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National Association of Federal Credit Unions | www.nafcu.org

May 13, 2015

The Honorable Debbie Matz, Chairman
The Honorable Richard Metsger, Vice Chairman
The Honorable Mark McWatters, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Chairman Matz, Vice Chairman Metsger, and Board Member McWatters:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing you regarding Field-of-Membership (FOM) reform. NAFCU has long advocated for such reform, and we appreciate the National Credit Union Administration (NCUA) Board's support for modernizing the agency's FOM regulations. As NCUA considers amending its current Chartering and FOM Manual, NAFCU and our members encourage the agency to fully utilize its statutory authority to provide requisite relief to our industry.

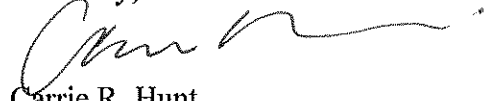
NAFCU continues to hear from our members that NCUA's FOM Rules and Regulations unnecessarily inhibit their ability to grow and serve their communities. Additionally, NAFCU and our members believe that the federal charter must keep pace with changes in state laws, technology, and the financial services industry. While we acknowledge that legislation is necessary to relax aspects of the *Federal Credit Union Act's* limitations on chartering, we firmly believe that NCUA can enact constructive regulatory relief today by streamlining its chartering and FOM procedures, as well as removing all non-statutory constraints on FOM chartering and expansion.

NAFCU appreciates NCUA's commitment to reforming federal FOM rules that have not been significantly modernized in more than fifteen years and we applaud the agency for soliciting feedback and input from stakeholders throughout the process. To develop recommendations for the agency's consideration, NAFCU convened a taskforce of over 50 of our members of various asset sizes, charter types and geographical locations to examine issues related to NCUA's existing FOM procedures and regulations. Attached are the specific recommendations of this taskforce that we believe will effect progressive procedural and regulatory FOM relief.

NAFCU looks forward to meeting with NCUA staff to discuss these recommendations and broader FOM reform in more detail as the agency considers ways to provide credit unions with

meaningful regulatory relief. Should you have any questions or if you would like to discuss these issues further, please feel free to contact me by telephone at (703) 842-2234 or by e-mail at chunt@nafcu.org, or Alicia Nealon, NAFCU's Director of Regulatory Affairs at (703)-842-2266 or anealon@nafcu.org.

Sincerely,



Carrie R. Hunt

Senior Vice President of Government Affairs and General Counsel

cc: Mr. Michael McKenna, General Counsel
Mr. Matthew Biliouris, Deputy Director, Office of Consumer Protection

FIELD OF MEMBERSHIP RULES AND REGULATIONS



NAFCU POLICY PAPER

May 2015

NAFCU's Field of Membership Task Force Recommendations to NCUA Board

Strengthening the federal charter and pursuing regulatory relief for federal credit unions (FCUs) is at the core of NAFCU's¹ advocacy efforts. We have consistently advocated for field of membership (FOM) reform as a top priority in our "Top Ten Regulations to Eliminate or Amend" and our "Five Point Plan for Regulatory Relief." While NAFCU acknowledges that legislation is necessary to relax aspects of the *Federal Credit Union Act's* limitations on chartering, we firmly believe that National Credit Union Administration (NCUA) has the statutory authority to provide FCUs relief today.

This Policy Paper summarizes the FOM concerns that NAFCU continues to hear from our members, as well as our recommendations for effecting progressive procedural and regulatory changes. To develop these recommendations, NAFCU convened a taskforce of over 50 of our members of various asset sizes, charter types and geographical locations to examine issues related to NCUA's existing FOM procedures and regulations. While this Policy Paper details a myriad of concerns and suggestions, NAFCU and our members believe that NCUA can enact constructive regulatory relief by removing all non-statutory requirements that impose geographic limitations on FOM chartering and expansion.

¹ The National Association of Federal Credit Unions (NAFCU) is a direct membership association committed to representing, assisting, educating and informing its member credit unions and their key audiences. NAFCU is the only trade association that exclusively represents federal credit unions.

I. Background

As the NCUA Board has noted numerous times, our industry's dual chartering system works best when the state and federal charters keep pace with each other. Several states, however, have been much more progressive in modernizing their FOM rules to recognize today's dynamic and ubiquitous marketplace. As a result, the industry has seen multiple credit unions convert to state charters in 2015 because of their inability to grow under the federal charter. For example, one of the largest community credit unions in Connecticut converted to a state charter earlier this year. This credit union wanted to expand its FOM beyond its community base, but was precluded from doing so under NCUA's current FOM rules. At NCUA's January 2015 Board Meeting, Chairman Matz aptly noted that these circumstances underscore the restrictive impact of the agency's current FOM rules.

The NCUA Board has committed to undertaking a comprehensive review of its FOM rules, and has pledged to streamline procedural and regulatory hurdles that unnecessarily burden credit union growth in today's financial services landscape. To facilitate this initiative, Chairman Matz has established an internal agency working group to examine FOM issues and to develop suggestions for strengthening the federal charter. Additionally, NCUA is actively soliciting industry feedback as it contemplates modernizing its FOM rule for the first time in over fifteen years.

II. FOM changes with NCUA's current statutory authority

A. NCUA Procedures for Chartering and FOM Expansion

NAFCU's members continue to raise questions about NCUA's Office of Consumer Protection's policies and procedures, particularly in the process of applying for FOM expansions or conversions. A number of NAFCU's members have indicated that it takes up to 18 months before their FOM requests are approved or denied by NCUA. Also, the online application process does not allow credit unions to attach necessary documents to an application, which NAFCU believes unnecessarily delays the process. Furthermore, during that extended time period after submitting the application, NAFCU's members are sometimes unable to get conclusive information about the status of their request from NCUA.

NAFCU believes that NCUA can remedy and streamline these procedural issues by releasing interpretive guidance and outlining a more transparent process. In particular, we recommend the following procedural changes:

1. Update Chartering and FOM Manual to reflect the current process

NCUA's Chartering and FOM Manual has not been updated since 2003. The Manual currently states that all application and amendment requests are approved through the Regional Director's office. In 2010, however, the process for FOM amendments changed with the creation of NCUA's Office of Consumer Protection (OCP). Now, many FOM-related applications are submitted directly to OCP. This change, however, has yet to be incorporated into the Chartering

and FOM Manual. NAFCU and our members strongly urge NCUA to release an updated Chartering and FOM Manual to reflect the many procedural changes that have been implemented over the past 12 years.

2. Require Deadlines for FOM Amendment Requests

Under NCUA's rules and procedures, there is no established time period in which the agency must respond to a request. Because FCUs are unable to anticipate a reliable timeline for agency review and approval of a request, NAFCU recommends that NCUA adopt a 30-day time limit for the Regional Director to either approve or deny a request that does not require NCUA Board approval. For all FOM amendments over 1 million members that need NCUA Board approval, NAFCU recommends that the agency adopt a 60-day time limit to either approve or deny a request.

3. Increase Transparency in the Decision Making Process

NCUA's current process for reviewing a FOM-related application fails to provide FCUs with notifications or updates on the status of their request except for the final decision. This lack of transparency and communication during the amendment process increases uncertainty and limits the FCUs ability to undertake prudent future business planning activities. NAFCU believes NCUA could eliminate this unnecessarily cumbersome, lengthy, and confusing process by providing definitive directions on OCP's application expectations and the timeframe for agency action. We recommend that NCUA establish a formal notification process with the FCU, requiring regular status updates to the FCU about pending applications.

B. Formal NCUA Rulemaking Actions

NAFCU believes that NCUA has the ability and latitude under the *Federal Credit Union Act* (FCU Act) to promulgate regulatory solutions to the existing FOM restrictions. Because any regulatory changes require NCUA Board action and a Notice of Proposed Rule Making (NPRM), NAFCU encourages the NCUA Board to move swiftly on proposing regulatory changes in order to ensure that the federal charter keeps pace with the state charter.

1. NCUA's Geographic & Population Restrictions

The FCU Act directs NCUA to establish a definition for "well-defined local community" and "rural district." *See* 12 U.S.C. § 1759. The FCU Act provides that:

"[NCUA] shall prescribe, by regulation, a definition for the term "well-defined local community, neighborhood, or rural district" for purposes of— (A) making any determination with regard to the FOM of a credit union described in subsection (b)(3) of this section; and (B) establishing the criteria applicable with respect to any such determination." *Id.*

However, there is no statutory requirement to apply rigid population limits, core areas, or geographical boundaries. While NAFCU acknowledges that these requirements may have been appropriate when initially promulgated, we firmly believe they are excessively restrictive and

arbitrary in today's environment. Due to the explosive growth of technology and digital communication platforms, today's society is ubiquitous and widespread. Credit union members can form a cohesive bond and be integrally related regardless of geographic location because modern technology provides platforms on which individuals can connect to one another from anywhere in the world. In today's modern world of teleconferences and webinars, credit union members can participate in activities developing common loyalties, mutual benefits, and shared interests without geographic restriction. Further, credit unions are equipped with modern technology to efficiently provide services to a larger population of consumers.

NAFCU recommends that NCUA remove all non-statutory requirements that impose geographic and population-based limitations on community charters. In particular, we suggest that the agency reconsider its definition of "well-defined local community" and "rural district."

Well-Defined Local Community

NCUA's current Chartering and FOM Manual advises that the "well-defined local community" requirement for a community charter is met if an applicant credit union can demonstrate that the area is a designated Core Based Statistical Area (CBSA) or a Metropolitan Statistical Area (MSA) with a population of 2.5 million or less. NAFCU continues to hear from our members that these population caps are arbitrary and unnecessarily restrictive.

NAFCU and our members believe a proposed area should not be disqualified as a well-defined local community simply because it exceeds a particular population size. There are many areas around the country that should qualify as local communities but would fail simply because of the arbitrary maximum population limit. NAFCU urges NCUA to consider the exclusionary effect of the rule and to remove the 2.5 million population cap, as it is not mandated by the FCU Act.

Definition of "Rural District"

Since 2013, NCUA's Rules and Regulations define a "rural district" as (1) a district that has well-defined, contiguous geographic boundaries; (2) the total population of the district does not exceed the greater of 250,000 or 3 percent of the population of the state in which the majority of the district is located; *and* (3) the district meets one of two other population requirements. The district *either* (a) does not have a population density in excess of 100 people per square mile, *or* (b) more than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the U.S. Census Bureau.

Under the "three percent" rule, only those credit unions that seek to serve in rural areas in the 13 most populous states in the country have benefited. Meanwhile, credit unions in 37 other states and territories are subjected to an arbitrary 250,000 population limit. Before 2010, the population limit was set at 500,000 until being lowered to the current level without explanation. NAFCU and our members request NCUA to revise the definition of rural so it will not unreasonably deprive numerous Americans the opportunity to receive high-quality financial services from a credit union that is able to serve them.

NAFCU recommends NCUA remove or significantly increase the 250,000 population limit or, *at minimum*, restore the pre-2010 population threshold of 500,000. The current population density threshold is far too low and the person-per-square-mile limitation should not be part of the formula in determining a “rural district.” NAFCU and our members strongly believe recommends that the 100 person per square mile limit be raised or eliminated.

2. Trade, Industry, or Profession (TIP) Charters

The FCU Act provides that an FCU may be chartered to serve “one group that has a common bond of occupation or association.” *See* 12 U.S.C. § 1759(b)(1). In interrupting this statutory language, NCUA has created a “Trade, Industry, or Profession common bond charter”, or more commonly referred to as a TIP charter. NCUA’s Chartering and FOM Manual requires that these charters have a single “common bond relationship...that demonstrates a narrow commonality of interests within a specific trade, industry, or profession.” *See* Appendix B, Part 701. Additionally, NCUA imposes two broad non-statutory limitations on a TIP charter. First, TIP charters are subject to a geographic limitation. Second, a TIP can only be a single-common bond charter, and is prohibited from adding associational groups.

NAFCU encourages the NCUA Board to remove these two non-statutory limitations. As noted above, NAFCU’s members firmly believe that geographic proximity is no longer a significant factor in a credit union’s ability to serve its consumers. Today’s technology offers credit unions the ability to provide more secure and cost-effective financial services regardless of physical location. Geographical proximity has a very different meaning in a today’s marketplace where consumers can access a wide range of financial services on their computers, phones or tablets. Credit unions should not be penalized for adopting the use of these technologies to serve and grow their memberships. Therefore, NAFCU recommends that NCUA remove the agency’s geographical limitation on TIP charters.

Further, as NCUA is aware, NAFCU and our members strongly oppose the agency’s chartering rule that prevents a TIP chartered-credit union from adding associations to its FOM. The effect of this limitation has been that FCUs are unable to offer their services to more consumers, a result that unnecessarily restricts American consumers’ access to much-needed financial services. Accordingly, we urge the NCUA to remove this restriction.

3. Charter Conversions

Under NCUA’s current rules, a single- or multi-associational chartered FCU is prohibited from continuing to serve its existing FOM when it converts to a community charter, unless the associational and occupational groups are entirely within the new community. *See* Appendix B, Part 701. NAFCU continues to hear from our members that this limitation is unnecessarily restrictive and unfairly curtails American consumers’ access to credit union services. Further, NAFCU’s members have indicated that this restriction deters them from expanding their single- or multi-associational charters because they do not want to lose their existing FOMs. As a result, rather than expanding their services to wider range of individuals, many of NAFCU’s members are forced to miss growth opportunities within their communities. Accordingly, NAFCU recommends that NCUA allow single- or multi-associational chartered FCUs who convert to a

community charter to continue to serve their previous associational and occupational groups, regardless of geographical boundaries.

4. Credit Union Mergers

In general, NCUA will not approve unless the FOM for the two credit unions meet stringent standards. *See* Appendix B, Part 701. In an emergency merger situation, however, NCUA can approve applications without regard to FOM requirements, the 3,000 numerical limitation, or other legal constraints. *Id*; *see also* 12 U.S.C. § 1759(d)(2)(B). To waive FOM restriction, NCUA must first determine (a) an emergency exists, (b) other alternatives are not reasonably available, and (c) the public interest will best be served by approving the merger. *See* Appendix B, Part 701; *see also* 12 U.S.C. § 1785(h).

NAFCU continues to hear from our members that they have declined merger requests from struggling credit unions because NCUA rarely utilizes its emergency merger authority to waive FOM constraints under the FCU Act. In particular, NAFCU's members have indicated that NCUA often waits until a credit union is irreparable economic distress before it will authorize an emergency merger. While NAFCU acknowledges that the FCU Act prescribes certain criteria, as noted above, we firmly believe that the statute provides the agency latitude to more broadly apply its emergency merger authority for waiving FOM constraints. NAFCU and our members recommend that the agency revisit its emergency merger guidelines, and consider ways it could more broadly and efficiently authorize mergers, irrespective of FOM constraints.

5. Service Facility Requirement

NCUA's Chartering and FOM Manual, among other things, requires an FCU to show how it plans to reasonably provide service to its FOM within a geographic area. NCUA suggests that in order to "reasonably provide service," there must be a physical service facility "where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed." *See* Appendix B, Part 701. These facilities can include a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility. *Id*.

NAFCU and our members strongly recommend that NCUA revise its service area requirement in order to better address the advancements of online banking services. Requiring credit unions to provide a physical presence in any geographic area which it may serve its members is an unnecessary burden, prevents credit unions from effectively and efficiently serving customers, and fails to consider advancing technology. Specifically, NAFCU urges NCUA to either eliminate the service area requirement or alternatively revise the definition of service area to include "facilities that are accessible to groups within the FOM through online services." Eliminating the service area requirement and updating the definition with a broader interpretation will ensure that NCUA will not need to constantly amend the definition as mobile banking services continue to develop. Furthermore, NCUA's current physical service facility requirement mandates that credit unions must spend resources on outdated service portals, which prevents credit unions from providing access to otherwise eligible members within its FOM.

III. Conclusion

NAFCU appreciates NCUA's commitment to modernizing federal FOM rules that have not been significantly modernized in more than fifteen years and we applaud the agency for soliciting feedback and input from credit unions throughout the process. NAFCU and our members urge NCUA to address the issues raised in this Policy Paper. Further, we encourage the agency to support legislative reform to the FCU Act that would recognize how consumers and businesses have evolved since the passage of the *Credit Union Membership Access Act*.