



strength in members.

December 9, 2016

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

RE: Chartering and Field of Membership Manual, 81 FR 78748-01

Dear Mr. Poliquin:

I am writing this letter to express the New York Credit Union Association's strong support for NCUA's proposal to once again allow credit unions to submit narratives explaining why areas qualify as a Well-Defined Local Community, even though they fall outside of pre-designated boundaries. When NCUA eliminated narratives in 2010, the Association criticized the amendment because it went well beyond what the Federal Credit Union Act required and made it more difficult for credit unions to meet consumer needs. Our view hasn't changed; credit unions need more flexibility, not less.

To understand how counterproductive the elimination of narratives has been, an example from the Albany-area is instructive. The Albany-Schenectady-Troy, New York Metropolitan Statistical Area (MSA) is comprised of Rensselaer County, Albany county Saratoga County, Schenectady County and Schoharie County. The introduction of MSAs into the community charter process made it easier for credit unions to expand and serve members within this zone, provided they could demonstrate the ability to serve their new communities.¹

In contrast, the 2010 changes means that these same credit unions cannot expand into areas such as Greene County, which is within commuting distance of downtown Albany and shares an overlapping political jurisdiction with the Albany-Schenectady-Troy MSA. Several important lessons can be drawn from this example.

NCUA offered two primary reasons in support of changing the charter expansion process. First, it argued that using recognized geographic designations such as MSAs and single political subdivisions such as counties would streamline the community expansion process by eliminating the need for credit unions to submit—and for NCUA to review—often voluminous narratives explaining why an area was a community.

¹ (<https://www.census.gov/population/estimates/metro-city/0312msa.txt>)

Secondly, by relying on uniform objective criteria rather than exercising discretion on a case-by-case basis, NCUA was insulating itself from legal challenges involving charter expansions. The changes achieved parts of both these goals but they have ultimately done more harm than good.

In many cases, it is helpful that credit unions no longer have to go through a narrative process to demonstrate what simply looking at a map makes clear: that closely aligned areas situated in neighboring counties and political subdivisions are well-defined communities for credit union purposes.

But the reforms missed the mark in several important ways. Most importantly, by making the process more objective, it arbitrarily denies credit unions the opportunity to serve communities they are capable of serving. There are circumstances in which areas such as an MSA or a county line, which aren't created to accommodate banking services, cannot tell the whole story. In fact, the banking industry once argued that Pennsylvania's Department of Banking abused its discretion by permitting a community charter expansion based on the fact that it was occurring within an MSA. (Pennsylvania Bankers Ass'n v. Pennsylvania Dep't of Banking, 981 A.2d 975, 986–87 (Pa. Commw.Ct. 2009)).

NCUA imposed its 2010 community expansion restrictions against the backdrop of lawsuits alleging that regulators were abusing their discretion in approving credit union community charter expansions. As NCUA explained in the preamble to the proposal:

“[a]nother problem related to NCUA determining that a multiple, contiguous political jurisdiction is a WDLC based on a narrative application is the risk of litigation. Because the narrative approach is inherently a subjective one, it is vulnerable to legal challenges. NCUA believes it would benefit all involved to eliminate the great expense, effort, and uncertainty associated with the narrative approach in favor of a simpler, more objective method.” (Chartering and Field of Membership for Federal Credit Unions, 74 FR 68722-01, 68723). In fact, the amendments were proposed less than a year after Pennsylvania's Banking Department was sued by the banking industry.”

Similar lawsuits may well be inevitable if NCUA goes forward with these amendments, and it's important for the chartering process to be demonstrably reasonable. A subtle but important addition to the review process that NCUA should implement as quickly as possible is the creation, by the Office of Consumer Financial Protection and Access, of guidance identifying indicia that a federal credit union's narrative should address. Such guidance will help show that charter expansions are based on reasonable determinations by NCUA. It will also clarify for credit unions what they should include in their narratives.

NCUA's decision to once again allow narratives will combine the efficiency of having areas that are pre-approved as Well-Defined Local Communities with the flexibility needed to allow credit unions to serve areas that fall outside of preset boundaries. These changes will not only help credit unions seeking to expand but, most importantly, will ultimately make more banking options available to members.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Mellin". The signature is fluid and cursive, with the first name "W. J." and the last name "Mellin" clearly distinguishable.

William J. Mellin
President/CEO
New York Credit Union Association