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January 31, 2003

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

Re: National Credit Union Administration; Organization, and Operations of Federal Credit Unions; 12 CFR Part 701; 67 Federal Register 72443, December 5, 2002

Dear Ms. Baker:

The American Bankers Association ("ABA") is responding to the proposed rule published by the National Credit Union Administration ("NCUA") concerning proposed amendments to its Chartering and Field of Membership Manual ("Chartering Manual"). This manual reflects the Field of Membership Policy established by NCUA in IRPS 99-1 as amended by IRPS 00-1 and IRPS 02-2. The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks—makes ABA the largest banking trade association in the country.

Background

In response to Congressional action in 1998, NCUA implemented the Field of Membership aspects of the Credit Union Membership Access Act ("CUMAA") through modification of its existing Field of Membership Policy. NCUA subsequently modified this policy in 2000 and 2002.

In response to CUMAA and modifications to its Chartering Manual, NCUA directed its Field of Membership Taskforce to "coordinate and monitor implementation of new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99-1." In part, this proposal represents NCUA's implementation of the recommendations of the Field of Membership Taskforce.

NCUA proposes several amendments to the Chartering Manual, all of which are designed to further expand a Federal credit union's ability to solicit more individuals and organizations for membership. In particular, NCUA proposes the following major modifications to its existing Chartering Manual:

1. In defining service facility for the purpose of including a select group within reasonable proximity to the credit union, NCUA proposes to significantly broaden the definition so as to incorporate wholly-owned ATMs or shared service centers including their ATMs within that definition.

2. NCUA proposes the elimination of certain mandatory requirements relating to the indicia for establishing an associational common bond for the purpose of credit union membership. Currently, to meet the association test, an association must: "(1) Hold meetings open to all members; (2) sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association; and (3) have an authoritative definition of who is eligible for membership." NCUA proposes to relegate these criteria from mandatory requirements to simply factors, among others, to determine whether a legitimate association exists for common bond purposes.

3. NCUA proposes a major modification to the existing occupational common bond category so as to incorporate within this definition employment based on a trade, industry, or profession. Under this proposal, common employment under one employer would no longer be required to determine an occupational common bond. Instead, a credit union could incorporate within its field of membership those individuals not employed by a single employer but having a "commonality of interests or characteristics" of employees within certain trades, industries, or professions.

   NCUA provides several examples of this expanded occupational common bond. In particular, teachers would be able to form a credit union based on the fact that they are teachers engaged in a common profession regardless of any relationship to a specific school or school district. Also, according to NCUA, "All members of the U.S. Armed Forces share a strong commonality of interest beyond the single employer concept of a particular military branch or military installation." This statement portends the creation of a Federal credit union serving all enlisted personnel and officers, within all services and branches of the U.S. Armed Forces.

4. NCUA proposes to modify the process to determine "economic advisability" for purposes of adding select groups to a multiple common bond credit union. NCUA proposes that the expedited process for adding these groups be expanded to incorporate groups with less than 3,000 individuals. NCUA believes this is appropriate because the vast majority of expansions involve fewer than 3,000 individuals, the vast majority of these expansions were

approved and those groups in this category were always determined not to be "economically advisable" for the purpose of establishing their own credit unions.

5. NCUA proposes significant changes to its rules relating to what constitutes a local community for the purpose of a community charter. NCUA proposes that "any city, county, or smaller political jurisdiction, regardless of population size, meets the definition of a local community." NCUA intends that the existence of a city or a county is an "irrefutable presumption" that it is a local community regardless of the size of the population. Also, NCUA proposes that a metropolitan statistical area ("MSA") is a local community if it has no greater than one million individuals as residents of that community and it meets certain documentation requirements relating to community interaction or common interests. In addition, NCUA proposes to increase the presumption for the existence of a local community from 200,000 residents to 500,000 residents for multiple political jurisdictions that are not part of a single MSA. Limited documentation relating to community interaction and common interests would be required. Further, NCUA proposes to expand the affinity of a community charter to include "persons or organizations that regularly do business in the community".

6. In the proposed rule, NCUA raises field of membership issues relating to a credit union's conversion from a state to a Federal charter. NCUA requests comment on lifting existing restrictions on the retention of state chartered credit union fields of membership which conflict with Federal limitations. In particular, NCUA seeks comment on whether there is a "compelling rationale" to authorize converted Federal credit unions to retain their state authorized fields of membership.

ABA Position

ABA strongly objects to the above modifications to the Chartering Manual and other documents relating to a Federal credit union's common bond and field of membership. These modifications circumvent Congressional intent as expressed in CUMAA and in the underlying statutory authority for chartering Federal credit unions and establishing their fields of membership. In proposing these modifications, NCUA fails to adhere to CUMAA's mandate to structure Federal credit unions' fields of membership within " a meaningful affinity and bond among members in the context of shared and related work experiences, interests, or activities, the commonality of routine interactions, and a well-understood sense of cohesion or identity." These criteria are ignored in NCUA's proposal.

Media reports indicate that a major factor in proposing these modifications is NCUA's desire to enhance the Federal charter so as to stanch the flow of Federal credit unions to what some perceive as more attractive state charters. In other words, sound public policy has been corrupted in the name of expediency. The

desire to retain and encourage Federal charters is advocated at the potential expense of safety and soundness of Federal credit unions and responsible public policy.

In terms of the particulars of the proposal, the ABA objects to each modification as identified above. This letter details each of these objections and urges NCUA to reject these proposed modifications in issuing a final rule.

Expanded Definition Of A Service Facility

NCUA attempts to override Congressional intent in its decision to arbitrarily incorporate wholly-owned ATMs or shared service center credit unions as part of the definition of a service facility. At the same time, NCUA seeks to dramatically reduce the number of basic services Federal credit unions must provide to qualify as a service facility.

On the last point, NCUA currently defines a service facility "as a place where shares are accepted for members' accounts, loan applications are accepted, **and** loans disbursed." (Emphasis added) NCUA proposes striking the word "and" and replacing it with "or", so that the new definition reads, "as a place where shares are accepted for members' accounts, loan applications are accepted, **or** loans are disbursed." (Emphasis added)

The new definition of a service facility lowers the threshold from meeting all three requirements to meeting just one of these requirements. NCUA's justification for the change is that "its current definition for the purpose of reasonable proximity is overly restrictive." By lowering the threshold, this ensures that the member has minimal connection with the credit union furthering the sense of detachment between the member and the credit union.

By including ATMs within this definition, NCUA would greatly enhance the ability of credit unions to expand beyond their full service branch networks. Federal credit unions could establish isolated ATMs hundreds of miles from their nearest branch service facility for the sole purpose of establishing outposts from which to recruit groups to join the credit unions. Applying this "If you build it, they shall come" theory, credit unions could expand much beyond their capability to adequately serve their newly recruited members. Such an approach to select group expansion could threaten the safety and soundness of these credit unions.

This unfettered approach to expansion would allow credit unions to bootstrap themselves across the country, establishing ATMs in areas that are most lucrative by the mere fact of placing or merely sharing an ATM in these areas.

Additionally, 900 credit unions participating in the Credit Union Service Center Network, the national shared branching program, could employ this proposed rule if finalized as a springboard to national fields of membership. Eight credit unions in the Puget Sound region have signed a branch-sharing agreement that will enable their

members to use about 40 branches in Alaska, Washington, or Oregon. This would allow an Oregon credit union to add a group in Alaska to its membership, even though the group is not within the geographical operation area of the Oregon credit union.

In a November 12, 1998 letter to the NCUA, Representative LaFalce recognized this overreach when he wrote:

> "This problem is compounded, in my view, by NCUA's interpretation of a credit union "branch" that goes significantly beyond the traditional idea of a full-service branch office. It would include electronic kiosks and other electronic facilities that could be deployed in numerous locations at far less cost than traditional branches. It would include shared branches and also branches and electronic facilities owned by multiple credit unions through credit union service organizations ("CUSOs"). This would permit each credit union that shares a branch or electronic facility or participates in a CUSO that operates such facilities to expand through inclusion of new groups in concentric circles around each of these locations, regardless of the geographic base of their own operations and membership."

This scenario was not the intention of Congress when it put in place the "reasonable proximity" requirement.

The specific statutory language of CUMAA does not authorize Federal credit unions to incorporate ATMs as service facilities in determining reasonable proximity for select group expansions. Instead, the statutory language provides in the "Criteria for approval of expansion of multiple common-bond credit unions" that NCUA shall "…require the inclusion of the group in the field of membership of a credit union that is within reasonable proximity to the location of the group whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union" 12 USC §1759 (f)(1)(B).

In keeping with this statutory language, there is nothing in the CUMAA report language, which equates "service facility" with ATM for purposes of select group expansion. In fact, just the opposite is true. In providing direction to NCUA relating to service facilities and ATMs, the Senate Banking, Housing, and Urban Affairs Committee and the House Banking and Financial Services Committee in the context of field of membership coverage for underserved areas have clearly stated that ATMs do not equate to service facilities.

In Senate Report 105-193, the Committee stated, "An automatic teller machine or similar device does not qualify as a service facility." In House Report 105-472, the Committee stated, "The term 'facility' in the Act is meant to be defined in the same way that the National Credit Union Administration has defined 'service facility', that

is, an automatic teller machine or similar device would not qualify." (Emphasis added). In both cases, the House and Senate Committees have clearly stated that service facility does not mean an ATM. NCUA should defer to this Congressional intent and withdraw this aspect of the proposal.

Elimination of the Mandatory Criteria for Determining Association Eligibility for Establishing a Credit Union

ABA objects to NCUA's proposed elimination of longstanding mandatory criteria to clearly establish the existence of legitimate associations for purposes of their eligibility to establish associational common bond Federal credit unions. These criteria include language that requires associations to "hold meetings open to all members, …sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association, …and have an authoritative definition of who is eligible for membership." If NCUA finalizes this proposed modification to the Chartering Manual, these mandatory criteria would be eliminated. Instead, they allegedly would be absorbed into existing language which allows NCUA to employ the "totality of the circumstances" to determine the eligibility of an association to establish such an associational common bond credit union or they would be ignored by NCUA.

Although NCUA in its preamble to the proposed regulation states that the existing mandatory criteria are "merged into the list of factors to be considered by the agency," it does not appear that, in reality, such a merger has occurred. The current mandatory language requiring associational groups to "hold meetings open to all members" is not included as a factor for consideration by NCUA in determining the legitimacy of the association in the proposed rule. The current mandatory language, which requires that the associational group "must have an authoritative definition of who is eligible for membership", does not appear as a factor in the proposed rule. The current language, which requires that the associational group "must sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association", has been made meaningless. In its place, NCUA has substituted language which creates the factor of "whether the association sponsors other activities." Under the proposed modification, what exactly is meant by the sponsorship of other activities when "activities" is not otherwise identified? This language is not the same as the existing requirement, which relates to the sponsorship of activities for a specific purpose; that being the demonstration that the members of the association, in fact, meet to accomplish the objectives of the association.

ABA believes that NCUA has proposed changes to the associational common bond, which pay little more than" lip service" to the criteria that must be present in order to ensure legitimacy of the association. NCUA ignores state laws, which establish specific requirements for the incorporation and operation of associations. These laws mandate that associations must hold meetings open to all members at least once per year; that associations must establish a definitive statement as to the eligibility for

membership; and that associations must demonstrate that they are engaged in activities, which involve members and meet their association's objectives. The ABA urges NCUA not to ignore these established state requirements. To do otherwise undermines the associational common bond by raising questions regarding the legitimacy and viability of associations and the safety and soundness of those Federal credit unions established to serve association members.

Trade, Industry, or Profession ("TIP") Occupational Common Bond

ABA urges NCUA to withdraw its proposed modification to the occupational common bond category, which would create a "wild-card" category based on an individual's trade, industry, or profession regardless of his or her employment or location. Historically, the occupational common bond has provided the opportunity for individuals employed by the same company or related companies to band together in a mutual effort to establish and operate a credit union. These employees could work together within their credit union to ensure the provision of financial services in a cooperative ownership environment. This occupational common bond Federal credit union organized in response to a common employer provides the framework to support its operations. Also, this structure better ensures that there exists, as Congress identified, a "meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities" through this commonality of employment. House Report 105-472.

In proposing this "wild-card" occupational common bond, NCUA severs the source of strength for occupational credit unions by eliminating the need for common employment and creates the opportunity for individuals to self-determine their categorization within a trade, industry, or profession. In doing so, NCUA ignores the inherent strength associated with an employment structure that can support a credit union and provide the environment for interaction among employees.

Under NCUA's proposed rule, there would be no limit on the combinations and permutations of these proposed "wild-card" occupational Federal credit unions. As an example, individuals licensed to practice law regardless of their state or even country of licensure could be the basis for a Federal credit union. These same lawyers who practice in different specialty areas such as domestic relations, antitrust, and corporate law, etc., could belong to different Federal credit unions based on their specialty. Those lawyers who are employed by corporations engaged in manufacturing televisions could also qualify for a Federal credit union serving those in the television manufacturing industry. In addition, kindergarten teachers in California, high school physics teachers in North Dakota, and history professors at a small New England college could form the basis for such a Federal credit union. Thus, there is no end to the opportunity to establish these "wild-card" Federal credit unions to serve the same "over credit-unioned" individual.

Creating credit unions within fields of membership where there exists only a commonality of profession, trade, or industry but not a "meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities" not only flaunts the letter of the law and the clear intent of Congress but also poses significant risks for NCUA in terms of the safety and soundness of these credit unions. ABA urges NCUA to reject this aspect of the proposed rule.

Expansion of the Expedited Process

NCUA continues to ratchet up the number of primary potential members in a select group expansion eligible for consideration under an expedited process. In 1999, this expedited process applied to select groups of 200 or fewer primary potential members. In 2000, NCUA increased this number to 500. Now, NCUA proposes that this number be increased to 3,000.

In keeping with ABA's comment letter of August 14, 2000, in response to NCUA's proposed increase to 500 or less, the ABA sees no justification for increasing the level again to less than 3,000. As was true in 2000, NCUA attempts to justify this expansion based on its own statistics which it believes demonstrate the advisability of such a liberalization. In keeping with the thrust of its earlier statistical analysis, NCUA indicates in its background discussion of the proposed rule, "In 2001, a substantial majority of the multiple group expansions approved, 95 percent, were groups of 500 or less. Further, less than one percent of the approved expansions consisted of groups of 3,000 or more. Overall, less than one percent of all applications for multiple group expansions were denied. More importantly though, no group less than 3,000 was denied for the reason it was economically viable to form its own credit union; that is, every group requesting to be added to the field of membership of an existing credit union was determined to not be economically advisable." NCUA should not be allowed to bootstrap its own actions into a new expanded rule.

As was true in 2000, the average time for approving a select employee group continues to decline. There is no need for an expanded expedited process when the turnaround time under normal processing is around two days.

As ABA previously indicated, the expansion of this expedited process further discourages groups from establishing their own independent Federal credit unions. As clearly stated in the House Banking and Financial Service Committee's Report relating to CUMAA, "the NCUA should charter new credit unions wherever possible …" This report further states that NCUA "should encourage groups, regardless of size to form their own credit unions." Thus, the legislative history demonstrates a very strong directive to NCUA to charter new credit unions rather than automatically add groups to existing multiple common bond credit unions, essentially on request and increasingly in the context of an expedited process. In addition, the Senate Banking, Housing, and Urban Affairs Committee in its report

relating to CUMAA emphasized that in all cases, NCUA should determine, based on objective criteria and the facts of each individual situation, whether a particular group of fewer than 3,000 persons can operate as a viable and independent Federal credit union.

As previously stated by ABA, NCUA's proposal makes it even easier for a group of primary potential members, otherwise eligible to establish their own credit union, to be included within a multiple common bond credit union. Such action further erodes Congressional intent to encourage, wherever possible, the formation of Federal credit unions. Further, NCUA ignores the fact that as of September 2002 there are 5,755 credit unions with 3,000 or fewer members. These credit unions are viable, profitable, and adequately capitalized. They successfully serve their members. These credit unions reflect the potential for the true cooperative, democratic experience that should be inherent in the credit union industry. Each member is able to participate actively in the oversight of his or her credit union more effectively in an independent Federal credit union than as a member of a select group in a much larger credit union. Thus, ABA urges NCUA not to increase the expedited process to incorporate groups of fewer than 3,000 individuals so as to discourage such groups from establishing their own independent Federal credit unions.

Dismantling of the Well-defined Local Community

In an aggressive stroke, NCUA proposes to, in effect, excise the term "local" from the Federal Credit Union Act ("Act") and in doing so ignore Congressional intent that the term "local" was inserted in the Act as a limiting factor on the geographic scope of community chartered credit unions. ABA urges NCUA to reject this approach. NCUA should reaffirm that "local" is a limiting factor in a community charter and in doing so withdraw those aspects of the proposed rule which do not comport with this term.

Under the proposed rule, NCUA creates the presumption that every city, county, or smaller jurisdiction by its very nature is a well-defined "local" community and therefore eligible for a community charter. This presumptively authorizes a community charter for New York City, including all its five boroughs or any subdivision thereof. It is true that New York City is a city. However, as a whole, or in its major components it is hardly a "local" community.

In addition, NCUA proposes that a multi-jurisdictional area that involves one million or fewer individuals in a metropolitan statistical area ("MSA") when combined with a nominal level of community interaction would meet the "local" community test for membership purposes. Also, NCUA presumes that the "local" test is satisfied if the proposed community is outside an MSA and the population is up to 500,000 people with nominal community interaction. In both instances, NCUA interprets "local" in a manner that defies Congressional intent.

In recognizing the limiting element inherent in the term "local" in the community credit union context, it is important to review the legislative history behind the addition of this term to the Act.

The Act defines the permissible membership for a community credit union as "persons or organizations within a well-defined local community, neighborhood or rural district." (Emphasis added) In adding the word "local" to the already existing term "well-defined," Congress clearly intended to impose finite and narrow limits on the area that can be served by a community credit union. In fact, it is clear that Congress added the word "local" in order to be more limiting than under the then existing law.

Legislative history makes clear the intent of Congress that "well-defined local community, neighborhood, or rural district" was to be narrow and limiting in its application. A colloquy between Senator Bennett (a member of the Senate Banking, Housing and Urban Affairs Committee) and Senator D'Amato (Chairman of this Committee) drives that point home. See *Congressional Record* of November 12, 1998, page S13003. Senator Bennett, in expressing his concern over the way that the NCUA would "design their regulations dealing with the size and scope of community credit unions," queried Chairman D'Amato about the necessity for an amendment Senator Bennett intended to offer.

> Senator Bennett stated: "Although I had initially intended to offer an amendment limiting the size of a federally-chartered community credit union to three or four contiguous census tracts, after discussing the matter with the Chairman I decided that my amendment would be unnecessary." (Emphasis added)
>
> Chairman D'Amato responded: "The Senator is quite correct when he states that his amendment would be unnecessary. The Banking Committee was very careful and direct in its instructions to the NCUA … The Committee intends for the NCUA to limit federally-chartered community credit unions to be subject to well-defined, local, geographic expansion limits."
>
> Senator Bennett then concludes: "I thank the Chairman for his clarification on this issue…. I am satisfied by the Committee's report and by the remarks of the Chairman that such an amendment would be redundant and unnecessary."

This colloquy demonstrates that in adopting the change to the community charter definition and including the term "local," Congress intended the permissible membership of a community credit union to be confined to a narrow geographic area – no greater than three or four contiguous census tracts. So, clearly the addition of the term "local" was meant to require NCUA to truly limit the geographic area of such credit unions. This proposal ignores this intent and creates the environment

within which community chartered credit unions could operate without realistic geographic restrictions.

It is important to note that on October 18, 2001, during a public NCUA Board meeting, this issue was raised relating to the application of two separate Federal credit unions seeking conversion from multiple group to community charters to serve Miami/Dade County with a population of over 2 million individuals. The NCUA Board denied the appeal from the Regional Director's denial of the requests of each credit union. The NCUA Board struggled with this appeal. In reviewing the applications, each Board member determined that there was sufficient evidence that the entire county incorporating the two major cities, Miami and Hialeah, did not meet the local community standard since there was no individual interaction and common interests.

This detailed analysis and review of the common interaction and interests convinced the NCUA Board that for purposes of conversion to a community charter a local community did not exist. However, this same analysis could never be employed if NCUA adopts its proposed rule relating to community charters. Instead, these issues would never come to the NCUA Board's attention because under the proposed rule "any city, county, or smaller political jurisdiction, regardless of population size, meets the definition of a local community…any credit union that wants to serve such an area would no longer need to provide a letter demonstrating how the area is a community or any other type of documentation demonstrating that the area is a community. This is an irrefutable presumption, regardless of population size." (Emphasis added)

The opportunity the NCUA Board would have to consider applications on their merits and in the context of determining the existence of a local community would be denied. Instead, under the proposed rule, the existence of a county would irrefutably presume the existence of a local community leading inexorably to the approval of the community charter.

In such a circumstance, Chairman Dennis Dollar's thoughtful discussion during the October 18, 2001, consideration of the above community charter conversions would never have occurred and his conclusion that a local community had not been established would never have been reached. Chairman Dollar's articulation of the need to treat community charter conversions of this nature on a case-by-case basis would have been silenced.

In enunciating his concerns, Chairman Dollar advocated a position that best argues for rejection of the city and county component of the proposal. As Chairman Dollar indicated in his remarks during the October 18, 2001, NCUA Board Meeting in support of the staff recommendation to deny the appeal:

> "I am going to agree with your determination as the appeal officer to uphold the region. I will say, though, the same thing that I have said in the past, when we have approved one and when we haven't approved one.
>
> As you well know, there are cases where I have supported you as the appeal officer and times that I disagreed with you as the appeal officer. But in each case, I have said that this should not be looked at as precedential as it relates to the next application that comes along.
>
> Each one is different. Each circumstance is different. Each need is different. I can't say that the next community, even if it is this large, may not meet the standard. But this one does not.
>
> We have approved large ones. We have turned down large ones. We have approved smaller ones. We have turned down smaller ones.
>
> The standard is not the size. The standard is the interaction – the criteria that is set forth of a clear, well-defined community in which there is interaction that can be documented, and the ability of the credit union to serve." (Official Transcript NCUA Open Board Meeting, October 18, 2001)

As Chairman Dollar stated, "Each circumstance is different." Adoption of this proposed rule relating to community charters would prevent the NCUA Board from adhering to this philosophy in an increasing number of circumstances.

Furthermore, the NCUA Board is proposing to clarify "that persons or organizations that regularly do business in the community can be included in the community's charter and are then eligible for membership." Currently, NCUA recognizes four types of affinity for a community charter – persons who live in, worship in, attend school in, and work in the community. NCUA is effectively adding a fifth affinity group – organizations and persons who regularly do business in the community.

Regularly doing business in the community is overly vague. Does regularly doing business necessitate a physical presence? How frequent is regular to constitute a meaningful affinity? For example, does a salesman from outside the community making a once per month sales call on a client in the community meet the criterion of regularly doing business? Also, does an individual who shops once a month in the community qualify?

By adopting this language, NCUA broadens the nexus of the community charter, when the Congressional intent is clearly to narrow the scope of community charters. Unlike the requirement that the person lives in, worships in, attends school in, and

works in a community ensures that the person has some affinity to the community and a physical presence in the community, people who regularly do business in the community, however, lack any meaningful affinity to the community and may not have a physical presence in the community. In ABA's judgment, this proposed clarification is arbitrarily vague and invites litigation and therefore, should be rejected.

The ABA urges the NCUA Board not to abdicate its responsibility to exercise its judgment in the context of applicable law and public policy. NCUA should reject this community charter component of the proposed rule.

State Charter Conversions Must Conform to Federal Requirements

NCUA requests comment on whether state chartered credit unions should retain their fields of membership when converting to a Federal charter. The Act is quite specific about fields of membership. A Federal credit union shall be limited to the membership described in one of the following categories: a single common bond credit union, a multiple common bond credit union, or a community credit union §12 USC §1759. Some states currently allow for credit unions to mingle community with occupational common bonds. The Act does not allow for the mingling of common bonds, with the exception of underserved areas. In this scenario, the state chartered credit union cannot retain its fields of membership if converting to a Federal charter – a choice needs to be made between community and occupational bond.

Additionally, some states have fields of memberships that exceed the limits under Federal law, especially with regard to community charters. If a credit union converts from a state to a Federal charter, its fields of membership must conform to the Federal standard. Otherwise, credit unions could circumvent the intent of Congress regarding fields of membership.

Therefore, if the credit union does not comply with the Federal requirements, it cannot convert to a Federal charter. NCUA does not have the discretion to willfully disregard the law.

Conclusion

The ABA urges NCUA to reject the proposed modifications to its common bond and fields of membership regulation. NCUA's expanded service facility definition, reduced criteria for association eligibility, creation of a TIP common bond, expedited process expansion, dismantled local community criteria and potential retention of state chartered credit union fields of membership after conversion to a Federal charter all raise serious questions as to their legality and their impact on the safety and soundness of Federal credit unions. If implemented by final rule, these proposed modifications would clearly ignore Congressional intent and underlying statutory authority. ABA strongly urges NCUA to reject these modifications.

If you have any questions about this letter, please do not hesitate to contact the undersigned or John Rasmus at 202-663-5333.

Sincerely,

Edward L. Yingling