

Cooperative Credit Union Association

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Creating Cooperative Power

February 8, 2016

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

**Cooperative Credit Union Association, Inc. Comments on Chartering and Field of Membership Manual Proposed Rule
RIN 3133-AE31**

BY EMAIL ONLY

Dear Secretary Poliquin:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc., please accept this letter of comment regarding the National Credit Union Administration Board's ("NCUA") request for comments pursuant to the Chartering and Field of Membership Manual Proposed Rule ("FOM proposal"). The Association is the tri-state trade association representing credit unions located in the states of Massachusetts, New Hampshire and Rhode Island, serving over 200 credit unions, which further serve approximately 2.6 million consumer members, and operating as part of the Credit Union National Association. The Association strongly supports this proposal.

The Association applauds the NCUA for recognizing the need for field of membership ("FOM") reform. Federally chartered credit unions ("FCUs") have lagged behind some of their state chartered counterparts in terms of FOM opportunities for years. A number of state laws remain more permissive, and in order to maintain a strong dual chartering system, the federal charter, which has remained less competitive than some state counterparts, must be strengthened. For example, in opining on field of membership standards, the Massachusetts Commissioner of Banks, the first regulator of credit unions administering field of membership, has expressed flexibility for state chartered credit unions to explain their field of membership nexus in a narrative format. While field of membership is not open ended, Massachusetts credit unions are able to explain growth within certain standards unique to that nexus, which has contributed to the state's field of membership laws being among the broadest in the country.¹ As a result of this charter authority disparity, three times more federal credit unions are converting to or merging into state charters in order to increase their FOM.

¹ DOB Op. Ltr. August 3, 1992.

More important, however, the current FOM regulatory framework has prevented individuals who need access to credit from having that opportunity. The continued success of credit unions depends on the ability to attract and diversify new membership.

Field of membership for federal charters has remained stagnant. The most recent extensive FOM reform was through the passage of the Credit Union Membership Access Act of 1998, now nearly thirty (30) years old. While the Association fully supported the 2015 NCUA proposal, which allowed twelve (12) additional categories of well-established associational common bonds to be automatically approved, this did not go far enough. Broader reform, within the current statutory authority of the Federal Credit Union Act (“FCUA”), and based on creative ideas that provide real regulatory relief to federal credit unions, is necessary. That is why the current proposal is such an important step, and receives our full support.

The result of successful passage of this proposal will be decreased disparity between state and federal charters, and an increase in the availability of affordable financial services to all individuals through a strong dual chartering system. The rule will accomplish the objectives set out by the NCUA: to ease any undue burdens and restrictions on an FCU’s ability to provide services to consumers who are eligible for membership, particularly those of modest means and those who may not currently be members of a credit union; enhance the menu of strategic options for FOM expansions; and maximize competitive parity between federal and state charters, to the extent allowed by law, while respecting the national system of dual chartering.

Finally, in preparation for the development of the present comment letter and to foster a local consensus, the Association again conducted four letter writing workshops across all of our geographic regions, as well as formed and administered an industry-wide FOM Working Group, which met multiple times over a period of approximately four months. The top comment received in these workshops and during the meetings of the Working Group was that FOM reform is necessary, and that this proposal is fully supported. Our members have also suggested additional areas for improvement. Through engagement with key NCUA Directors from the Office of Consumer Protection, Division of Consumer Access, individual credit unions discussed their specific fact patterns, and have commented on specific provisions that could be broadened.

The majority of this letter will elaborate on the provisions most highly supported by Association members, and address other key issues, which members have brought to my attention.

I. Support of Proposed Rule

The proposed rule will modify the Board’s policies affecting the definition of a local community, a rural district, and an underserved area; group members’ proximity to multiple common bond FCUs when they expand; expansion of single common bond FCUs that serve a trade, industry or profession; and the process for applying to charter or expand an FCU.

Reasonable Proximity through Members' Online Access to Services

The FCUA authorizes multiple common bond credit unions to expand through the addition of select groups having dissimilar common bonds under certain circumstances. One criteria is that the group could not feasibly or reasonably establish a new single common bond credit union. When formation of a single common bond credit union either is not practicable or is unsound, the FCUA requires the group to be included in the FOM of a credit union that is within reasonable proximity to the location of the group.

“Reasonable proximity” under the current regulation requires the establishment of a “service facility” including a branch, a shared branch, a mobile branch with weekly visitations, and a credit union owned electronic facility. The proposal would amend this definition to allow for modern technology to be utilized in determining whether “service facility” is present for purposes of demonstrating reasonable proximity to a group, including access through an online internet channel such as a transactional website or mobile platform.

This consideration of modern technological advances is a positive step in recognizing sophisticated online banking users. Associations need not restrict their membership to a service area of a credit union to be included in an FOM. With the development of electronic delivery methods for financial service, geography, location, and physical branches become less representative of the scope of a service area. Additionally, the proposed requirements that the modern technology be able to accept shares, accept loan applications, or disperse loans, will limit the credit union from broadening its geographic reach without having the actual capability to have a presence in the area. Inclusion of such criteria in the proposal is highly supported. The ability to utilize this technology as a service facility will also help credit unions attract younger generations and millennials, a population group that is accustomed to quick electronic delivery of products and ease of use. Such technological considerations will allow credit unions to bring that population group in, thereby diversifying their membership base.

Other Persons Eligible for Credit Union Membership

The proposal would allow a credit union to include within its common bond those who have been honorably discharged as a veteran of any branch of the United States Armed Forces within its affinity groups. This provision is supported without question. Honoring the service of veterans and facilitating their ability, and that of their affinity groups, to join a credit union, is sound policy whether on active duty or honorably discharged.

The Association suggests that the NCUA consider expanding this concept of service to veterans, by allowing credit unions to include within its common bond larger veterans' service groups such as the local chapters of the Disabled American Veterans, Veterans Services Offices, American Women Veterans groups, American Legion, and any other organizations whose primary mission is to serve the branches of the United States Armed Forces. Such groups have their own dedicated advocacy efforts, publications, and strong governance structures including regular bylaws, schedules, voting rights, and annual meetings annual. In addition, participation in such organizations is limited to those

who meet certain qualifications, often requiring participants to be veterans themselves. The Association notes that these groups may be permissible within a credit union's FOM under another test or provision. It is our position that such groups fall as squarely into the concept of affinity groups as honorably discharged veterans, and should be eligible for membership automatically.

Streamlined Determination of Stand-Alone Feasibility of Groups Greater than 3,000

The proposal eliminates the current overlap analysis required for groups between 3,000 and 5,000 seeking to form a new credit union. The proposal allows NCUA to accept a written statement indicating the conditions that exist for why a group cannot form its own credit union.

The Association suggests an increase in the threshold of 5,000 to at least 10,000. Based on NCUA's own statistics, the difficulties in creating a new credit union and one that would be viable are many in this day and age. The dearth of new credit unions over the past ten (10) years is evidence alone of this difficulty. NCUA itself notes that 80 percent of credit union failures occurred in credit unions with fewer than 5,000 members. The Association is of the position that the 10,000 threshold is a better cutoff that represents the point at which a standalone single common bond credit union could reasonably have a chance at success.

However, the Association notes that an upper cap has a weak relation to the strength of a group's common bond. The nexus, commonalities, and dependency relationships should be the focus of regulatory policy and a credit union should be able to demonstrate this using its knowledge of its community and the relationships therein.

We note that for categories within the proposed range, NCUA is not eliminating the requirement to demonstrate that a group cannot establish a new single common bond credit union, but is now accepting a statement in lieu thereof. NCUA can still accept or reject this statement during the application process, and is merely adjusting the extent of the documentation that will be required. Thus, this provision appears to be well within the NCUA's statutory authority. Therefore, the Association supports this proposal and recommends an increase in the threshold.

II. Community-Based Credit Unions

The Association supports the following provisions:

Population Limit as Applied to a Well-Defined Portion of a Core-Based Statistical Area ("CBSA")

The current regulation states that CBSAs with populations that exceed 2.5 million cannot be used as a well-defined local community ("WDLC"). The Association strongly questions this rationale. The proposal would allow for a portion of a CBSA to qualify as a WDLC even when the population of the CBSA as a whole exceeds 2.5 million.

While the Association supports this consideration of CBSAs that are highly concentrated in terms of population that may contain smaller portions, we are of the position that the population limit as a whole should be eliminated in its entirety, or, in the alternative, increased to at least 5 million. The FCUA does not impose a numerical population limit, and therefore is not statutorily required, particularly as the concept of a well-defined local community in and of itself is not limited to a finite number. Such a numerical limit constrains who a credit union can serve and is arbitrarily designed to limit a credit union that could serve a well-defined community that is larger than 2.5 million people safely and soundly.

The Association suggests that if the NCUA chooses to retain a numerical cap, that the regulation allow a credit union to use the nexus test to demonstrate a relationship and commonality of a group that exceeds the current limit of 2.5 million.

Use of Combined Statistical Area

The current regulation does not allow a credit union to use a Combined Statistical Area (“CSA”) for a WDLC. The proposal would include CSAs in the definition of a WDLC, no longer limiting credit unions to serving a statistical area no larger than a metropolitan statistical area (“MSA”) or a metropolitan division. This is a significantly positive step and would give credit unions in a CSA flexibility to serve members in the CSA up to the population limitation instead of being limited to a single CBSA or MSA. CSAs consist of multiple and identifiably different CBSAs, but who have substantial employment interchange and community ties. A credit union should not be limited to serving only one MSA or CBSA in a CSA when many of its members would likely live or participate in activities in the other MSA or CBSA. This expansion allows a credit union flexibility to serve a community that would not normally fall into a single CBSA.

The Association additionally supports the adoption of this provision as CSAs are independently published and are based on verifiable standards. We are supportive of the NCUA’s consideration of verifiable indices prepared by other organizations. There is value in having an independent, publicly verifiable concept included in the definition of a well-defined local community. For example, our New England region is unique in that the NCUA recognizes independently verifiable micropolitan statistical areas as delineated by the Office of Management and Budget within the region as well-defined local communities, a characterization that does not exist in other parts of the country. This consideration has provided flexibility for our members. The ability to include CSAs within a credit union’s field of membership will be an additional step in the right direction.

Addition of an Area Adjacent to a CBSA

Currently, credit unions cannot serve areas outside of a CBSA or a single political jurisdiction. The proposal would allow a credit union to serve a contiguous area outside of a CBSA, CSA, or single political jurisdiction or rural district if that area is within the WDLC. A credit union would be required to demonstrate in a written narrative the interaction or common interests for the proposed expanded community as a whole, when seeking to add an area adjacent to a CBSA. This expanded community

would be subject to the proposed population limits for community charter of 2.5 million and rural district charter of 1 million.

The Association supports this expansion, as well as the move back to a narrative approach. An FCU would provide a written narrative to demonstrate interaction or common interests of the proposed expanded community when seeking to add an adjacent area. Such an approach is needed when defined communities such as CBSAs and single political jurisdictions do not adequately encompass a particular area. The approach should be used to allow credit unions to describe why specific NCUA requirements to determine a community have not completely captured a community, an effort that is more intricate than can be explained with numerical graphs or population numbers. The narrative approach allows credit unions to better explain areas and communities that they are most familiar with and often in the best position to judge whether they can be served by such a credit union.

The Association has worked closely with two of our members who will benefit from the change to adjacent areas and the use of a CSA. One member located in central Massachusetts has been considering a field of membership expansion, but has made the business decision to delay due to the inability to serve an entire community, which consisted of multiple MSAs. If the proposal is adopted a CSA, which is clearly defined by the Office of Management and Budget, can be used, this member will be able to serve the community that its members interact with on a daily basis but who previously were prevented from being offered the same financial services due to their location in a different MSA.

Another member that serves multiple counties in north-central Massachusetts and that has applied for FOM expansion but has been denied on three separate occasions, appears to also be able to serve the individuals within its community that it could not previously serve due to such severe definitions and documentation. The ability to use a narrative approach to describe the everyday economic interactions between its community members will more clearly show their dependency relationship and the common sense of expanding service to those individuals. Also, the ability to add a contiguous area outside of the credit union's CBSA would promote the economic advancement of the desired county by allowing a member-centric community credit union to serve working families there.

Another example arises in the state of Rhode Island, where a credit union located in the northern part of the state will benefit from being able to serve the members of its community which under current regulation fall outside of the definition of a well-defined local community. Such members are located in contiguous areas just across state lines outside of the CBSA, and will be able to access the credit union's services and products under the proposal. A unique geographical quality of this credit union is the ability to conveniently serve members who work or reside immediately on either side of the state's northern border, and the recognition of this fact pattern by the NCUA is appreciated.

In stark contrast to such examples, a member credit union in southeastern Massachusetts, which would have benefited from this proposal, was required to expend significant time and cost in submitting an application to the NCUA Board for approval for a transaction that is permitted under the proposed regulations. As part of that application for regulatory approval, which was successful, the credit union was forced to make a business decision whether to surrender expansion within a community to include

a Providence-Warwick RI-MA MSA within its FOM. Further complicating this decision was the fact that the member had a branch in a Massachusetts town serving members, and the agency was unable under the current rules to allow contiguous or grandfathered communities. The community could have been served by the branch while the credit union expanded its FOM, but as the current proposed provisions were not yet in place, this credit union was forced to deny service to potential numbers who would have qualified and been able to apply for membership within this community under the credit union's former field of membership. The proposed rule would not only allow this now, but would simplify what was a costly and timely process for the credit union.

III. Multiple Common Bond Credit Unions

The Association is supportive of the changes that were made for multiple common bond credit unions. However, the Association is of the position that reform can go further in this area.

The reasoning and logic behind the expansion to parties who have a strong dependency relationship with employees of a TIP credit union should be applied to multiple common bond credit unions. The proposal goes one step in this direction by including SEG contractors in a multiple common bond, but does not go far enough.

The proposal will extend to multiple occupational common bond credit unions the ability to add persons who work regularly for an entity that is under contract to any of the multiple SEG sponsors listed in its charter, provided the contractor has a strong dependency relationship with the sponsor in each case. The Association supports this expansion, and suggests that the "strong dependency relationship" test should be applied to other groups beyond just those under contract.

For example, the Association has worked with a Massachusetts member that serves a large healthcare facility. The inclusion of SEG contractors in a multiple common bond credit union will be helpful to this credit union in that the credit union will be able to serve not only employees of the facility itself but also the various contractors the facility works with. However, this healthcare facility also serves as a teaching organization. The students, interns, residents, and volunteers of the facility are not covered under the proposal, as they are not "under contract" to the facility. They do, however, have a strong dependency relationship on the facility, and in fact are economically dependent on each other. The Association suggests extending the thinking behind the expansion of SEG contractors to include other groups.

IV. Trade, Industry or Profession Credit Unions

Trade, Industry or Profession ("TIP") as a Single Common Bond

Under existing policy, NCUA recognizes a single occupational common bond between a select employee group ("SEG") sponsor's employees and those of its contractors, provided there is a strong dependency relationship between the sponsor and the contractor. The proposal will expand the definition of a TIP charter to include entities that have a strong dependency relationship with, and whose employees work directly with employees of, other entities within the same industry.

The Association supports this expansion. We also support the characterization of a “strong dependency relationship” as one that hinges on the likelihood of a significant economic impact on either or both parties if one were unable to continue in its operations without doing business with the other. Vendors and contractors who are closely associated with a particular trade or industry by means of outsourced work or independent contracting should be allowed to be served by the credit union.

V. Underserved Areas

Exclusion of Non-Depository Institutions and Non-Community Credit Unions when Calculating the Concentration of Facilities Ratio

Currently, when a credit union seeks to serve an underserved area, NCUA calculates a proposed area’s concentration of facilities ratio to meet a statutory requirement that a proposed area be underserved by other depository institutions. Data currently used may include non-depository institutions and non-community credit unions that cannot actually serve the entire population of a proposed area despite having a branch there.

The proposal would exclude non-depository institution or non-community credit unions from the concentration of facilities ratio under certain circumstances, and would include other multiple common bond credit unions serving the underserved community. The rule will also consider alternative methods to the concentration of facilities ratio that may more comprehensively reflect underservice by other depository institutions. These alternatives could reference the underserved counties, as designated by the CFPB, or a metric of a credit union's own choosing that it would submit as evidence of underservice in a proposed area, provided the metric is based on "data of the board and the federal banking agencies."

This provision is not only appropriate but necessary. Non-depository institutions and non-community credit unions either by definition or in fact cannot and do not serve the proposed area, and therefore should not be included in a calculation of a proposed area's concentration of facilities ratio. The current calculation limits individuals’ access to affordable financial services from a credit union despite sometimes clear evidence that another type of institution cannot serve all members of a particular population group. This is but one necessary change, which will expand service to underserved areas.

The Association encourages NCUA to make it a priority to continue to expand and find ways for all credit unions to add and serve underserved areas.

VI. Suggestions for Further Reform

Automatic Approval

In addition to the specific groups that were identified for automatic approval by the NCUA’s 2015 Associational Common Bond proposal, the Association recommends the addition of other select groups. Such groups should include: agricultural cooperatives; school-based and community-based

athletic groups; and academic extra-curricular and club activities. As with the organizations specifically identified for automatic approval in the previous proposal, these types of groups feature strong common bonds, well-defined membership requirements, are integrally related, and share an active participation in local group activities that further the goals and purposes of the association.

The Association urges the NCUA to apply flexible regulatory policies to such organizations and groups of individuals that share a demonstrable common bond.

Conversion Process

The NCUA should address the FOM issue in the instance of a state charter's move to convert to a federal charter, when the state's regulatory authority on FOM is more expansive than federal authority. For example, if a state charter has a FOM that consists of various communities that would not be considered well-defined local communities under the federal regulations, the NCUA should consider a grandfathering process for that credit union to maintain its current FOM upon conversion to a federal charter.

This maintenance concept should be applied elsewhere as well. For example, a credit union that seeks to convert to a community charter should be allowed to maintain previously approved groups in their FOM that would fall outside the boundaries of their new community. This would allow credit unions to evaluate the charter that best fits the needs of the credit union and the community.

This can also be expanded in the situation of current grandfathered FOM credit unions that seek to expand but that are unable to serve new members. Often, these are community chartered credit unions that serve FOMs that already fit into one of the well-defined local community categories, and in order for these credit unions to expand, they would need to eliminate communities or convert to a state charter. Such legacy FOM credit unions should be allowed to use the new regulations without having to diminish their existing FOMs.

Placing a credit union in a position of deciding between further growth and continued service to current members is irrational and out of place for a regulatory agency. Current policy forces credit unions to make business decisions either towards future growth but with the disadvantage of taking away the access to financial services current members, or stagnation. This inability to seek growth has no place in sound regulatory policy.

Data Sources

The Association is heartened that the NCUA has incorporated consideration of additional data sources in terms of defining communities into this proposal. We are of the position that this approach should be continued and expanded. The Office of Management and Budget, the CFPB, and other well-established entities maintain up to date statistics, census data, lists, and descriptions of our communities. The NCUA should seek to interact more regularly with such entities to develop the most current understanding of rural districts, underserved areas, CSAs, MSAs, and other area descriptors, and clearly communicate to the industry what data is being relied on when making a field of membership consideration and determination.

Other Suggestions

To help illustrate the need for further reform, the Association offers another example of a western Massachusetts member with adjacent counties. Adjacent to the credit union's county are three other counties in Massachusetts that are home to several small credit unions. Some of these are struggling and are seeking merger partners. Most are not yet candidates for an emergency merger, but most certainly will be at some point in the future if a suitable merger partner cannot be identified before they become a threat to the NCUSIF. Unfortunately, because of FOM restrictions the credit unions cannot merge with any community credit unions if their FOM is not completely contained within the acquiring credit union's common bond. Consequently, most of those credit unions will continue to struggle or will be forced to enter into mergers that may not be as advantageous to their membership as a merger with a larger, stronger credit union would be. Such an approach regarding mergers defies logic and only results in an overall weaker system that provides relief from FOM restrictions solely when a credit union is on its deathbed and no longer financially attractive for most suitors.

While the Association respects the integrity of credit union field of membership, we think at a minimum that in cases of a potential voluntary merger involving two different community chartered credit unions that as long as the continuing credit union will serve a community that satisfactorily meets all FOM requirements and definitions, that the merger should be permitted. Likewise, we believe that any two federally chartered credit unions should be permitted to merge voluntarily regardless of their respective FOMs provided that the resulting charter of the continuing credit union is one that satisfactorily meets one defined in the FOM and Chartering Manual. Simply stated, in our view any two federal charters should be able to voluntarily merge and should be able to pick their resulting charter type upon the merger.

Another area worthy of review is the ability of community chartered credit unions to adopt underserved areas. This was the policy of NCUA for many years and we believe is consistent with the intent of Congress to support credit union growth. It is our understanding that NCUA suspended the ability of community chartered credit unions to adopt underserved areas as a result of threatened legal action from the American Bankers Association several years ago. This is bad policy and should be revisited. Millions of Americans currently residing in underserved areas would be better served and would have greater access to affordable financial products and services if the agency would revert to its previous policy of allowing community chartered credit unions to adopt underserved areas.

VII. Effect on the State Charter

Regulators are the arbiters of credit union safety and soundness and help ensure the public's confidence in the financial services system that is vital to any state's economic stability. The Association's state chartered credit unions strongly support efforts to strengthen the federal chartering system through the adoption of the proposed changes.

The competitive nature of the dual chartering system prompts both state and federal regulators to be responsive to the needs of their constituent credit unions and citizens. The dual system actually provides checks and balances between two levels of government. If in the future a state-chartered

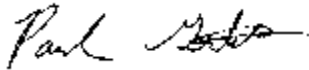
credit union chooses to conduct its due diligence in evaluating charter choice, the proposed changes serve to make the federal credit union charter a viable option to deliver credit union service. The continued strength and growth of all credit unions is an important systemic goal.

VII. Conclusion

The Association strongly supports this proposal, and encourages the NCUA to quickly adopt all of the proposed changes. In addition, we request consideration and adoption of our suggested additions, which will only further the objectives of this proposal while remaining within current statutory authority.

Thank you for your consideration of these views. The Association appreciates the opportunity to provide input and I remain available to address any questions or concerns at 508.229.5623 that you or your staff may have at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul C. Gentile".

Paul C. Gentile
President/CEO

PCG/mabc/kb