Michael Lee
Director of Regulatory Advocacy
League of Southeastern Credit Unions
22 Inverness Parkway, Suite 200
Birmingham, AL 35242

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

Re: Chartering and Field of Membership – 12 CFR Part 701 [RIN 3133-AF06]

12/9/2019

To Mr. Poliquin,

The League of Southeastern Credit Unions & Affiliates (LSCU) appreciates the opportunity to comment on the proposed changes to the Field of Membership rule. We support the board's decision to readopt the proposals regarding the Combined Statistical Area (CSA) and Well-Defined Local Community (WDLC). We also agree with the supporting explanation for the elimination of the requirement to serve the core in the Core-Based Statistical Area (CBSA). However, we do not support the changes that would require applicants to demonstrate why their field of membership selection was not based on a discriminatory intent. The LSCU is a trade association that represents 339 credit unions in Alabama, Georgia and Florida with nearly $120 billion in total assets and approximately 10 million members. Our mission is "to create an environment that enables credit unions to grow and succeed." These comments reflect our opinion as to how these proposed changes align with that mission.

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In our previous comments to NCUA on field of membership issues[1], we have supported the proposed changes to credit union field of membership because we believe that as technology, financial services, and our communities change, credit unions also must evolve to meet the needs of our members. Therefore, we support the re-adoption of presumptive WDLC consisting of a CSA or contiguous portion thereof, of up to 2.5 million people. We also agree with the explanation for and reasoning in eliminating the requirement for Federal credit unions serving a CBSA, to serve the core area therein. However, we oppose the NCUA's proposal to amend the Chartering Manual to create an affirmative requirement for an incorporating credit union to demonstrate that its WDLC is not based on discriminatory intent.

First, we agree with the Board that this additional burden on incorporating credit unions is not necessary to satisfy the concerns of the Court of Appeals regarding the elimination of the Core Area requirement. Therefore, we think the spurious concerns expressed by bankers (not to mention the fact that Congress has specifically left credit unions exempt from the Community Reinvestment Act) does not justify the creation of a new requirement that credit unions must demonstrate that their decisions regarding the choice of service area in a CSA/CBSA field of membership application is based on sound business judgement and not based on an illegal discriminatory motive.

[1] Letter from Michael Lee, Director of Regulatory Advocacy, League of Southeastern Credit Unions to Gerard Poliquin, Secretary of the Board, National Credit Union Administration (1/29/2016), available at https://www.ncua.gov/files/comment-letters/2015/CLFOM2016226MLee.pdf, & Letter from Michael Lee, Director of Regulatory Advocacy, League of Southeastern Credit Unions to Gerard Poliquin, Secretary of the Board, National Credit Union Administration (12/9/2016), available at https://www.ncua.gov/files/comment-letters/2016/cl-cfmm-20161209-lmike-lscu.pdf.

We have serious concerns about how NCUA would determine that an incorporating credit union was not choosing its service community based on discriminatory factors. First, it shouldn't be the credit union's responsibility to prove it has no discriminatory motive in its community service area, NCUA should bear the burden of proving there is discriminatory intent. (We may be interpreting this incorrectly, and this step would come after the agency determines the applicants have discriminatory intent or a desire to exclude low income people. Either way, the following considerations are still relevant.) So while overt discriminatory actions should raise concerns with NCUA regarding the drawing of community fields of membership service boundaries, we think it highly unlikely that there will be many cases where this would be obvious or easily proven, therefore we believe that NCUA may look at other factors to make this determination, which leads to the question as to how NCUA will be analyzing the application for indications of discrimination or exclusion.

What criteria regarding the issue of serving low-income people and minorities will be used to scrutinize applications for a new charter, an expansion, or an amendment for a credit union's choice in their community field of membership for CSA and CBSA? Will the credit union membership need to comprise a proportionate composition of minority or low-income members to that of the local population? If not, what amount of a disparity in the two populations would give rise to a suspicion of discrimination to warrant redress in the field of membership community boundaries? One of our concerns is that NCUA might use some mutation of the disparate impact theory to scrutinize an applicant for a community-based CSA/CBSA field of membership. Considering the bankers' redlining theory and the litigation spawned from it, we think this to be a serious, if unlikely, scenario.

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Another consideration regarding a community credit union's mix of membership relates to the general efforts to serve low-income people. One example has been credit union efforts to provide alternatives to payday lending with the PAL product, yet, according to many of our credit unions, there are still challenges relating to both the marketing of and the sustainability of that product. So, while PAL and other products will continue to be utilized by credit unions to serve low-income members, executives must scrutinize the health of those portfolios like all others. So how do credit unions balance serving low-income people against the safety and soundness of the credit union? We ask specifically as it relates to credit unions choosing which communities to serve. Indeed, these often-competing interests are listed in the NCUA chartering policy goals in the Charting and Field of Membership Manual.[2] For instance, if the zip codes of a core area had a high incidence of poor credit scores, so much so that it could be reasonably calculated that the cost of serving the community would outweigh the potential benefits in serving the potential members whose credit was good enough to obtain a loan from the credit union, would this be a sufficient explanation for NCUA as to why the credit union is choosing not to serve that core area? Would the rationality of the business plan outweigh the goal of serving the underserved indicated in the Federal Credit Union Act? We understand these are not mutually exclusive, but the challenge is for credit union executives and examiners is to assess these competing interests. We think the judgement of credit union executives should be deferred to in these difficult cases, primarily because they are ultimately responsible for the performance of the credit union and in serving its members.

[2] 12 CFR app. B to Part 701 (2019).

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Another thing to consider when deciding to add regulatory requirements to the Federal community charter, is in the competitive appeal of a Federal community charter as compared to that of a state charter. Any additional burden on a credit union's field of membership choice for a Federal community charter will likely make a similar state charter more appealing. LSCU supports the dual chartering system and thinks federal and state charters should strive to be more competitive with each other. Additional burdens to the chartering process may give state charters a distinct competitive advantage.

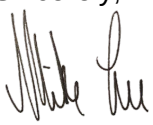
We think another relevant consideration is the push to use alternative data to analyze lending risk. This may be a great tool to open the doors for people who have not had a credit history or one that is marred and that this additional data may modify the risk of lending to them, therefore providing greater access to credit for low income members. We support the use of alternate date in assessing lending risk. This, along with all the new fintech innovations, may be the key to providing better access to financial products to the underserved. We think focusing on these innovations is preferable to adding a regulatory hurdle to a credit union's community chartering.

We reiterate our support for the board's proposals to readopt proposals regarding the Combined Statistical Area and Well Defined Local Community and the supporting explanation for the elimination of the requirement to serve the core in the Core-Based Statistical Area. But we oppose any changes in the regulations or the Charter and Field of Membership Guide that would require applicants to demonstrate why their field of membership selection was not based on a discriminatory intent. We think the chartering and field of membership manual has sufficient means to assess and address the efforts of credit unions in serving the underserved, even those who are not eligible for membership.

There are enough data, supervisory authority, and community activists to address and deter discriminatory behavior.

We appreciate the efforts of the NCUA to improve the field of membership rules so credit unions have more flexibility to serve their members as their wants and needs change with the times. We look forward to working with NCUA in studying how new technology and underwriting techniques can provide the underserved with better access to credit while promoting the safety and soundness of our industry.

Sincerely,



Mike Lee
Director of Regulatory Advocacy
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