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May 30, 2023

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Chartering and Field of Membership; RIN 3133–AF46

Dear Ms. Conyers-Ausbrooks:

On behalf of America's credit unions, we are writing to the National Credit Union Administration (NCUA) regarding the proposed rule to amend the chartering and field of membership rules. The Credit Union National Association (CUNA) represents America's credit unions and their more than 135 million members.

Field of membership (FOM) reform is an important issue for CUNA and our member credit unions. CUNA's federal and state-chartered credit union members have expressed concern that the federal charter is falling behind many state charters and thus has become a barrier to the flexibility needed to operate dynamic and efficient cooperative financial institutions. CUNA remains committed to the dual charter system. If functioning properly, the dual charter system creates incentives for the NCUA and state regulators to move in the direction of policies that allow broader operating authority and impose fewer unnecessary constraints on operations. Tension between the federal and state charters is important for the dual chartering system to remain viable. Innovation in each charter is more likely when there is competition between the two, so long as it does not compromise safety and soundness.

In 2015, the NCUA established a working group to review the FOM rules and regulations. In response to the agency's review, CUNA put forward four guiding principles that remain relevant today as the NCUA proceeds with this and future FOM rulemakings:

- 1) The NCUA should not impose restrictions on federal credit unions' (FCU) FOM beyond what is required in the FCU Act, and the NCUA should construct requirements that minimize the negative impact of clearly outdated portions of the Act.
- 2) Technological developments in recent decades have radically changed consumers' access to financial services, so the NCUA's FOM policies must keep pace with the changing marketplace.

- 3) Regardless of quantitative restrictions the agency may decide to suggest in its FOM policies, these should never be viewed as absolute; a FCU should always be allowed to provide a written narrative to explain why its FOM proposal is consistent with the NCUA's policies.
- 4) It is difficult to imagine a situation where safety and soundness is adversely affected by FOM; nevertheless, a FCU should not have its current FOM or a proposal for expansion analyzed as a safety and soundness issue.¹

Consistent with CUNA's official position on FOM,² we appreciate the work the NCUA has undertaken over the last several years to expand FOM opportunities for FCUs. Today, the archaic FOM restrictions to which credit unions are subject are antithetical to the goal of financial inclusion and economic equity, and they impede credit unions more fully fulfilling their statutory mission to promote thrift and provide access to credit for provident purposes. We consistently urge Congress to relax or eliminate these restrictions. This proposed rule represents an important step toward a more inclusive approach to credit union membership. CUNA strongly supports this proposed rule, as the changes contemplated would help credit unions deliver necessary financial services to more Americans.

Overview of Proposed Changes

The NCUA is proposing to amend its chartering and FOM rules with respect to the provision of financial services to low- and moderate-income communities and expanding access to financial services and products generally.³ The NCUA is also proposing several changes to the FOM rules to streamline application requirements and clarify procedures. The proposed rule would make a number of changes to the Chartering and FOM Manual (Manual) to enhance consumer access to financial services, while reducing duplicative or unnecessary paperwork and administrative requirements.

¹ CUNA Letter to NCUA re Field of Membership Reform and NCUA Working Group (June 15, 2015), available at <https://www.cuna.org/content/dam/cuna/advocacy/letters-and-testimonials/2020/CUNA%20Field%20of%20Membership%20Recommendations.pdf>.

² CUNA's official position on Field of Membership: CUNA strongly believes that all consumers have the right to improve their financial well-being through the services of not-for-profit financial cooperatives. To that end, credit union boards of directors must have significant flexibility to determine their fields of membership to enhance safety, soundness, and service. Every consumer should have access to credit union services through one or more credit unions. Competition among credit unions is beneficial to members, and cooperation among credit unions is essential to extending credit union services to more credit union members and potential members.

CUNA supports an amendment to the Federal Credit Union Act that clarifies that all federal credit unions, regardless of FOM charter type, are permitted to add underserved areas outside of their fields of membership. CUNA supports reasonable clarification of the definition of "underserved" only if any change in the definition is accompanied by "grandfathering" of any underserved area already served by a federal credit union and does not direct credit unions to only serve underserved individuals or communities. CUNA also supports efforts by Congress and credit union regulators to minimize other field of membership restrictions and to permit credit unions greater flexibility to reach out and serve consumers.

Compendium of CUNA Policies on Legislative and Regulatory Issues, page 12.

³ 88 Fed. Reg. 12,606 (Feb. 28, 2023).

More specifically, the proposal would:

- Make several changes on underserved areas that multiple common bond FCUs may seek to add to their FOMs. The changes would streamline existing application requirements and clarify the role of data and criteria that other federal agencies provide relating to underserved areas.
- Simplify application requirements for community-based FCUs by eliminating the need to submit redundant or less useful information and providing a standard form for business and marketing plans.
- Eliminate the business and marketing plan requirement for certain federally insured state-chartered credit unions (FISCU) that seek to convert to a federal charter while serving the same community FOM.
- Expand the community-based FOM affinities—relationships between a person and the geographic community—to recognize the growth of telecommuting and remote work for companies headquartered in a community.
- Better capture the ongoing bond between individuals within a field of membership and their immediate family members following the death of a member.
- Correct unintended consequences of prior rules, including a provision that may prevent credit unions from expanding into certain underserved rural areas.

Overall, we support the proposed changes, which should help reduce unnecessary burdens and increase efficiency in the FOM application process.

Proposed Changes

A. Underserved Area Additions

The FCU Act allows multiple common bond FCUs to serve members residing in “underserved areas,” provided the FCU establishes and maintains a facility there.⁴ The Act currently permits only multiple common bond FCUs to add underserved areas to their FOM beyond the common bond requirements specified in the FCU Act. This option is an exception to the FCU Act’s general requirement that an FCU limit its membership to one of the three options in the FCU Act (single common bond, multiple common bond, or community).

The FCU Act defines an “underserved area” as (1) a “local community, neighborhood, or rural district” that (2) meets the definition of an “investment area” under the Community Development Banking and Financial Institutions (CDFI) Act and (3) is “underserved by other depository institutions.”⁵ The CDFI Act defines an “investment area” as a geographic area that meets the CDFI Fund’s economic distress criteria and has significant unmet needs. Regarding the unmet needs criterion, the CDFI Fund’s regulation requires a narrative analysis demonstrating a pattern of unmet needs.

⁴ 12 U.S.C. 1759(c)(2).

⁵ 12 U.S.C. 4702(16).

As noted, a multiple common bond FCU that seeks to add an underserved area to its FOM as an investment area must satisfy the CDFI Fund's economic distress criteria, among other requirements. The current Manual essentially reiterates the economic distress criteria from the CDFI Fund and requires FCUs seeking to add underserved areas to satisfy these requirements. Despite the acknowledgment of the potential for the CDFI Fund to change the criteria over time, the NCUA has received numerous inquiries about perceived conflicts between the Manual and the CDFI Fund's current regulations and policies.

The NCUA is proposing four changes to the requirements that apply to multiple common bond FCUs that seek to serve underserved areas. These changes would:

- 1) Clarify the agency's intent to provide flexibility to multiple common bond FCUs serving underserved areas based on rural districts;
- 2) Clarify how the NCUA applies the CDFI Fund's economic distress criteria;
- 3) Eliminate census block groups as a geographic unit for composing underserved areas, in adherence to a regulatory change that the CDFI Fund has adopted; and
- 4) Simplify and reduce the burden for FCUs on the required statement of unmet needs that must accompany a request to serve an underserved area.

1) Underserved Areas Based on Rural Districts

In 2016, the NCUA made a rule change regarding the definition of a rural district, which is one subcategory of options for a community charter. In addition to increasing the population limit, the 2016 rule added a restriction so that an area's boundaries would not exceed the outer boundaries of the states that are immediately contiguous to the state in which the credit union maintains its headquarters.

The intent behind the headquarters restriction for a rural district's boundaries for community-chartered credit unions was to prevent areas from becoming overly broad. However, the change also applies to underserved areas, thus unintentionally reducing the options available to multiple common bond credit unions interested in adding to their FOMs underserved areas consisting of rural districts. The change also created an inconsistency between eligibility to add underserved areas consisting of rural districts versus underserved areas consisting of communities or neighborhoods, which did not include a geographic restriction in relation to an FCU's headquarters. As such, the proposed rule removes this headquarters restriction for underserved areas.

We support this proposed change, as it is a helpful clarification that should reduce unnecessary restrictions and provide greater flexibility for credit unions to serve more members. We agree with the NCUA that despite this proposed change, certain inherent constraints will continue to prevent the addition of underserved rural districts from becoming overly broad, such as the need to satisfy the economic distress criteria and the requirement that the FCU's business and marketing plan demonstrate an intent and ability to serve the entire area. Further, this proposed change is appropriate given that the headquarters restriction was intended to apply only to community charter FCUs consisting of rural districts and not to underserved areas consisting of rural districts.

2) Application of CDFI Economic Distress Criteria

The Manual discusses the data an FCU and the NCUA will use to decide whether an area meets the investment area criteria for a proposed underserved area expansion. The Manual currently requires the use of the most recent decennial U.S. census data. This proposal would eliminate the term “decennial” and revise the applicable sections to clarify that the census dataset should be consistent with the practices of the U.S. Treasury Department in overseeing the CDFI Fund.

Both the Manual and CDFI regulation use the phrase “decennial census” when defining “investment area.” In 2021, the NCUA replaced the use of decennial data with Census Bureau’s American Community Survey (ACS) data. ACS data allows for a more current assessment of economic distress for geographic units under consideration. Further, the CDFI Fund now uses ACS data in place of decennial data for most of its programs.

To address these developments the NCUA is proposing to amend the Manual to cross-reference the CDFI Fund’s economic distress criteria, as the CDFI Fund may amend them from time to time. This change would clarify that the NCUA defers to the CDFI Fund on these criteria, which is appropriate under the FCU Act because the CDFI Fund’s economic distress criteria determine which areas are investment areas that can count as underserved areas. The NCUA notes that it would continue to make final determinations on underserved area applications, including whether an FCU meets the economic distress criteria. The proposed change would simply clarify that, by statute, an investment area must meet the CDFI Fund’s economic distress criteria.

We support the proposed change to stop replicating these criteria in the Manual, which although will create a slight burden it should reduce confusion and inconsistencies as these criteria may change over time. Similarly, inclusion of a *summary* of the current CDFI Fund criteria in the Manual would also increase the opportunity for inconsistencies.

3) Technical Update to Eliminate Census Block Group as a Permissible Geographic Unit

The Manual outlines acceptable geographic units, which includes census block groups. In 2015, the CDFI Fund deleted references to block groups in its regulatory definition of geographic units that may constitute an investment area.

For regulatory consistency, the NCUA believes it is not appropriate to include a census block group as a geographic unit. The proposal would replace outdated quotations and paraphrases of the CDFI Fund’s criteria with a direct reference to the criteria, as the CDFI Fund may change them from time to time.

While we recognize the benefits of using block groups over census tracts for FOM purposes, we support elimination of block groups in order to maintain consistency with the CDFI Fund’s criteria. We believe this proposed change is unlikely to have a material impact on credit unions’ ability to add an underserved area.

4) Statement of Unmet Needs

The CDFI Act, as referenced in the FCU Act, requires an investment area to have “significant unmet needs for loans or equity investments.”⁶ Currently, FCUs seeking to add an underserved area must submit a one-page narrative outlining that the proposed service area has significant unmet needs for credit union services (SUN statement). The SUN statement must include support in the form of objective reasons and/or accompanying documentation derived from an identified, authoritative source. The Manual further indicates that third-party documentation is most compelling.

The NCUA is proposing to remove the length requirement and third-party data or support references. We agree with these proposed changes for several reasons, including that neither are required by the CDFI Fund’s criteria⁷ or the FCU Act. Aspects of the SUN statement can be challenging for applicants, particularly with regard to third-party data. This often involves a great deal of subjectivity, resulting in excessive communication with the agency to clarify certain issues.

While the statute provides that an investment area must meet the “objective criteria of economic distress developed by the [CDFI] Fund,” it does not include the same requirement for the significant unmet needs element of the definition. Thus, while the CDFI Fund’s regulations and policies on this element are significant, the NCUA believes it is not required to have identical requirements if a different approach would meet the statutory standard. A less prescriptive approach would continue to meet the statutory standard while not conflicting with the CDFI Fund’s standards. Further, we agree with the agency that the current SUN statement requirement duplicates other elements of the application.

B. Community Charter Conversions and Expansions

The proposal would make the following changes to reduce the regulatory burden for community charter applications or conversions:

- 1) Establish a simplified business and marketing plan for community charter applications;
- 2) Provide a standardized, fillable application for community charter conversion or expansion requests; and
- 3) Eliminate the requirement for FISCUs converting to a federal community charter to submit a business and marketing plan under certain conditions.

Simplified Business and Marketing Plan

In implementing the economic advisability requirement of the FCU Act, the Manual requires the credit union to submit a business plan containing specified elements, which

⁶ 12 U.S.C. 4702(13).

⁷ The CDFI certification application requires simply that the applicant “provide [a] narrative description(s) of the significant unmet capital or financial service needs within each identified Investment Area.” The application requires no specific length and does not call for third-party data or support. 88 Fed. Reg. 12,613.

currently apply to new FCU charters and existing FCUs requesting a community charter conversion or expansion.⁸

We agree with the agency's approach to move away from some of the granular details currently required, such as with regard to branch structure. Further, moving away from requiring an applicant to list every product or service makes sense. Specifically, the proposed rule would remove the requirement that a credit union provide "details, terms, and conditions of the credit union's financial products, programs, and services to be provided to the entire community" and instead include a question on whether the credit union is full service, and if so, what unique or particularly interesting products or services it offers.

We agree it is unnecessary to require every product or service to be listed given the regulation's definition of "full service." Further, we believe the proposed question pertaining to "unique or particularly interesting" products or services offered, while potentially subjective, could be helpful for purposes of the NCUA's application review.

Standardized Fillable Application for Community Charter Requests

According to the NCUA, the agency receives several requests each year for an application form for a community conversion or expansion request. Because there is no such form in the Manual, credit unions' submissions can be voluminous and may not meet regulatory requirements. Thus, the proposed rule would require the use of a fillable, standardized application form for all community charter actions. The standardized application is intended to better focus credit unions on critical requirements and ensure uniform NCUA reviews across applications. The use of the standardized application form is also intended to reduce the number of follow-up requests from the NCUA for additional information.

We agree with the agency that the use of a standardized application form should increase efficiency and potentially decrease the burden on applicants. The information required by the proposed form⁹ appears relevant to community conversion or expansion requests. Specifying the information that must be submitted—as would likely be achieved by the proposed form—should streamline the NCUA's review of applications.

While it may be appropriate for the fillable application to be mandatory at some point, we believe it makes most sense initially to allow credit unions to use the form on a voluntary basis. Doing so would result in less disruption following inevitable updates to the form. Further, though codifying the form in the Manual would make it more readily accessible, it would require a new notice-and-comment rulemaking for even minor changes. If adopted, we encourage the NCUA to solicit regular feedback from users of the form and

⁸ The FCU Act and the Manual require the NCUA to consider the economic advisability of chartering a new FCU and expanding an existing FOM. The business and marketing plan requirement in the Manual achieves this by allowing the NCUA to consider whether a new FCU has realistic assumptions that support its viability and plan to serve its entire FOM. 88 Fed. Reg. 12,613.

⁹ Application for Community Field of Membership Amendment, NCUA Form XXXX, *available at* <https://www.regulations.gov/document/NCUA-2022-0179-0002>.

amend it as appropriate. Once any problems with aspects of the form have been resolved, the agency may want to revisit the idea of codifying it in the Manual.

Requirements for Community-Based State-Chartered Credit Union Converting to an FCU

FISCUs converting to a federal community charter are currently subject to the business and marketing plan requirements. The proposed rule eliminates this requirement for FISCUs converting to a federal community charter if they will continue to serve the same community.

Under the proposal, the business and marketing plan for a converting FISCU would be replaced by the following questions:

1. Does the existing community consist of a portion of a Core Based Statistical area or Combined Statistical Area? If so, please explain the credit union's basis for selecting its service area.
2. Describe products and services you offer or plan to offer to low- and moderate-income and underserved members.
3. How will you market to the low- and moderate-income, and underserved (economically distressed) people, and those with unique needs, in the community?

The NCUA believes the proposed removal of the business and marketing plan requirement for FISCU conversions will not hinder the agency's ability to assess the applicant's economic advisability and its capacity to provide services to low- and moderate-income members. This would be accomplished through the NCUA's review of the FISCU's Financial Performance Report, review of examination reports, including reports related to compliance with consumer financial protection and fair lending statutes and regulations. The proposed changes will reduce the time involved for both the credit union and NCUA staff.

We support the proposal to replace the business and marketing plan requirement with the three questions noted above. We agree with the agency that the economic advisability of granting a community charter in a conversion to a FCU is more readily determinable because the applicant is an existing insured credit union whose management and operations the NCUA has supervised and that has an established history of serving the community. This proposed change will reduce the burden on converting FISCUs while not hampering the agency's ability to conduct a proper review.

C. Groups Sharing a Common Bond with Community Areas

There are currently four types of affinity groups eligible for membership in a community FCU, persons who: live in, worship in, attend school in, or work in the community or rural district. The proposal would add a fifth affinity group eligible for membership in community FCUs, as discussed below.

The current regulatory structure imposes limits on credit unions serving, or desiring to serve, a community which has employers with staff located outside the community

boundaries. This limitation potentially discourages credit unions from pursuing a federal community charter if they have an existing working relationship with the employees of an employer headquartered within its operational area, but would, upon converting, lose the ability to serve the employer's staff working from another location.

The NCUA is also concerned that the current affinities permitted for community credit unions do not satisfactorily address changing trends in the workplace. Most significantly, the concept of employment location has changed over time, particularly in a post-pandemic office environment, which increased the trend for telecommuting and decentralized workplaces. Advances in technology have significantly changed how employees conduct work and communicate with one another, and there is less of a need for persons working for the same entity to share a common work location.

The proposal would add a fifth affinity to include an employee for an entity headquartered in the community, neighborhood, or rural district. The NCUA believes this rule change will help FCUs adapt to serve everyone with ties to a community by providing employees access to a community credit union with which they have a bond through their employer, even if they do not physically work in the well-defined local community or rural district.

We support adoption of this fifth affinity group, which is extremely relevant given the current and increasing remote work posture of more and more companies. Further, we agree that the addition of the "paid employee for a legal entity headquartered in the well-defined local community, neighborhood or rural district" also has safety-and-soundness benefits to FCUs. It will allow community FCUs to reduce their risk of localized economic downturns and disasters.

Lastly, we agree with the agency that while the concept of where people work is changing, particularly with more and more remote employees, individuals in another location who are employed by a company headquartered in the community still maintain important ties to their company's headquarters.

D. Eligibility of Immediate Family Members of Decedents

The proposal would update the groups of persons who may join an FCU based on a common bond with its members or the FCU. Under the current options available for FCUs to enroll secondary members, immediate family members of decedents are not eligible for membership unless the person was a spouse of a person who died while within the FOM of the credit union. As a result of the survivors not retaining membership eligibility, the NCUA has learned FCUs may lose the funds the decedents held in the credit union to another financial institution, along with any goodwill associated with a longstanding relationship the credit union had with the decedent.

We support the proposed update to the definition of secondary members for each common bond type to include every member of a decedent's immediate family or household for a six-month period following the decedent's passing. Allowing the immediate family members of a decedent to obtain eligibility is a sensible change, particularly since it will alleviate additional stress in a period of grief. We believe the

proposed change is preferable to the alternative contemplated by the NCUA that would limit eligibility to instances where the decedent was a member of the credit union, as opposed to a potential member. Lastly, we believe it is important that immediate family member eligibility be limited in duration, whether six months as proposed, or a longer period of time as determined by the agency.

Conclusion

On behalf of America's credit unions and their more than 135 million members, thank you for considering our comments regarding the charting and FOM proposal. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743 or LMartone@cuna.coop.

Sincerely,

A handwritten signature in blue ink that reads "Luke Martone". The signature is written in a cursive style with a long horizontal stroke at the end.

Luke Martone
Senior Director of Advocacy & Counsel