Louisiana
Credit Union League

January 25, 2016

Mr. Gerard Poliquin
Secretary to the NCUA Board
1775 Duke Street
Alexandria, VA 22314

Re: Comment Letter to the Proposed Amendments to NCUA's Field of Membership and Chartering Manual 12 CFR Part 701

Dear Mr. Poliquin:

On behalf of the Louisiana Credit Union League (LCUL), I would like to thank you for the opportunity to express our views on the recent proposal by the NCUA Board addressing the field of membership (FOM) rules of the National Credit Union Administration found in 12 CFR Part 701.

LCUL commends the NCUA Board for its willingness to consider much needed reforms to the current FOM rules. Although there are a number of positive aspects of this proposal that we support and will highlight in greater detail below, we must state our view that it is somewhat disappointing the Board did not go as far as the statute allows and – in taking an unnecessarily tight view of the statute - failed to remove some controversial restrictions placed in the FOM rules during the 2010 rewrite. That said, we believe this proposal is a significant step in the right direction that, if combined with a few changes and enhancements allowed within the statute, should provide much needed flexibility for those federal credit unions seeking to better serve their members.

To that end, we are pleased to provide the following comments and recommendations regarding the proposed amendments to NCUA's FOM rules.

Core Area Service Requirement Removed

We enthusiastically support the proposed change that will give federal credit unions the ability to convert to a community charter or expand an existing community charter without having to serve the core area if electing to serve a portion of a Core Based Statistical Area (CBSA). This change is significant in that it provides additional flexibility to a credit union in making a true safety and soundness determination as to what part of an area it can reasonably serve if it does not feel that its financial position would best be served by taking the entirety of a CBSA. It also allows the credit union flexibility to maintain a marketplace footprint that might be focused on other parts of the CBSA.

Under the current FOM rules a credit union is mandated by regulation to serve the "core area" which is defined as the most populated county or municipality in the CBSA. Perhaps noble in its original intent, in many cases this requirement has unfortunately resulted in a credit union taking on a larger community than it originally wanted to serve or abandoning efforts to serve or expand a community altogether. The proposed change to remove the core area service requirement for federal credit unions is appropriate in our view and will enhance safety and soundness by allowing a credit union to focus on those areas in a CBSA that it can reasonably serve.

Combined Statistical Areas Authorized

More expansive than what is available by expanding into a CBSA, the proposal also gives credit unions the ability to apply to serve combined statistical areas subject to the existing population cap of 2.5 million. It is our understanding that these areas go beyond the boundaries of what typically constitutes a Metropolitan Statistical Area (MSA) and should provide additional flexibility for those credit unions desiring to expand their geographic footprint. Although a welcomed and needed change that obviously is within the confines of a statute that states a credit union can serve a "well defined local community" (not merely a "neighborhood" or "town" or "county"), we regret that such communities are still subject to an arbitrary population cap of 2.5 million that is found nowhere in the statute. This arbitrary population cap, for which there is no basis in law or equity, unfortunately diminishes the potential of this significant change for a number of credit unions in larger metropolitan areas.

Population Limit as Applied to a Well-Defined Portion of a Core Based Statistical Area

Since 2010, NCUA's existing FOM rules have permitted a portion of a CBSA to qualify as a well-defined local community provided the population of the CBSA as a whole does not exceed 2.5 million. The effect of this provision has been that a smaller portion of a statistical area with a 1.5 million population could not qualify if the entire CBSA had a population in excess of 2.5 million.

The proposal attempts to rectify this by amending the rules to state that the population limit of 2.5 million will apply to the CBSA or any well-defined portion thereof. The practical effect of this proposed change as we read it is that a federal credit union could serve any well defined portion of a CBSA provided the area sought does not exceed 2.5 million in population even if the CBSA in its entirety is well above 2.5 million in population.

While we support this change and believe it to be much better than what is currently available, we remain perplexed as to why the Board feels that the continued application of arbitrary population caps is needed. The retention of the population cap is burdensome and seems counterproductive in our view and as such should be removed.

Areas Adjacent to a Core Based Statistical Area Authorized

Based on our reading of the proposal, credit unions would be given the ability (subject to the population cap of 2.5 million) to serve an outside area contiguous to its *existing* CBSA or single political jurisdiction. In order to do so and reminiscent of NCUA's community charter application procedure prior to 2010, a credit union will be required to submit a narrative in their application to demonstrate interaction or common interests of the proposed expanded community as a whole. Without question this is an important and substantive change that is certainly welcomed.

However, as stated previously, the significance of this change is dramatically diminished by retaining the arbitrary population cap of 2.5 million.

Population Caps Retained

The single biggest drawback to this proposal, in our view, is (as stated above) the Board's decision to retain arbitrarily imposed population caps on communities comprised of a more than a single political jurisdiction. While the addition of Combined Statistical Areas and the removal of the "Core Area" service requirement are unquestionably good changes and noteworthy, the improvements are undermined and not nearly as far reaching as they seem at first glance, when they are still subject to an unreasonable 2.5 million population cap.

Simply stated, either the area qualifies as a community or it does not. Population should not determine whether the area considered meets the definition of a "well-defined local community" Since July 2010, NCUA has solely relied on statistical information compiled by other governmental agencies in making a determination of whether a community exists. Essentially, this continues to be the case in the proposed rule with the limited exception that authorizes the addition of an adjacent area to a CBSA or a Combined Statistical Area subject to an overall population cap of 2.5 million. Given that every single definition of "community" under this proposal continues to be predicated on statistics compiled and defined by other governmental agencies and absent any statutory requirement mandating the Board to do so, we feel that there is absolutely no logical justification for the inclusion of population caps.

If one of the goals of the NCUA Board is to ensure that the federal charter is competitive with state charters (very few of which, if any, have population caps on communities), the retention of arbitrary population caps severely undermines such a goal. Indeed, state credit union supervisors have been approving statewide fields of membership for years without regard to population limitations. Rather the regulatory focus has been, and rightly so in our opinion, whether or not the credit union had the ability to serve the community for which it was seeking approval. The ability to serve decision is most often made on a

number of critical factors that include, among other things, the credit union's business plan and overall ability to serve members via branches, electronic means and ATMs. The population of the statewide community is not an issue in determining these communities. Neither should it be for federal community charters.

We believe strongly that the federal charter would be significantly enhanced if the arbitrary population caps are removed in their entirety. In fact, we would remind the NCUA Board that the 1999 field of membership rules – which were challenged unsuccessfully in court by the same banking associations that will oppose these rule changes – and the 2003 field of membership rules – which the banking associations did not elect to challenge in court – did not contain population caps. They were implemented in 2010, over twelve years after the passage of the Credit Union Membership Access Act of 1998. Obviously, population caps are neither statutorily mandated nor essential from a regulatory point of view. We remain convinced that they are arbitrary, inherently inequitable and unnecessary.

Congressional District Meets Definition of Community

We support the proposed change that establishes that an individual Congressional District will meet the definition of a well-defined local community. Although the availability of other more expansive community charter options will likely make it a less desirable option for most credit unions, the inclusion of a single Congressional District as meeting the definition of a well defined community will provide another layer of flexibility for those credit unions seeking to diversify their fields of membership through a community charter. A Congressional District, in our view, certainly is well-defined and local by its nature.

Rural District

The proposed rule raises the population cap for Rural Districts from 250,000 persons or 3% of the state's population to a flat 1 million population cap. While the increase in population cap from 250,000 to 1 million is a definite improvement and admittedly encompasses all state rural populations with the exception of California, it still begs the same question raised earlier regarding community charter requirements as to why a population cap is needed or justified at all.

The proposal retains and includes additional criteria (multi-state expansion test) for establishing a rural district that limits multi-state expansion to only those states with borders immediately bordering the state containing the federal credit union's headquarters or main office. Although unnecessary in our view, we have no major objections to the inclusion of this provision if the arbitrary population caps were removed.

Given the existence of these rigorous qualifying criteria, we believe that the inclusion of a population cap is an unneeded and therefore should be removed.

Concentration of Facilities Test for Establishing Underserved Areas

The Concentration of Facilities Test has become one of the most frustrating aspects of submitting a request to serve an underserved area and it is disappointing to see that this controversial provision has been retained in the proposed changes to the FOM rules.

Although the proposed exclusion of non-depository institutions and non-community credit unions from the concentration of facilities ratio is an improvement in a very flawed burdensome matrix, the minor tweaks included in this proposed rule only skirt around the edges of this issue and offer very little from a practical perspective. Retaining this flawed and cumbersome test will do little in providing any meaningful analysis and will continue to discourage credit unions from adopting underserved areas.

The proposal states that a federal credit union can submit a metric of "its own choosing as evidence of underservice in a proposed area, provided the metric is based on data of the Board and Federal banking agencies". The inclusion of such alternatives in the proposal to identify areas as underserved raises the question of why credit unions would be required to demonstrate that an area designated by a governmental agency like the US Treasury CDFI Division as underserved is "underserved enough" to meet a separate standard by NCUA? Either an area qualifies as underserved or it does not.

If an alternative is to rely on counties designated as underserved by the CFPB or to utilize data derived from the federal banking agencies as this proposal would seem to allow, then we suggest that a credit union should be able to rely on the US Treasury's CDFI determination that the census tracts comprising the area to be served are indeed underserved. Shouldn't the CDFI determination of an underserved area be enough to demonstrate significant unmet needs?

The best approach in our view would be to completely remove the significantly flawed and ill-advised Concentration of Facilities Test and simply use the determination by CDFI as justification that the area is underserved. If the other financial institutions located in an underserved area have not impacted the residents there sufficiently to build the area out of its lower income status, then why should NCUA penalize a credit union willing to serve that particular underserved community? It would seem to us that access to additional lower cost financial services offered by credit unions could only benefit the residents of underserved areas by providing them with additional choices.

Reasonable Proximity

In our view, one of the most important and long overdue provisions in the proposed rule is the revised definition of "service facility" for SEG expansion to include online financial services, including computer-based and mobile phone channels. This is a significant and welcomed change that finally acknowledges 21st century advances in technology. The NCUA Board deserves commendation for this action that brings about true "modernization" into the service delivery equation when determining reasonable proximity for SEG expansion purposes.

This proposed change appropriately recognizes how many technological based avenues for conducting business are available to credit union members in today's marketplace. It is encouraging to see the agency move forward with a proximity standard that is truly reasonable for today's marketplace.

However, the proposal stops short of being as meaningful and significant as it could have been by excluding its application to the requirement that a credit union serving an underserved area "must establish and maintain an office or facility in an underserved area." In other words, the revised definition would allow a credit union to serve a SEG through online and mobile services without a branch nearby, but would not allow a credit union to serve an underserved area without a physical presence within the area. This makes little sense in our view.

It would seem that an equitable treatment argument should be applied here. If mobile banking and transactional websites are good enough for multiple common bond credit unions with SEGs all across the country and start up credit unions with no branches, then it should be authorized for credit unions that have made a determination to serve an underserved area. It is difficult to see how the service component to the member is any different here. Again, SEG expansion as well as underserved area expansion should be evaluated on the credit union's ability to serve.

Again, there is no question but that the revised definition of "service facility" for SEG expansion is both reasonable and welcomed, but we would like to see this applied to underserved area expansions as well. Doing so would add some real meat to the FOM reforms. Failing to do so continues to place the federal charter at a disadvantage over most state charters. As mentioned earlier and as cited by the NCUA in the summary of the proposed rule, more and more states are granting statewide fields of membership and they are allowing their credit unions to rely on 21st century technology to serve their members. NCUA should fully embrace the revised definition of "service facility" and apply it across the board.

Inclusion of SEG Contractors in a Multiple Common Bond

According to our reading of the proposal, this provision would add to a SEG-based credit union independent contractors with a "strong dependency relationship" to the SEG. We support this provision and believe it will be helpful in qualifying potential members for a number of multiple common bond credit unions.

Inclusion of Office/Industrial Park Tenants in a Multiple Common Bond

The provision to allow a multiple common bond credit union to serve any business in an office complex, any store in a mall, or any tenant in an industrial park if the complex, mall or park administration seeks the service is a good change and one that we enthusiastically support. The inclusion of this provision enables a credit union to sign up the entire complex in one SEG approval that covers all businesses within the complex. This is a welcomed change that is very reasonable and will truly streamline the SEG approval process.

Streamlined Determination of Stand Alone Feasibility of Groups Greater Than 3,000

While we view this primarily as an internal processing improvement, this is a good change. The agency's recommended approach in this area is appropriate in our view and is representative of what it takes to start and maintain a viable credit union. That said, for this change to be truly effective and helpful, the size of the group should be increased to 10,000 (or maybe even larger) in order to fully take into account the actual penetration rate – which is often half or less - of a group required to sustain a viable, safe and sound credit union.

Other Persons Eligible for Membership in Credit Union

We support the proposed change to permit any federal credit union that includes a branch or branches of the United States Armed Forces in its charter to include within its common bond the honorably discharged veterans. This is an appropriate addition in our view that allows federal credit unions to honor and recognize the service of our veterans, providing them with the choice of additional lower cost financial alternatives.

TIP

The inclusion of adding employees or independent contractors with a "strong dependency relationship" to the TIP is appropriate and helpful to have clearly defined.

However, we think the agency is missing a real opportunity to offer meaningful reform in this area by failing to propose allowing TIP chartered credit unions to adopt underserved areas. Given that the TIP charter is really somewhat of a "super SEG," thus functioning similar to a multiple common bond credit union, there really is no reason why credit unions with this charter type should not be able adopt underserved areas. As such, we would urge the NCUA Board to seriously consider authorizing TIP charters the ability to adopt underserved areas.

Failure to Amend Merger Rules

The proposal is silent on mergers. Considering merger trends today, it is difficult to see how this proposal can be viewed as major FOM reform without addressing FOM constraints in voluntary mergers and the unreasonably tight interpretation the agency takes in determining what constitutes "in danger of insolvency" for emergency mergers. With the industry averaging one merger per business day for the last 15 years, this omission is big and we would encourage the Board to give careful consideration to modifying its existing rules on mergers.

Without question the proposed rule is a marked improvement over the rules currently in place and are clearly within the statute. In fact, we are of the opinion that more could be done in the FOM arena within the parameters of safety and soundness while maintaining the confines of the statute. With a few small but significant changes as discussed above, this proposal could provide even more meaningful FOM reform for federal credit unions. We encourage the NCUA to consider these suggested areas of additional revision to the original field of membership proposal.

As always, thank you for the opportunity to provide our thoughts and comments. Again, we commend the NCUA Board for their willingness to address this important issue for the growth, diversification and long-term financial enhancement that will result in stronger, safer and sounder credit unions.

Sincerely,

Anne M. Cochran
President/CEO