

December 2, 2016

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

Re: 12 CFR Part 701 Chartering and Field of Membership Manual

Dear Mr. Poliquin:

The National Credit Union Administration (NCUA) Board (the Board) is proposing substantive changes to its field of membership (FOM) and chartering manual regarding community charters.

Specifically, the Board proposes to quadruple the population size of a presumptive community charter for a well-defined local community (WDLC) consisting of a statistical area or a portion thereof served by a federal credit union (FCU) to 10 million from 2.5 million. Also, the proposal would allow an FCU to submit a narrative, supported by appropriate documentation, to demonstrate that the community it wishes to serve qualifies as a WDLC.

Summary of Position

The proposed rule would expunge the word “local” from a WDLC. When Congress amended the Federal Credit Union Act in 1998, it intentionally inserted this term “local” as a means of limiting the geographic scope of community chartered credit unions.

The Board should retain the current population size of a presumptive WDLC consisting of a statistical area or portion thereof at 2.5 million people.

In addition, the Board should not adopt the use of the narrative model in defining a WDLC. However, if the Board does approve the use of the narrative model, NCUA should not “rubber stamp” information provided by an FCU showing interaction and common interests of residents of the proposed area.

Population Threshold of 10 Million for Statistical Area

The Board is proposing to raise the population threshold of a presumptive community charter consisting of a statistical area or a portion thereof served by an FCU to 10 million.

The Board defines a statistical area as being comprised by a Combined Statistical Area or a Core-Based Statistical Area (CBSA). A CBSA is either a Metropolitan or Micropolitan Statistical Area.

In explaining the increase in the population threshold, the proposal states that "the Board anticipates that many areas that would qualify as a WDLC will experience population growth over time. The Board therefore believes that its policy should anticipate and accommodate inevitable growth ... in order to maximize the potential membership base available to community credit unions."

Also, the proposed rule noted that the 10 million population limit conforms to the population of the most populous single political jurisdiction approved by the Board (Los Angeles County).

In addition, the Board believes the 10 million population proposal would narrow an inherent imbalance between FCUs and state-chartered credit unions. According to NCUA, there are at least nine states with populations in excess of 2.5 million that permit their credit unions to serve a state-wide field of membership.

Position

The Board should retain its current population threshold of 2.5 million for a statistical area or a portion thereof to be treated as a presumptive WDLC.

NCUA's proposal to expand the population threshold for a statistical area or a portion thereof to 10 million would significantly expand the definition of community beyond any reasonable definition of "local" – circumventing Congressional intent as expressed in the Credit Union Membership Access Act (CUMAA)¹ and goes beyond NCUA's underlying statutory authority for chartering and establishing field of membership requirements for federal credit unions. The proposed rule ignores CUMAA's mandate to limit the field of membership boundaries of FCUs to "a meaningful affinity and bond among members in the context of shared and related work experiences, interests, or activities, the commonality of routine interactions, and a well-understood sense of cohesion or identity." In adding the word "local" to the already existing term "well-defined," Congress clearly intended to impose finite and narrow limits on the area that a community credit union may serve.

In fact, NCUA in 1998 acknowledged that Congress' new "local" requirement imposed a "more circumspect and restricted approach to chartering community credit unions."² However, the proposal to increase the population of a statistical area or portion thereof from 2.5 million people to 10 million people does not reflect a restricted approach to chartering community credit unions.

In proposing to increase the population limit for a statistical area or a portion thereof from 2.5 million to 10 million, the Board noted that the population limit conforms to the population of the most populous single political jurisdiction approved by the Board (Los Angeles County). However, during a hearing before the House Committee on Ways and Means on November 3, 2005, former Ways and Means Chairman Bill Thomas expressed amazement and concern that the county of Los Angeles can be defined as a local community. Former Chairman Thomas stated: "I don't understand [the] county of LA."³

If the proposed population threshold of 10 million is approved, this would allow an FCU to serve a statistical area as a WDLC with a population that is larger than the population of 41 states and the District of Columbia.

In addition, the proposal would qualify 20 additional Combined Statistical Areas as presumptive WDLCs. This means that all but two Combined Statistical Areas would qualify as presumptive WDLCs.

¹ Public Law No, 105-219

² 63 Fed. Reg. at 72,012 (1998)

³ <https://www.gpo.gov/fdsys/pkg/CHRG-109hhr26372/pdf/CHRG-109hhr26372.pdf>

For example, the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Combined Statistical Area would qualify as a presumptive WDLC under NCUA's proposal. The Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Combined Statistical Area has an estimated population of approximately 9.6 million people. The region encompasses one county in southern Pennsylvania, portions of the eastern panhandle of West Virginia, central and southern Maryland including part of the eastern shore, the District of Columbia, and northern Virginia. It includes six Metropolitan Statistical Areas and two Micropolitan Statistical Areas. This region has numerous trade areas, multiple taxing authorities, and multiple political jurisdictions. Thus, the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA Combined Statistical Area is hardly a local community; but rather a region.

As previously mentioned, the Board believes the 10 million population proposal would narrow an inherent imbalance between FCUs and state-chartered credit unions. In an effort to keep the federal charter relevant, the Board is in a race to the bottom with the states to render the concept of common bond virtually meaningless. Unfortunately, the Board is overstepping its authority as the Board supplants its judgement for that of Congress. Therefore, the Board should not proceed with this proposed rule. If the Board believes these changes are needed, the Board should go to Congress to amend the Federal Credit Union Act.

Therefore, the Board should withdraw its proposal to raise the population threshold from 2.5 million people to 10 million for a statistical area or portion thereof to qualify as a presumptive WDLC.

If an FCU wishes to serve a statistical area with a population in excess of 2.5 million people, the Board should establish a process to give the public notice and an opportunity to comment on an FCU's application. In addition, the Board should be required to vote on the proposed community charter application.

Narrative Model

Until 2010, NCUA required that an FCU applying a community charter submit a narrative for NCUA approval demonstrating that the residents of the proposed community had common interests and interaction. The Board abandoned the narrative requirement in favor of an objective model that gave credit unions the choice between two presumptive WDLC models.

The Board is now proposing to allow an FCU to submit a narrative to demonstrate that the community it proposes to serve qualifies as a WDLC based upon common interests and interaction among the area's residents. According to the proposal, NCUA notes that its pre-2010 experience with community charter applications has identified 13 criteria that were most useful and compelling to demonstrate common interests and interaction.

The thirteen criteria are:

- Presence of a Central Economic Hub;
- Community-wide Quasi-Government Agency Services;
- Governmental Designations with Community;
- Shared Public Services and Facilities;

- Hospitals and Major Medical Facility Services;
- College and University Enrollment;
- Multi-Jurisdictional Mutual Aid Agreements;
- Organizations' and Clubs' Membership and Services;
- Newspaper Subscriptions;
- Attendance at Entertainment and Sporting Events;
- Local Television and Radio Audiences;
- Community-wide Shopping Patterns; and
- Geographic Isolation.

According to the proposed rule, “[a]n area need not meet all of the narrative criteria to qualify as a local community; rather, the totality of circumstances within the criteria a credit union elects to address must indicate a sufficient presence of common interests and interaction among the area’s residents.”

Position

The Board should not move forward with proposal to let an FCU use a narrative model to define a WDLC.

However, if the Board does approve the use of the narrative model, NCUA should not “rubber stamp” information provided by an FCU showing interaction and common interests of residents. NCUA has an obligation to examine not only those factors that support the presence of common interests and interaction in the proposed community; but also, those factors that do not support the presence of common interests and interaction. To exclude factors that would rule against the presence of common interests and interaction would bias the agency’s analysis. As a federal judge opined: “NCUA must critically analyze the facts provided in the application to ensure that incomplete and erroneous information does not lead to an improper conclusion.”⁴

Therefore, the Board should require that any FCU using the narrative model to apply for a community charter should address all 13 criteria that the Board identified as most useful and compelling to demonstrate common interests and interaction. Moreover, the Board should stipulate that at least a supermajority of the criteria, preferably 75 percent, be documented as most persuasive before NCUA approves the community charter application.

In addition, for any FCU using the narrative model, the NCUA Board should publish a notice in the Federal Register and on its website seeking comment on whether the proposed community charter application is a WDLC. This would assist NCUA with its analysis of whether the area in question is a WDLC.

The failure to look at all relevant factors with regard to a community charter may lead the agency to an improper decision and would likely have NCUA embroiled in needless litigation.

⁴ 347 F.Supp.2d 1061 (2004) AMERICAN BANKERS ASSOCIATION, et al., Plaintiffs, v. NATIONAL CREDIT UNION ADMINISTRATION, Defendant, America First Federal Credit Union, et al., Intervenors Defendants. No. 2:03CV621DAK. United States District Court, D. Utah, Central Division. December 8, 2004.

Conclusion

The Board is proposing substantive changes in its FOM regulation, which will further render the concept of common bond moot. The proposed rule would expunge the word “local” from a WDLC. When Congress amended the Federal Credit Union Act in 1998, it intentionally inserted this term as a means of limiting the geographic scope of community chartered credit unions.

Therefore, the Board should retain the population size of a presumptive WDLC consisting of a statistical area or portion thereof at 2.5 million individuals. The Board also should not adopt the use of the narrative model in defining a WDLC.

Sincerely,

Keith Leggett