

Open Board Meeting

November 19, 2015

**Board Member J. Mark McWatters
Statement on the Proposed Field-of-Membership Regulations**

I will vote to issue for comment the field-of-membership¹ proposal pending before the NCUA Board and I encourage the credit union community and other interested parties to review the proposed rule and submit written comments to the agency.

I will, accordingly, only offer limited observations on the proposed rule today.

In my view, the NCUA should permit credit unions to articulate a reasoned argument for the existence of a “well-defined local community,” rather than having to incorporate their business model into an array of Core Based Statistical Areas, Combined Statistical Areas, Metropolitan Statistical Areas, Metropolitan Divisions, and Adjacent Areas, subject to population caps. In reviewing a credit union’s narrative case for the existence of a community, the NCUA should make two inquiries. First, does the proposed community qualify as a “well-defined local community” under a plain language reading of that phrase? Second, will the credit union serve the proposed community in a safe and sound manner?

Some may argue, however, that there is some comfort with the statistical based approach to analyzing the existence of a “well-defined local community” and that stripping those rules from the regulations would vest too much discretion within the NCUA regarding whether a particular community qualifies as a “community credit union.” The agency should address this issue by using the statistical based approach with increased population caps to create a safe harbor rule, while also permitting credit unions to alternatively employ a de novo narrative approach completely independent of the restrictions and limitations inherent in the statistical approach with population caps to articulate a “well-defined local community.” In other words, the agency should permit credit unions to present an independent case as to how they may serve a community without becoming bogged down in compliance with arbitrary statistical areas and population caps.

In addition to the use of a safe harbor rule and a de novo narrative approach to the determination of what constitutes a “well-defined local community,” I am interested in receiving comments regarding the following:

- Whether a credit union may solely rely upon the determination by the Community Development Financial Institution Fund, a division of the United States Treasury Department, that a proposed area is underserved instead of using the “concentration of facilities test” matrix;

¹ I wish to thank the NCUA staff for their work on the proposed field-of-membership rule.

- Whether the proposed amendment to “service facility” to include “online financial services” should be expanded to include its application to the requirement that a credit union serving an underserved area must establish and maintain an office or facility in the underserved area;
- Whether a single statewide Congressional District constitutes a “well-defined local community;” and
- Whether the definition of “rural district” is the appropriate approach under the Federal Credit Union Act to address concerns of federal credit unions serving non-urban areas.

The proposed field-of-membership rule also omits any reference to the constraints present in voluntary mergers and what constitutes “in danger of insolvency” for emergency mergers. Further, the proposed rule does not address whether “Internet communities” may establish their own credit unions or be incorporated into existing credit unions. The NCUA should analyze these issues consistent with the requirements of the Federal Credit Union Act.

As I have previously cautioned, while we want to provide flexibility as allowed by the Federal Credit Union Act, we must not misread the law to either expand fields of membership or limit them. I encourage the agency to publish in the *Federal Register* legal analysis to support all proposed and final changes to the field-of-membership regulations.

In the agency’s review of the field-of-membership rule, we must not jeopardize those credit unions that rely on our rules by failing to provide sufficient legal analysis necessary to support the changes we propose and adopt.

Thank you.