

Cooperative Credit Union Association

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Creating Cooperative Power

December 9, 2016

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

**Cooperative Credit Union Association, Inc. Comments on Notice of Proposed Rulemaking
Regarding Community Common Bond
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's ("NCUA") request for comments pursuant to the Notice of Proposed Rulemaking Regarding Community Common Bond ("FOM proposal"). The Association is the state credit union trade association representing credit unions collectively located in the states of Delaware, Massachusetts, New Hampshire and Rhode Island, serving approximately 195 credit unions which further serve approximately 3.8 million consumer members. On behalf of member credit unions, 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 their state chartered counterparts in terms of FOM opportunities for years. State laws remain more permissive, and in order to maintain a strong dual chartering system, the federal charter, which has remained less competitive than its state counterparts, must be strengthened. More importantly, 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 membership.

The NCUA recently finalized its FOM proposal that was published in December of 2015. The final rule includes substantive modifications to the provisions affecting each of the three FOM types that the Federal Credit Union Act ("FCUA") authorizes: single common bond; multiple common bond; and community credit unions. The Association overwhelmingly supported that proposal.

Specifically, the provisions relative to affinity groups, the use of a combined statistical area, the addition of an area adjacent to a core-based statistical area, the expansion of the definition of a trade, industry, or professional charter, and the changes to the definitions of “rural district” and “underserved area” that were adopted in the final rule receive the Association’s full support.

The current proposal seeks to delve deeper into the provisions relative to community charters. The Association again extends its support to the provisions contained in the current proposal, as they are further examples of the broad reform that provides real regulatory relief to credit unions that is necessary.

In preparation for the development of the present comment letter and to foster a local consensus, the Association met with its industry-wide FOM Working Group, as well as administered a targeted survey on the current proposal’s suggested changes. Our members indicated their full support of the current proposal, and also suggested additional areas for improvement.

I. Narrative Approach

The Association strongly supports the general use of the narrative model in seeking approval to charter, expand, or convert to a community charter.

The NCUA, in its deliberations over the recently finalized FOM rule, considered reinstating the narrative model for the limited purpose of presenting indicia that residents on both sides of an adjacent area to an existing presumptive community share common interests and interact with each other. The Association notes with support that the current proposal expands the use of the narrative model to general use, and not just for the singular purpose of demonstrating common interests of adjacent areas.

The use of the narrative model, particularly when accompanied by well-defined criteria, will benefit both credit unions and the NCUA. 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. While field of membership is not open-ended, Massachusetts credit unions are able to explain growth within certain standards set up for that nexus, which has contributed to the state’s field of membership laws to be the broadest in the country.¹ This process has worked successfully, and the NCUA’s decision to reinstate the narrative model is a positive one.

The presumptive community model may be too limiting if it confines credit unions to presumptive community options that may be unsuited to their purposes and ability, leaving them with no recourse but to accept an area other than the one they ideally seek to serve. This creates problems for the credit union, who seeks to serve a particular community but is barred from doing so, and also creates a dilemma for the NCUA, whose mission is to assist credit unions in providing services to the underserved in a safe and sound manner.

¹ DOB Op. Ltr. August 3, 1992.

The Association is of the position that the NCUA should allow credit unions the option to elect either the narrative approach, or the presumptive community model, to support any proposed change to FOM. Greater flexibility in the application process eliminates superficial boundaries that are created when credit unions are forced to operate only within the boundaries of presumptive communities. Local credit unions are better situated to understand the boundaries, make-up, and needs of their communities, and the ability to use either the narrative approach or the presumptive community approach will allow the maximum number of individuals to be eligible for credit union membership and their products and services.

Narrative Criteria

The proposal would amend Appendix B of the Chartering and Field of Membership Manual to state that in lieu of a statistical area, such as a CBSA or a CSA, credit unions can supply compelling evidence of interaction or common interests in order to charter, expand, or convert to a community charter. To assist credit unions in developing their narratives, the NCUA has identified 13 criteria that the NCUA will consider in deciding a credit union's application.

Member credit unions opined on the relevance of the NCUA's suggested set of narrative criteria to identify a well-defined local community. Of the 13 criteria, 8 received the distinction of being extremely relevant in considerations for a FOM charter, expansion, or conversion. They are as follows:

- Presence of a central economic hub;
- Shared public services and facilities;
- Hospital and major medical facility services;
- College and university enrollment;
- Organizations' and clubs' membership and services;
- Newspaper subscriptions;
- Attendance at entertainment and sporting events; and
- Local television and radio audiences.

One of the proposed criteria received a classification of not being relevant at all in the consideration of a FOM charter, expansion, or conversion. The criterion is:

- Governmental designations within the community.

Survey respondents supplied additional comments on some of the proposed criteria. Radio marketing and consideration of the audience was seen as a relevant source of information. Commenters were in agreement that data on listenership of either a radio program or particular radio marketing is a good indication of the existence of a community. Comments were also provided on geographic isolation, noting that an area's detachment from other well defined geographic areas could be a relevant consideration of a community. Isolation from other communities can take many forms, and could result in increased interaction or common interests of that particularly detached area.

II. Increase in Population Limit

Current regulation states that core-based statistical areas (“CBSAs”) with populations that exceed 2.5 million cannot be used as a well-defined local community (“WDLC”). The Association strongly questions this rationale. While the proposal would increase this population maximum to 10 million, the Association is of the position that a population limit should be disregarded entirely.

The Association questioned the need for an upper cap on population in its comments of the first FOM proposal. While the Association supports the finalized provision that allows for a portion of a CBSA to qualify as a WDLC even when the population of the CBSA exceeds 2.5 million, we again reiterate that an upper cap is unnecessary and has no basis in statute.

The consideration of the NCUA of a CBSA that may have a population that exceeds 2.5 million demonstrates the understanding that numerical caps are often manufactured concepts that ultimately serve as nothing more than a limitation. The Association questions the need for any upper cap on a population limit when other standards are in place to prevent a well-defined local community from expanding too far. The limit seems redundant at best, and irrelevant at worst, when the ultimate consideration is whether the community is well-defined. It is conceivable that a community that meets all other considerations of being well-defined could total 10.1 million, in which case it would fall out of the definition due to the addition of a few hundred individuals. This seems an arbitrary determination. The FCUA does not impose a numerical population limit, and therefore a numerical limit 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 10 million people safely and soundly.

The requirements that the credit union applicant demonstrate both that the proposed area will continue to emphasize interaction or common interests among residents within those boundaries as essential features of a local community, and that the credit union maintains the ability and commitment to adequately serve that community without compromising either the safety and soundness of the credit union’s operations or the cohesion of the community, are sufficient safeguards to ensure that an area is accurately identified as a WDLC.

The 10 million figure was chosen as it would conform to the population of the most populous single political jurisdiction the Board has approved to date, Los Angeles County. The NCUA notes that the FCU that serves that community has not experienced adverse safety or soundness consequences attributable to its population size. It appears that the underlying intent of the NCUA in making these various changes to FOM provisions is to be forward-looking, and to anticipate future changes and growth. To that end, it seems incongruous that the NCUA would impose a numerical cap equivalent to an area which has already reached the proposed limit, but has not shown to be problematic or a threat to safety and soundness.

In addition, the Board itself seems to contemplate that a population limit is unnecessary. In the NPRM, the Board specifically asks commenters to respond to the following questions: whether to apply any population limit at all if the area is completely or primarily urban; whether to apply a

population limit to a CBSA or statistical area given that neither is defined according to maximum population; whether to apply a population limit equivalent to the most populous/largest single political jurisdiction NCUA has approved; and various other considerations regarding whether to apply the population limit in a certain way. These questions suggest that there is currently uncertainty as to whether a population limit is necessary at all.

III. Use of Combined Statistical Area

The recently finalized rule integrated combined statistical areas (“CSAs”) into the definition of a WDLC, no longer limiting credit unions to serving a statistical area no larger than a metropolitan statistical area or a metropolitan division. The current proposal extends the same consideration to CBSAs, and will permit a credit union to designate a portion of a CBSA as its community without regard to division boundaries. This change corrects the inconsistency in the treatment of a portion of a CBSA versus that of a CSA, and receives the Association’s full support.

As with the change to CSAs in the finalized rule, this change to CBSAs is a significantly positive step and would give credit unions serving CBSAs flexibility to serve members without being confined to the boundaries of the metropolitan divisions within the CBSA. A credit union should not be limited to serving only the metropolitan divisions within its CBSA when many of its potential members would likely live or participate in activities beyond those boundaries. This expansion allows a credit union flexibility to serve a community that would not normally fall into the boundaries of the metropolitan division.

IV. Suggestions for Further Reform

The Association reiterates some of the comments made during deliberations of the finalized FOM rule, and is of the position that many of the following suggestions could be incorporated in the current proposal.

Automatic Approval

In addition to the specific groups that included for automatic approval in the recently finalized rule, 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 practice flexible regulatory policy relative to organizations and groups of individuals that share a noticeable 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 can be applied elsewhere. 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 to current members, or stagnation. This inability to seek growth has no place in sound regulatory policy.

Merger Considerations

To help illustrate the need for further reform, the Association again offers the 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 any community credit unions in if their FOM is not completely contained within the credit union. 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 defies logic and only results in an overall weaker system that only provides relief from FOM restrictions 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

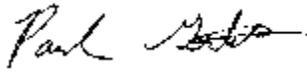
meets all FOM requirements and definitions, that the merger should be permitted. Likewise, we believe that any two federally chartered credit unions should be permitted to merge voluntarily regardless of their respective FOMs provided that the resulting charter of the continuing credit union is one that 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.

V. **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 behind 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/kb