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National Association of Federally-Insured Credit Unions

December 6, 2019

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Chartering and Field of Membership (RIN: 3133-AF06)

Dear Mr. Poliquin:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the National Credit Union Administration's (NCUA's) proposed changes related to its Chartering and Field of Membership (FOM) Manual (Chartering Manual). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 118 million consumers with personal and small business financial service products. NAFCU and its members appreciate the NCUA's efforts to amend its Chartering Manual to modernize its regulations so credit unions can continue to effectively serve their communities. NAFCU generally supports the proposed changes to the Chartering Manual, which would streamline the NCUA's chartering procedures, but opposes the proposed rule's additional requirements for marketing and business plans because it would add undue burden for credit unions applying for a community charter.

General Comments

NAFCU recognizes the proposed changes to the Chartering Manual are limited in scope. Nonetheless, NAFCU would like to reiterate its support for broad modernization and improved flexibility in the FOM rules so that credit unions are better able to adapt to their changing environments and serve those individuals most in need. In order for credit unions to compete in a 21st century economy, the federal credit union charter must align with changes in state laws, technology, and the financial services industry. Notably, the federal Chartering Manual requirements should complement state charters because the credit union industry's dual chartering system works best when the state and federal charters align with each other. Several states have been more proactive about modernizing their credit union FOM rules. As a result, the credit union industry has seen multiple credit unions convert to state charters because of their inability to grow under the federal charter. NAFCU and its member credit unions appreciate the NCUA's prompt response to the recent decision from the U.S. Court of Appeals for the D.C. Circuit (D.C. Court of Appeals), which correctly upheld most of the 2016 FOM rule.¹ The NCUA should continue to find ways to improve its FOM rules to recognize today's dynamic and ubiquitous marketplace.

¹ See *Am. Bankers Ass'n v. Nat'l Credit Union Admin.*, 934 F.3d 649 (D.C. Cir. 2019).

NAFCU acknowledges that the proposed changes to the Chartering Manual are intended to address only the three aspects of the August 2019 D.C. Court of Appeals' decision regarding well-defined local communities (WDLCs). In particular, the changes to the Chartering Manual include (1) re-adopting the presumptive WDLC option consisting of a Combined Statistical Area (CSA) or a portion of a CSA with a population of up to 2.5 million and (2) amending the Chartering Manual as it applies to applications, conversions, and expansions for CSAs and Core-Based Statistical Areas (CBSAs) to require an applicant to explain why it has selected its FOM and to demonstrate that its selection is not based on discriminatory intent. NAFCU recognizes that the latter requirement is a direct response to the D.C. Court of Appeals' assessment that the NCUA had not adequately responded to objections that the elimination of the core requirement might permit FCUs to engage in discriminatory redlining. The proposed change to the Chartering Manual thoroughly explains the basis for eliminating the core-area service requirement for community Federal Credit Unions (FCUs) that choose a portion of a CBSA as a WDLC.

NAFCU supports the NCUA Board's interpretation of the FCU Act and recognizes that the amendments to the Chartering Manual are within the NCUA's legal authority. As the D.C. Court of Appeals' ruled, Congress gave the NCUA broad authority to issue rules governing fields of membership.² The proposed changes to the Chartering Manual are consistent with the FCU Act's text and rationally advances the FCU Act's purpose of enhancing the public benefit that citizens receive.³ As a result, the proposed changes would facilitate consumer access to credit unions and provide relief from restrictions on a FCU's ability to provide products and services to underserved communities.

NAFCU supports changes to the Chartering Manual that would help strengthen the growth of credit unions to serve underserved communities and ensure credit unions remain healthy and viable in the markets they serve. In particular, the NCUA's efforts to re-adopt the 2016 FOM Final Rule's presumptive WDLC option and further explain the basis for eliminating the CBSA's core area requirement would allow credit unions to serve more members across the country and expand their services to unbanked and underbanked communities. Moreover, the requirements under the proposed Chartering Manual would allow greater flexibility to community-chartered credit unions in how they define the local communities they serve and provide credit unions with better opportunities to serve underserved areas by updating the process for defining those areas.

Although NAFCU supports the NCUA's past and present efforts to modernize the FOM rules, there remains more room for improvement of the process. NAFCU appreciates the NCUA's prompt response to the D.C. Circuit Court's recent decision and urges the agency to fully utilize its statutory authority to holistically evaluate the FOM rules to alleviate credit unions from unnecessarily restrictive rules. Moreover, NAFCU asks the agency not to create additional burdens on credit unions seeking to serve greater portions of their communities.

² *Id.* at 18-20.

³ *See* § 2, 112 Stat. at 914.

Elimination of the Metropolitan Division Boundaries Rule for CBSAs

NAFCU supports the changes to allow a credit union to designate a portion of a CBSA as its WDLC without regard to metropolitan division boundaries. This change would offer regulatory relief to community FCUs burdened by the current federal requirement in community chartering rules. As the NCUA acknowledges, serving a large and densely populated core area may require credit unions to expend a significant amount of resources toward rent, overhead, and other expenses, which a developing FCU may not have the resources to cover. By contrast, eliminating the core requirement would offer community-based FCUs additional flexibility to provide financial services to low- and moderate-income parts of communities that are outside the core. Ultimately, this provision would offer consistency with more flexible state chartering rules. Importantly, this would allow credit unions to serve more underserved communities because it provides credit unions broader operating authority and imposes fewer unnecessary constraints on credit union operations.

Additional Requirements for Marketing and Business Plans

NAFCU opposes the proposed amendments to the Chartering Manual to require an applicant for CSAs and CBSAs to explain why it has selected its FOM and to demonstrate that its selection is not based on discriminatory intent. These vague additional requirements, although well-intentioned, have the potential to further complicate the application process and delay approval of FOM changes, which would prevent credit unions from providing valuable financial services to communities that need it most. As the NCUA Board appropriately notes in its proposal, credit unions have continued to serve underserved communities, as directed by the *Credit Union Membership Access Act*, and have had no history of “redlining.” In fact, credit unions have historically provided services to low and moderate-income communities in times of distress, while banks pulled away from providing much needed services to underserved communities.⁴

Based on income data at the metropolitan statistical area (MSA) level, NAFCU has compared the number of mortgage loan originations in MSAs that experienced a decline in median income. The results showed that during the Great Recession, credit union mortgage loan originations in areas that experienced a decline in median income dropped only slightly compared to banks.⁵ Meanwhile, since 2012, banks continued to retreat from serving these communities while credit union mortgage originations in MSAs have more than doubled.⁶ Moreover, the member-based, cooperative nature of credit unions naturally provides an incentive for an FCU to serve its low- and moderate-income member-owners in a way that does not exist in for-profit financial institutions. Credit unions continue to provide essential services to underserved communities and follow the safeguards and fair lending requirements embedded in statutes and regulations governing the financial services industry. Ultimately, the historical data shows that credit unions have a strong record of providing services in distressed areas, contributing to the sustainability of local economies, and serving underserved and unbanked communities. But that does not mean

⁴ NAFCU, 2018 Federal Report.

⁵ *Id.* at 10.

⁶ *Id.*

there is no room for improvement of the FOM rules to permit credit unions to provide valuable services to even more sections of their communities.

The proposed rule expands on existing business and marketing plans through specific provisions and requirements applicable to CSAs and CBSAs. In particular, in addition to requiring a credit union to demonstrate it will serve a contiguous community, the proposed changes to the Chartering Manual explicitly grant the NCUA authority to deny an application for a community charter unless the applicant demonstrates the following in its business and marketing plan: (1) The credit union will provide financial services to low- and moderate-income and underserved people, and (2) that the credit union has not selected its service area in order to exclude low- and moderate-income and underserved people. The proposed additional marketing and business plan requirements would add unnecessary burden for credit unions who presently must go through a long and detailed chartering process. Credit unions already provide extensive information on how they will serve a community under the existing requirements and practices in the chartering or FOM expansion process. Such information includes submitting a marketing plan addressing how the community will be served for the 24-month period after the proposed conversion to a community charter.

Under the current requirements, a credit union must detail how it will implement its business plan; the unique needs of the various demographic groups in the proposed community; how the credit union will market to each group, particularly underserved groups; which community-based organizations the credit union will target in its outreach efforts; the credit union's marketing budget projections dedicating greater resources to reaching new members; and the credit union's timetable for implementation. Credit unions take great effort to provide the necessary information for their FOM applications. Under the proposed changes to the Chartering Manual, it is unclear what type of additional information credit unions will need to submit to demonstrate that they will provide financial services to low- and moderate-income and underserved people.

To avoid any unnecessary delay or erroneous denial of community charter applications, the NCUA should keep the current marketing and business plan requirements in place. Rather than requiring additional information and prolonging the chartering or FOM expansion process, the NCUA should provide further guidance that lays out clear expectations for credit unions that plan to submit FOM applications, amendments, and expansions. Clarifying guidance on existing business and marketing plan expectations, not additional requirements, would better help credit unions serve underserved communities. NAFCU asks that the NCUA not add more roadblocks to the chartering and FOM expansion process.

Currently, without the additional proposed requirements, it can take a credit union several months or more to complete the chartering process. To streamline the application process for community charters, it is especially important that the NCUA add guidance on acceptable information for marketing and business purposes. A model form or similar guidance would help to demystify the application process, lessen the regulatory burden for credit unions, and simplify the review process for the NCUA. NAFCU supports transparency from the agency on its expectations for credit unions seeking FOM changes and urges the agency to avoid creating additional barriers for FOM applications.

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Conclusion

NAFCU generally supports the changes to the Chartering Manual and urges the NCUA to eliminate the additional marketing and business plan requirements under the proposed rule. Credit unions could would better serve underserved communities with improved flexibility in the Chartering Manual. If you have questions, please contact me at mmakonnen@nafcu.org or (703) 842-2222.

Sincerely,

A handwritten signature in black ink, appearing to be 'MM' with a long horizontal line extending to the right.

Mahlet Makonnen
Regulatory Affairs Counsel