempts to impose subjective limits on these fluid and growing areas. Any decision to layer additional, requirements—like population caps—introduces uncertainty and compromises the descriptive purpose of CBSAs and CSAs.

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[5] *See* United States Census Bureau, Geographic Terms and Concepts - Core Based Statistical Areas and Related Statistical Areas, available at https://www.census.gov/geo/reference/gtc/gtc_cbsa.html (last visited November 27, 2016)

[6] 65 Fed. Reg. 82228, 82236 (2000).

[7] *See* 75 Fed. Reg. 37246, 37248 (2010), *see also* 65 Fed. Reg. 82235.

Eliminating the metropolitan division boundaries rule for CBSAs will grant immediate relief.

Allowing a credit union to designate a portion of a core-based statistical area as its WDLC without regard to metropolitan division boundaries will offer immediate regulatory relief and remove an arbitrary impediment in community chartering rules. As NCUA has already recognized, this change is necessary to avoid inconsistency with the more flexible rules for designating a portion of a CSA as a WDLC and to fix a drafting error in the final FOM rule. NAFCU appreciates NCUA's quick response on this issue and believes that this relatively uncontroversial correction will make the chartering process less arbitrary and easier to understand.

Requested improvements to the community chartering process.

Deadlines for FOM Amendment Requests.

Under NCUA's rules and procedures, there is no established time period in which the agency must respond to a request. Because FCUs are unable to anticipate a reliable timeline for agency review and approval of a request, NAFCU recommends that NCUA adopt a 30-day time limit for the Regional Director to either approve or deny a request that does not require NCUA Board approval. For all FOM amendments over 1 million members that need NCUA Board approval, NAFCU recommends that the agency adopt a 60-day time limit to either approve or deny a request.

Increase Transparency in the Decision Making Process

NCUA's current process for reviewing a FOM-related application fails to provide FCUs with notifications or updates on the status of their request except for the final decision. This lack of transparency and communication during the amendment process increases uncertainty and limits the FCUs ability to undertake prudent future business planning activities. NAFCU believes NCUA could eliminate this unnecessarily cumbersome, lengthy, and confusing process by providing definitive directions on OCP's application expectations and the timeframe for agency action. We recommend that NCUA establish a formal notification process with the FCU, requiring regular status updates to the FCU about pending applications.

Streamline Charter Conversions

Under NCUA's current rules, a single- or multi-associational chartered FCU is prohibited from continuing to serve its existing FOM when it converts to a community charter, unless the associational and occupational groups are entirely within the new community. *See* Appendix B, Part 701. NAFCU continues to hear from our members that this limitation is unnecessarily restrictive and unfairly curtails American consumers' access to credit union services. Further, NAFCU's members have indicated that this restriction deters them from expanding their single- or multi-associational charters because they do not want to lose their existing FOMs. As a result, rather than expanding their services to wider range of individuals, many of NAFCU's members are forced to miss growth opportunities within their communities. Accordingly, NAFCU recommends that NCUA allow single- or multi-associational chartered FCUs who convert to a

community charter to continue to serve their previous associational and occupational groups, regardless of geographical boundaries.

Streamline Notification Requirements

NCUA created inefficient rules governing how a credit union must notify groups that will be removed from the FOM as a result of a charter conversion. Rather than establish rules governing how to properly alert individuals that the credit union is no longer able to serve them, NCUA should permit credit unions to continue to serve these groups after the conversion has taken place.

Conclusion

NAFCU and our members support the proposed changes to the field of membership and chartering rules for community credit unions. The regulatory changes outlined above could be enacted to provide meaningful relief and ensure the continued viability of the chartering process. NAFCU also hopes to maintain a dialogue with you on this important topic.

If you have any questions or need additional information, please feel free to contact me, or Carrie Hunt, Executive Vice President of Government Affairs and General Counsel at (703) 842-2234 or chunt@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO