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Gerard S. Poliquin
Secretary of the Board
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1775 Duke Street
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RE: National Credit Union Administration; Chartering and Field of Membership; 81 Federal Register No. 217, 78748, November 9, 2016

To Whom It May Concern:

The National Credit Union Administration (NCUA) has requested comments on a proposal that would comprehensively amend the chartering and field of membership requirements governing federal credit unions with a community charter. This proposal goes well beyond any reasonable definition of "local" and "well-defined." The American Bankers Association[1] (ABA) is strongly opposed to this proposal and urges that it be withdrawn.

Membership in credit unions is limited by law to those that share a "meaningful affinity and bond."[2] In addition, community chartered credit unions are limited to serve areas that are "well-defined" and "local."[3] This proposal reimagines the definitions of plain language statutory terms, effectively rendering the concept of well-defined and local meaningless. The reimagined definitions eviscerates the major limitations placed on credit union field of membership expansion and would allow nearly any federal community credit union to serve almost any geographic area or population center it desires.

Throughout this proposal the Board sidesteps the Federal Credit Union Act requirements in the name of industry growth and replaces its own judgment for that of Congress. Such a drastic expansion of taxpayer subsidized financial institutions is inconsistent with the limited scope of credit union operations envisioned by Congress. Furthermore, NCUA's proposal would directly undermine the ability of taxpaying banks to serve their communities – replacing healthy, private sector financial services with government subsidized competition. The ABA urges the Board to reconsider this egregious overreach and withdraw this proposal.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $15 trillion banking industry and its 2 million employees. Learn more at aba.com
[2] Credit Union Membership Access Act Public Law No, 105-219
[3] Federal Credit Union Act 12 U.S.C. Section 1759(b)(3)

In order to maintain an emphasis on a meaningful affinity and bond among residents within well-defined, local community boundaries—an essential feature of the community federal credit union charter—the Board should:

- Retain the population size of a presumptive well-defined, local community consisting of a statistical area or portion thereof at 2.5 million;
- Not adopt the use of the narrative model in defining a well-defined, local community.

Retain Population Size of Presumptive Well-Defined, Local Community at 2.5 Million

The Board should retain the population size of a presumptive well-defined, local community consisting of a statistical area or portion thereof at 2.5 million. The proposal would expand the population threshold four times, to 10 million. This significantly expands the definition of community beyond any reasonable definition of **local**, circumventing Congressional intent as expressed in the Credit Union Membership Access Act (CUMAA).[4] The proposal blatantly ignores CUMAA's mandate to limit the field of membership boundaries of FCUs to "a meaningful affinity and bond among members in the context of shared and related work experiences, interest, or activities, the commonality of routine interactions, and a well-understood sense of cohesion or identity."

NCUA determined the 2.5 million population threshold an appropriate level as it conforms to the population parameters by which the OMB recognizes metropolitan divisions with a Core Based Statistical Area. As a practical matter, the 2.5 million person cap helps ensure that credit unions are serving well-defined local communities with meaningful close-knit interaction among residents, as Congress intended.

The larger an area's population, the less likely that there is local-level interaction as intended by Congress. Indeed, even 2.5 million strains credibility; while 10 million is completely unreasonable. For example, the Philadelphia-Reading-Camden, PA-NJ-DE-MD Combined Statistical Area with an estimated population of 7.2 million individuals would, under this proposal, qualify as a well-defined, local community. This Combined Statistical Area encompasses multiple counties across four state lines, including eight southern New Jersey counties, two counties in northern Delaware, six counties in eastern Pennsylvania, and a northern county in Maryland. In addition, this Combined Statistical Area encompasses six Metropolitan Statistical Areas. The Philadelphia-Reading-Camden, PA-NJ-DE-MD Combined Statistical Area hardly meets any reasonable definition of local, well-defined community, but is rather more representative of a large region.

NCUA should continue to emphasize interaction or common interest among residents within community boundaries as essential feature of a local community. The Board should therefore withdraw its proposal to raise the population threshold from 2.5 million people to 10 million for a statistical area or portion thereof to qualify as a presumptive well-defined local community.

[4] Public Law No, 105-219

If an FCU desires to serve an area with a population greater than 2.5 million—something that should be a **rare** and only in exceptional circumstances—the Board should establish a process to give public notice and seek comments on the FCU's application. In addition, the Board should be required to vote on the proposed community charter application, after comments have been received. This should not be a check-the-box exercise by NCUA, but a thorough investigation into the proposed community and the necessity to serve such a large area.

Do Not Adopt Use of Narrative Model in Defining Well-Defined, Local Community

The Board should not adopt the use of the narrative model in defining a well-defined, local community.

The proposal would allow a federal community chartered credit union to submit a narrative to demonstrate that the community it proposes to serve qualifies as a well-defined, local community based upon common interest and interaction among the area's residents. Until 2010, NCUA had required that all FCUs applying for a community charter submit a narrative for NCUA's approval demonstrating that the residents of the proposed community had common interest and interaction. The Board appropriately abandoned the narrative requirement in favor of the objective model that currently exists. The Board made this decision to provide consistency and enhance its chartering policy, assuring the strength and viability of the community charter. The current proposal virtually reverses this decision.

The proposal identifies 13 criteria that have been deemed most useful and compelling by the Board to demonstrate common interest and interaction among residents. The Board noted that it is not necessary that an area "meet all of the narrative criteria to qualify as a local community; rather, the totality of circumstances within the criteria a credit union elects to address must indicate a sufficient presence of common interests and interaction among the area's residents." This is not acceptable.

NCUA has an obligation to examine not only factors that support the presence of common interest and interaction in the proposed community, but also factors that do not support the presence of common interest and interaction. To exclude factors that would rule against the presence of common interests and interaction would result in an incomplete analysis and would bias the results of the narrative. This point was reinforced in 2004 by a federal judge.

In a 2004 lawsuit against NCUA by the ABA on behalf of the banking industry, ABA challenged the NCUA's determination of whether a particular community—in this case a six-county area in Utah—meet a reasonable standard of "well-defined local community." District Judge Dale Kimball opined: "The word local was intended to be a limiting factor, but there is no indication in the record that the NCUA analyzed any issue that may have tended to diminish the likelihood of finding more than one local community in the six-county area. This is contrary to the statute… … [T]he NCUA must critically analyze the facts provided in the application to ensure that

incomplete and erroneous information does not lead to an improper conclusion."[5] The Board has an obligation to require any narrative application to address all 13 criteria identified as most useful and compelling to demonstrate common interest and interaction among residents. Without a thorough analysis and investigation, NCUA risks an improper conclusion.

In addition to requiring any narrative application model to address all 13 criteria identified by the Board, a process to give public notice and comment should also be established. Such a transparent and open process enables all voices to be heard regarding whether the proposed community charter application is indeed a well-defined, local community.

Conclusion

In conclusion, ABA opposes NCUA's proposal which would comprehensively amend its chartering and field of member requirements governing federally chartered community credit unions. The proposed amendments are contrary to both statutory constraints and congressional intent to limit the field of membership boundaries of federal community credit unions to "local" and "well-defined" populations. NCUA should continue to emphasize interaction or common interest among residents within community boundaries as essential feature of a local community. Therefore, the NCUA Board should withdraw this proposal.

ABA appreciates the opportunity to share its views and would be happy to discuss any of them further at your convenience. If you have any questions please contact me at (202) 663-5356 (e-mail: bkleinpaste@aba.com).

Sincerely,

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[5] 347 F.Supp.2d 1061 (2004) AMERICAN BANKERS ASSOCIATION, et al., Plaintiffs, v. NATIONAL CREDIT UNION ADMINISTRATION, Defendant, America First Federal Credit Union, et al., Intervenors Defendants. No. 2:03CV621DAK. United States District Court, D. Utah, Central Division. December 8, 2004.