Open Board Meeting October 27, 2016

NCUA Board Chairman Rick Metsger
Statement on the Final Field-of-Membership Rule

It is important to begin today by putting our actions into historical context. The Federal Credit Union Act was passed in 1934 to help address a national crisis—the lack of credit for working families in the wake of the Great Depression. Banks simply weren't lending to average Americans. A key purpose of the act was to create a national system of not-for-profit, member-owned cooperatives to "provide a source of credit for provident and productive purposes" especially to "persons of modest means."

The key distinguishing traits of federal credit unions are that they are not-for-profit and member-owned, without external stockholders, and are governed under the principle of one member, one vote. Credit unions enable consumers to collaboratively pool their savings to help each other—members helping members. The common-bond requirement is a way to help ensure their success. It isn't an end in itself, but rather a means to an end—providing safe access to our national system of cooperative credit.

The world was very different in 1934. When the Federal Credit Union Act became law, less than half of all Americans owned their own homes, which were financed primarily by three- to five-year balloon mortgages on no more than half the home's value. Today, nearly two-thirds of American families own homes, which are financed primarily by 30-year mortgages that typically cover 80 percent or more of the home's value.

Moreover, in 1934, only 40 percent of Americans owned cars; today more than 90 percent do. While I don't have data on telephone ownership in 1934, only 37 percent of Americans had phone lines in 1940, compared to 98 percent today. And the phone lines of the 1930s were all party lines that required operators to connect calls. None of them were either wireless or cellular. Computers, smartphones and ATMs didn't exist, and calculators were mechanical devices called "adding machines" that only did simple math.

By the last decade of the 20th century, our nation and technology had both advanced significantly. Beginning in the 1980s, as globalization began to take hold, many large-scale businesses that had sponsored local credit unions were pulling out of communities, shutting down their plants or moving facilities overseas, leaving workers and local members and their credit unions behind. At the same time, job growth was driven increasingly by small businesses, which were too small in scale to support their own credit union.

The Federal Credit Union Act hadn't really kept up with these workplace changes. In 1998, by a narrow 5-to-4 margin, the Supreme Court ruled that under the act's wording, select employee group and association-based credit unions could only have a single common bond, and not multiple common bonds, as NCUA had approved in the 1980s and 1990s to ensure the continued safety and soundness of the system and the National Credit Union Share Insurance Fund.

In response to this Supreme Court decision—one that potentially could have invalidated tens of millions of credit union memberships—in 1998 Congress overwhelmingly passed the Credit Union Membership Access Act. The updated law explicitly allowed select employee group and association-based credit unions to have multiple common bonds. This helped ensure that the employees of smaller business, those too small in size to form their own single-sponsor credit union, were not left at a disadvantage and they too could offer their employees credit union membership in a multiple common-bond credit union.

Congress also authorized three types of community charters: well-defined local communities, neighborhoods and rural districts. It gave the NCUA broad authority to define the meaning of those terms. In contrast, Congress also required the agency to find that groups of 3,000 or more members lack the capacity or desire to establish their own credit unions, before those groups could be added to the field of membership of a multiple common-bond credit union.

It is important to note that Congress called this law the Credit Union Membership Access Act. This demonstrates congressional intent. Just as with the underlying Federal Credit Union Act, the purpose of Credit Union Membership Access Act was to facilitate access by consumers to a national system of not-for-profit cooperative credit. That is also why we have just renamed our Office of Consumer Protection. It is now the Office of Consumer Financial Protection and Access. The change better reflects the actual work of that office and emphasizes the importance of providing consumers with access to our national system of cooperative credit.

The purpose of this rule is to expand access for consumers so they can obtain the credit they need and to provide a safe place to invest their life savings. Consumers should be able to choose the financial institution that best meets their needs. We are also responding to the changes in the world around us.

Just as the world and the financial services industry changed dramatically between 1934 and the passage of Credit Union Membership Access Act in 1998, they have continued to evolve in subsequent years—dramatically in fact. When the Credit Union Membership Access Act became law in 1998, only 41 percent of all Americans had the ability to go online. The internet was in its infancy, dial-up speeds were slow and few consumers had access to broadband. Just slightly more than one-third of Americans owned cellphones, cellphone service was sporadic, and smartphones, mobile payments and remote deposit capture didn't exist. Today more than 92 percent of Americans have cellphones, most of which are smartphones with mobile broadband and are capable of making and receiving mobile payments, accessing account data, making remote deposits, and entering into a wide variety of other financial transactions.

In the mid-1990s consumers visited their local branch an average of 26.5 times each year. Today that number is only an average 3.2 times a year, and it continues to drop. To put it another way, consumers have transitioned from more than two branch visits a month to about one visit every four months. Starting in 2014—for the first time—consumers were more likely to use mobile banking than a physical branch. That is a huge transformation in our financial system. Credit unions, like other financial institutions, have numerous new ways to serve consumers. Instead of anchoring our regulatory framework in the past, NCUA has to keep up with today's technologies and the ways consumers want to access financial services, and do so within the confines of the Federal Credit Union Act.

What my colleague, Board Member McWatters, and I are doing today is to use the discretionary authority provided to us under Credit Union Membership Access Act to bring the administration of the law into the 21st century. I want to thank my colleague Mr. McWatters for his cooperation and for his significant contributions to both this final rule and the proposed rule we will consider next.

Under the Credit Union Membership Access Act, which added a new section, 109(d)(3), to the Federal Credit Union Act, the Board has a mandate to act. That section reads:

> Regulations and Guidelines.—The Board shall issue guidelines or regulations, after notice and opportunity for comment, setting forth the criteria the Board will apply in determining under this subsection whether or not an additional group may be included within the field of membership category of an existing credit union.

Section 103 of the Credit Union Membership Access Act also added a new section, 109(f), to the Federal Credit Union Act. It reads:

> Definition of a well-defined local community, neighborhood, or rural district.—The Board shall prescribe, by regulation, a definition for the term 'well-defined local community, neighborhood, or rural district.'

The Board has followed both of these requirements. After having provided notice and opportunity to comment, we are now issuing a final rule. We are, by regulation, defining the terms used in the act. Thus, the Board is following the procedures set forth by Congress.

It also is worth noting that even though we received a record number of comments on this proposed rule—11,380 to be precise—the limited number of comments we received from both parties and both chambers of Congress were all supportive of various aspects of the rule.

This final rule makes approximately a dozen changes to our field-of-membership rules. Staff has done an excellent job of summarizing those changes, so I'm not going to go over the individual provisions. Instead, let me focus on our compliance with the Administrative Procedure Act, why the changes are a natural evolution, and why they are not a risk to the safety and soundness of either the credit union system or individual credit unions.

The vast majority of the comments we received on our proposed rule supported it, but a number of comments included thoughtful suggestions that went beyond the scope of the proposed rule, and which may not be a logical extension of what we proposed. The most significant of these suggestions were alternative population caps for well-defined local communities, and the use of a narrative approach to form a new or expanded well-defined local community.

To make sure all stakeholders have an opportunity to comment on these new proposals, the Board has deferred action on changes to the 2.5-million population cap for well-defined local communities and will instead propose a new rule dealing with population caps and the narrative approach. In doing so, the Board is meticulously complying with the letter and the spirit of the Administrative Procedure Act to make sure the public has an opportunity to comment formally on alternative population caps and use of the narrative approach to create a well-defined local community.

In our final rule today, however, the Board is finalizing the addition of combined statistical areas as designated by the Office of Management and Budget based on data from the U.S. Census Bureau to the list of "presumptive communities." It also is finalizing a proposal to correct what was an inadvertent drafting error in the existing rule that prohibited any portion of a core-based statistical area from serving as a field of membership if the population of the whole core-based statistical area was more than 2.5 million.

This final rule also changes the definition of well-defined local communities. The definition of local is not static, and it has changed over time. When our nation was founded, local was most likely defined in terms of how far a person could travel on horseback in a single day. In the early 20th century that definition would have changed to how far a person could travel by car in a single day. In the 21st century, that definition became completely transformed when financial services could be obtained online and through mobile devices.

Today, where once stood farms years ago are now suburbs and sprawling exurbs circling urban city centers. Today, a smartphone can be both an ATM and a video teller capable of delivering a wide range of financial services. As just one example, an Army captain serving our country who is a member of a military credit union today can apply for a car loan or pay his or her bills while stationed in Iraq, Afghanistan, Germany or South Korea through multiple digital methods without needing a local branch.

One only has to look at the transformation of the telecommunications industry to understand how dramatically the world has changed since the passage of the Federal Credit Union Act. In 1934, a local call was usually limited to your hometown plus perhaps a couple of neighboring towns. Everything else was considered long distance. By 1998 when the Credit Union Membership Access Act passed, most consumers had access to telecommunications services under which statewide—or even regional—phone calls were considered local. And today, almost all consumers have nationwide local calling on their cellphones, as well as their landlines if they still have one. Consumers want, need and demand regulatory definitions and financial services that keep up with the times.

Similarly, the requirements for a rural district are not static. They are also not the same as the requirements for a well-defined local community. The key defining characteristic of a "rural district" is population density. There would have been no need to delineate "rural districts" as a type of community charter if a "rural district" also had to be "local" because then all rural districts would also be well-defined local communities. In that case, rural districts would simply be a subset of well-defined local communities.

We also know that Congress has a longstanding interest in supporting rural areas, whose economies frequently lag behind urban areas and where a larger proportion of the population consists of persons of modest means. I'll give you an example I heard from my own U.S. Senator. In March of last year, in my home state of Oregon, the small unincorporated town of Christmas Valley in rural Lake County lost its last financial institution. The several thousand residents of Christmas Valley and the neighboring towns of Fort Rock, Silver Lake and Summer Lake now have to drive about 150 miles round trip to find a brick-and-mortar financial institution.

We've all heard of food deserts—areas that lack access to supermarkets and grocery stores. Many rural areas are financial deserts. We can't let communities like Christmas Valley become Christmas "Death" Valley. We simply have to make it easier for residents of areas like this to access affordable financial services. That's what this final rule helps accomplish.

The final rule also makes a number of changes to enhance consumer access to multiple common-bond credit unions. It maintains the act's requirement that groups of 3,000 or more form a separate credit union whenever practical and consistent with reasonable standards for the safe and sound operation of a credit union, but it streamlines paperwork for groups that cannot feasibly or reasonably establish a new single common-bond credit union because they lack sufficient volunteer or other resources or are unlikely to be financially viable or stable.

It also recognizes that the nature of employer and employee relationships have changed dramatically in recent years. Many jobs are now performed by contractors who have a substantial dependency on the sponsor of a select-employee group contractor. The employees of such contractor share a common bond with the group sponsor's employees and, thus, are now included with the select employee group.

This final rule provides a menu of new options for multiple common bond, TIP and community charters. In keeping with my emphasis on continual quality improvement at the agency, they also provide meaningful regulatory relief to credit unions, most of which are small businesses.

Individually, none of these changes is monumental. Collectively, however, they bring our regulations and definitions into the 21st century. Our changes are in keeping with the letter and the spirit of the law. They are a logical and natural evolution of existing rules. They will promote consumer choice and our mission under the Federal Credit Union Act to create a national system of cooperative credit that provides a source of credit for provident and productive purposes to persons of modest means.

As the safety and soundness regulator for federally insured credit unions, it is incumbent on me to note that none of the changes in this final rule, or the proposed rule we are about to consider, pose a risk to the safety and soundness of either the National Credit Union Share Insurance Fund or individual credit unions. As I have said on many occasions, to the best of my knowledge, no credit union has ever failed because its field of membership is too large. But some credit unions have failed because their field of membership was too small and they did not have the volunteers, financial resources, and loan demand they needed to be successful.

Furthermore, it is often stated that states are the petri dishes for federal policy. There are numerous states that have updated their field-of-membership policies so that they are even broader than what we are providing in this final rule, and the subsequent proposed rule. Many of these changes were successfully implemented years, and even decades ago at the state level, without adverse consequences for consumers, for credit unions in their states, for the federal Share Insurance Fund, or even for banks. The changes we are making today are not risky actions. They simply expand access and choice for consumers and provide options for federal credit unions to make them more successful.

In closing, I want to thank my colleague, Board Member McWatters, and his staff for their thoughtful and constructive work on this final rule, and on the new rule we are about to consider. Washington in general may be dysfunctional these days, but the NCUA Board is not. Staff with our Office of General Counsel and Office of Consumer Financial Protection and Access also deserve a tremendous amount of thanks. I know the long hours they put into this; they worked diligently to make today's final rule possible. I look forward to working with Board Member McWatters and the Office of Consumer Financial Protection and Access on the implementation of this important final rule.

To best serve our country's consumers, it is essential that we adopt this final regulation to help ensure, within the authority granted by Congress, that the federal charter incorporates field-of-membership rules that keep pace with technological and societal change and reflect the times we live in. That is why Congress gave us a mandate to define the terms used in the act and that is also why I will vote in favor of this final rule.

Finally, let me add that where necessary the agency will also continue to recommend to the Congress appropriate changes to the Federal Credit Union Act to further enhance consumer access to our national system of cooperative credit, particularly to persons of modest means.