

Cooperative Credit Union Association

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Creating Cooperative Power

May 30, 2023

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: Chartering and Field of Membership (RIN 3133-AF46)

Dear Ms. Conyers-Ausbrooks,

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. (“Association”) appreciates the opportunity to comment on the National Credit Union Administration’s (NCUA) proposed rule to amend the agency’s Chartering and Field of Membership Manual. The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 3.6 million consumer members. The Association has developed these comments in consultation with our members.

The Association’s High-Level Comments

- The Association supports this proposal, including streamlining the underserved area expansion process and better harmonizing it with updated Community Development Financial Institution Fund rules. We urge the Board to finalize the rule as proposed.
- The Association strongly supports the NCUA Board’s proposal to allow federal credit unions (FCUs) to add underserved areas without regard to geographic location.
- We support the proposed simplified business and marketing plans for community field of membership conversions and expansions, as well as the proposal to eliminate this requirement for state-chartered community credit unions converting to FCUs.
- We strongly support the proposal to allow members of affinity groups based within a community credit union’s geographic community to join the credit union, as well as to allow family members of deceased members to join.
- We urge the Board to clarify that states—like Rhode Island—which fall entirely within a Census Bureau Combined Statistical Area can be community fields of membership.

The Association's Detailed Comments

The Association supports this proposal and urges the Board to finalize it as proposed. We applaud the Board's efforts to update its underserved area and community chartering rules to reduce paperwork burdens, address unintended consequences in the current rules, and generally make it easier for FCUs to serve underserved areas and have credit unions convert to community fields of membership.

- i. The Board Should Clarify That Small States Like Rhode Island Which Fall Entirely Within a Combined Statistical Area or Rural District Can Qualify as Parts of Community Fields of Membership*

The Association strongly urges the Board to address an unintended consequence of its prior community field of membership rulemakings that affects credit unions in a few small states like Rhode Island. We wish to bring to the Board's attention that some of the Association's members have been denied fields of membership that include the State of Rhode Island because of an apparent drafting error in the agency's Chartering and Field of Membership Manual. We believe that the Board should clarify this issue as part of this rulemaking.

Specifically, the Board's September 2020 final rule on Chartering and Field of Membership¹ allowed community FCUs to serve a field of membership based on contiguous segments of U.S. Census Bureau Combined Statistical Areas that have a total population of fewer than 2.5 million residents. This sensible and well-reasoned policy has helped the Association's members reach numerous individuals in need of credit union services who previously would not have been able to join these institutions.

The current rule is unclear, however, concerning the eligibility of states like Rhode Island that fall entirely within a Combined Statistical Area (in this case the Boston-Providence-Worcester Combined Statistical Area) and meet the applicable population limitations. This is because pre-existing language elsewhere in the agency's Chartering and Field of Membership Manual cites the "State of California" as an example of an impermissible Field of Membership.²

As a consequence of confusion concerning this pre-existing "State of California" example in the Manual, the Association's member credit unions have been denied the State of Rhode Island and contiguous counties in Massachusetts within the Boston-Providence-Worcester Combined Statistical Area as a community field of membership even though these areas have a total population below 2.5 million as field of membership and meet other applicable requirements. This southeastern New England region should in fact qualify as an eligible community field of membership based on the plain language of the September 2020 final rule.

¹ Chartering and Field of Membership, 85 Fed. Reg. 56,498 (Sep. 14, 2022).

² See 12 C.F.R. pt. 701, Appendix B, § V.A.7 ("Some examples of unacceptable local communities, neighborhoods, or rural districts are: Persons who live or work in the State of California. (not a permitted community).").

We believe that the same unintended consequence stemming from this “State of California” example—which is essentially a drafting error—may also affect other small states, like Wyoming, in the context of rural districts.

While we agree that the entire State of California, with more than 39 million residents and 160,000 square miles of geographic area, is too large to qualify as an FCU’s community field of membership, Rhode Island is a much smaller state both in terms of population and geography. In fact, the state of Rhode Island is smaller even than the County of Los Angeles, California, which is a permissible community field of membership because it is a county. Los Angeles County has more than 10 million residents and is more than 4,700 square miles in size.

In contrast, Rhode Island has fewer than 1.1 million residents and a geographic area of only 1,200 square miles. There is no reason why a small state like Rhode Island and nearby Massachusetts counties with a combined population below 2.5 million should be off-limits as a community field of membership when they fall entirely within Boston-Providence-Worcester Combined Statistical Area. This is especially true considering that much larger and more populous geographic areas like Los Angeles County are indeed permissible communities.

The same should hold true with respect to small states falling entirely within a rural district as well as those that fall entirely within a Combined Statistical Area.

We urge the Board to clarify in the final version of this rule that small states like Rhode Island that are entirely within a Combined Statistical Area, or a rural district, and meet other applicable criteria should be eligible to be included in FCUs’ geographic fields of membership either on their own or in combination with contiguous regions in other states within the same Combined Statistical Area or rural district.

ii. Underserved Area Additions

The Association supports the Board’s proposal to streamline its underserved area standards and better harmonize them with updates to the Community Development Financial Institution Fund (CDFI Fund) rules on which they are based. In order for an FCU to expand to an underserved area, the Federal Credit Union Act requires that the geographic region must meet the CDFI Fund’s economic distress criteria as well as other requirements established by NCUA. We agree with the Board’s proposal to:

- (1) Provide flexibility for rural districts that cover parts of multiple states by eliminating the requirement that an underserved area be in the same state as the FCU’s headquarters and/or in states adjacent to the FCU’s headquarters;
- (2) Clarify how the CDFI Fund’s economic distress criteria apply to underserved areas, including the use of the U.S. Census’s American Community Survey data that is typically more up-to-date and comprehensive than decennial census data;

(3) Eliminate census block groups from the rule because the CDFI Fund has deleted this as a geographic criterion in favor of better-known geographic boundaries; and

(4) Reduce paperwork burdens by eliminating the requirement for FCUs to provide a formal “Statement of Unmet Needs” (SUN) document as part of its application to serve an underserved area.

We urge the Board to finalize these changes as proposed because they will reduce regulatory burdens on FCUs seeking to serve underserved areas and thereby increase low- and moderate-income Americans’ access to not-for-profit credit union services.

Regarding the Board’s desire to provide more flexibility concerning its rules on rural districts, we strongly support the NCUA Board’s proposal to allow FCUs to add underserved areas to their fields of membership without regard to geographic location instead of limiting these underserved areas to those within the state where the FCU is headquartered and adjacent states.

We agree that this limitation was a drafting error as the Board has stated in the proposal, and—much like the situation concerning Rhode Island discussed above—should be resolved in the final version of this rule. Allowing FCUs to allow underserved areas without regard to their distance from the FCU’s headquarters was prior NCUA policy and limiting underserved consumers’ access to credit union services this way disadvantages low-income communities based on seemingly arbitrary geographic distances that have little relevance in today’s technological environment.

In addition, given the relatively frequent changes that the CDFI Fund makes to its rules, we believe it would help reduce regulatory burdens on FCUs for NCUA to provide a high-level summary of CDFI Fund requirements and a citation to the applicable part of the CDFI Fund’s regulations. FCUs may have difficulty locating the correct CDFI Fund requirements unless the Manual provides a citation to the relevant part of CDFI Fund rules.

iii. Simplified Business and Marketing Plan

The Association supports the Board’s proposal to simplify the business and marketing plan requirements for FCUs seeking to serve a community field of membership. We agree that the agency’s “Standardized Fillable Application for Community Charter Requests” form will help significantly reduce paperwork burdens on FCUs seeking to serve geographic communities and urge the Board to finalize this form but not to make it mandatory per se. While most FCUs will likely choose to use this form, we believe that FCUs should have the flexibility to use a free-form narrative option to address uncommon scenarios that may not have been completed during this rulemaking to limit the potential for unintended consequences.

We also support eliminating the business and marketing plan requirement for state-chartered community credit unions seeking to convert to community FCU charters. Since these credit

unions are already serving the geographic area in question, we agree that requiring a full business and marketing plan for these institutions would be unnecessarily duplicative. We believe that these credit unions answering the brief questions proposed in the rulemaking about their products and services and marketing plans should be sufficient.

iv. Groups Sharing a Common Bond with Community Areas

The Association also strongly supports the proposal to allow members of affinity groups with overlapping common bonds with community FCUs, such as the employees of companies based within a credit union's geographic community field of membership, to become members of the credit union.

As the Board suggested in the proposal's preamble, this change will reduce the regulatory burdens associated with associational common bond FCUs converting to community charters.

Many of the Association's members have converted to community charters while continuing to serve affinity groups, however, in today's changing technological environment and with the shift to remote work, it is logical for the NCUA to modernize its field of membership rules in this regard. We urge the Board to finalize this aspect of the rule as proposed.

v. Eligibility of Immediate Family Members of Decedents

We support the Board's proposal to allow immediate family members of deceased FCU members to join the FCU. In many cases these relatives may inherit the member's credit union accounts and only did not join the credit union while their relative was alive because they incorrectly believed that they could do so later.

We see no policy reason why these relatives should not be allowed to join the credit union and keep their deceased loved ones' accounts open. We urge the Board to finalize this aspect of the proposal.

vi. Updated References for Review of Prospective Management and Officials

We support the Board's proposal to update the citations regarding review of prospective credit union managers and officials for their fitness and propriety to run a financial institution.

This technical clarification and correction should reduce compliance burdens by helping credit unions more easily locate the applicable provisions of law concerning whether an individual should be considered fit and proper to serve as a credit union executive or board member.

vii. Possible Future Actions by the NCUA Board

Regarding "well-defined" underserved areas, the Association agrees with the Board that the text of Section 109 of the Federal Credit Union Act, 12 U.S.C. § 1759, does not require underserved areas to be "well-defined" even though this section of the Act uses the term "well-defined" with

respect to community fields of membership. Under the traditional canon of statutory interpretation *expressio unius est exclusio alterius* (“the expression of one thing is the exclusion of the other”), the U.S. Congress’s decision to include the “well-defined” requirement for community fields of membership but omit it for underserved areas means that underserved areas should not be have to be “well-defined.” In other words, requiring an underserved area to be “well-defined” is inconsistent with the plain language of the Act.

Regarding the concentration of service facilities—i.e. branches of other depository institutions—in a proposed underserved area, we support the three approaches currently allowed under the existing version of the Manual. We welcome, however, the Board doing additional research in this area given changing economic conditions, including banks’ closures of numerous branch offices over the past several years. The Association has noted that its member credit unions are typically adding new branch offices in our region while many banks have reduced their branch footprints, especially in lower income areas. This branch pullback by banks may mean that the need for credit unions to serve underserved areas is more important now than ever before.

Regarding neighborhoods as a chartering option, we are not aware of neighborhoods that are typically larger than the other geographic regions that are permissible for FCU community fields of membership or underserved areas. In today’s financial services marketplace neighborhood-bound credit unions would find it difficult to achieve the economies of scale necessary for successful intermediation between savers and borrowers at competitive rates. We therefore do not believe that the agency should develop guidance specifically on neighborhood-based credit unions when the Federal Credit Union Act gives alternative geographic community options that are more likely to result in economically sustainable institutions.

The Association appreciates the opportunity to comment on the NCUA’s proposed rule on Chartering and Field of Membership. If you have any questions about our comments or require further information, please do not hesitate to contact the Association at govaff-reg@ccua.org.

Sincerely,

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