

June 30, 2014

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Comments on NCUA's Notice of Proposed Rulemaking Regarding
Associational Common Bond

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments on the proposed rulemaking regarding Associational Common Bond, which appeared in the *Federal Register* on May 1, 2014. By way of background, CUNA is the nation's largest credit union advocacy organization, representing our nation's state and federal credit unions, which serve over 99 million members.

The proposed rule would update 12 C.F.R. part 701, Appendix B, which details the process that federal credit unions (FCU) must follow when adding associations to their fields of membership. Clear rules and procedures are essential for the transparent and fair application of field of membership requirements, and CUNA generally supports the agency's efforts to clarify these provisions—in line with our advocacy for additional efficiencies and transparency in NCUA processes when credit unions must seek agency approval. We also appreciate the agency's efforts to simplify and streamline the approval process.

CUNA is aware that some credit unions have serious concerns about the proposal. Those concerns, along with CUNA's recommendations to resolve their concerns, are addressed below, following our comments on the proposed approach to pre-approved groups.

Pre-approved Groups

Under the proposal, groups listed in proposed Appendix B would be automatically approved. CUNA strongly supports this aspect of the proposal and commends the agency for this approach. If adopted, it would enhance credit union membership growth and operational efficiency for credit unions and the agency alike.

We understand that NCUA's list of pre-approved groups in the proposed rule is not meant to be exhaustive, and we recognize it is difficult to envision every type of group that might fit the parameters of this approach.

For this reason, CUNA requests that NCUA develop a mechanism for adding groups outside of the rulemaking process. Under such a process, we think that FCUs should be able to add associations without prior approval that have a purpose comparable to that of an association already on the pre-approved list. Credit unions could notify the agency after the fact and NCUA could compile a list on an annual basis of all the associations that fit the pre-approved criteria.

In the meantime, we urge that NCUA add the following to the list of pre-approved groups:

- Cooperative associations, such as farm and electric cooperatives and others with similar purposes and structures;
- Associations designed to advance historically disadvantaged groups;
- Associations such as animal welfare leagues or humane societies;
- Membership societies, such as historical societies; and
- Any other legitimate association that has been functioning for at least five years.

Associational Group Quality Assurance Review

The Board states that "in order to prevent abuses of the membership system, NCUA is currently reviewing the way associational groups are formed and operated." We agree that NCUA should establish a clear rule regarding associational common bonds and apply this rule uniformly to all FCUs.

However, we emphatically oppose any retroactive application of a new rule, which is an outcome some credit unions fear would result from the proposal. In general, it is our view that absent official evidence of illegal activity, once an association is approved, it should be part of a credit union's field of membership without further reviews by the agency.

It is our understanding that NCUA has received some inquiries and a limited number of complaints regarding the legitimacy of a few associations. If the agency determines that to follow up on complaints it must review associations in question, we urge NCUA to develop proposed procedures subject to notice and comment. Such procedures should address how the agency would determine that a complaint has substance and the circumstances that would result in a review. They should also include the scope of the review and the process that NCUA would use, as well as the steps a credit union could take to remedy a material issue found by NCUA. In addition, we urge NCUA to address clearly how appeals would be pursued by a credit union and processed by the agency. Absent a clearly defined process for review of complaints

and for credit union appeals, credit unions fear that NCUA will take a heavy-handed approach and force them to remove associations from their field of membership. Transparency through a well-articulated review process will result in greater efficiencies and promote more equitable outcomes.

Further, for the very limited number of circumstances in which NCUA is concerned that an association does not meet the agency's criteria, we urge the agency in its rule to provide sufficient time for the credit union to work with the association to determine if the problems can be addressed and remedied before further agency action is required.

Threshold Requirement

Under the proposal, when considering a new application, the agency would apply the threshold test first and determine whether the association was "organized primarily for the purpose of expanding credit union membership." It is our understanding that this review would not be routinely applied to existing common bonds that are already part of a credit union's field of membership; we would oppose such application.

Once an association passes the threshold test, whether it may be added will then be based on the totality of the circumstances factors in the rule. If it does not pass the threshold, the agency's inquiry ends and the association may not be added.

NCUA has long held the view that in order for a FCU to include an association, the association should have a distinct purpose and other indicia of membership affinity. We appreciate that the proposed addition of the threshold test is intended to codify the agency's long-standing approach to associational common bonds.

We are concerned, however, about the application of the threshold test and its proposed use to disqualify associations automatically. In that connection, we would like to propose a modification to the proposed approach.

We urge the agency to revise the first paragraph under Section III. A. 1.a. "Threshold Requirement ..." to state the following:

As a threshold matter, when reviewing an application to include an association in a federal credit union's field of membership, NCUA will coordinate with the credit union and association to determine if the association has been formed *solely* for the purpose of expanding credit union membership. Even if NCUA makes such a determination, the association may be added if it is a separate organization, distinct from the credit union, and the credit union meets the totality of the circumstances test. If, after careful review and ample opportunities for the credit union and association to provide information to support the view that the association should be added, NCUA determines that the association is ineligible to be included, the credit union may appeal the

decision to the NCUA Board. The totality of the circumstances test consists of the following factors

We believe this approach is consistent with the Federal Credit Union Act. We also urge the agency to spell out what process it will use to determine whether the threshold test has been met and include all factors that the agency will use in determining compliance with the threshold requirement. A clear process for how credit unions should appeal an adverse ruling should also be addressed.

We want to be clear that we believe a credit union should be allowed to help form an association. Even if the association was formed with a purpose of expanding a credit union's membership, we believe that should be permissible as long as the association meets the agency's requirements. We can foresee instances in which a credit union might want to reach a certain group of consumers who share a common trait or life situation, but are not organized and do not fit into an existing field of membership. A credit union should be able to sponsor such an association that it helped form and be allowed to provide membership to the association.

Footnote 17 in the supplementary information states that an organization should be operating independently from the requesting FCU for at least one year prior to the request to add the group to the FCU's field of membership. We do not support this approach unless waivers are permissible. Another approach would be to allow associations in existence for one year that attest they meet NCUA's standards to be automatically approved. In addition, we think that issues like this should be addressed in the rule.

Totality of the Circumstances

CUNA supports the totality of the circumstances test to determine if an association qualifies for a field of membership. This test determines whether the association is valid.

The proposed rule would change the wording of factor 4 of the test, to read, "whether the association's membership eligibility requirements are authoritative." This factor needs further explanation. The meaning of "authoritative" is unclear in this application, and the ambiguity could lead to confusion and possible inconsistent application by NCUA staff.

We support the proposed separateness factor and think that it should be used in the threshold test as long as it is clear credit unions may help groups form associations under the parameters discussed above.

Also, we think providing space and other support to groups should not mean a credit union cannot add the group as an association common bond. As you know, credit unions are cooperatives that typically lend support to many community interests and

causes. Space and assistance to community groups to operate their associations should not mean credit union service should be denied to a group that furthers the goals of the spirit of the credit union.

Grandfathering in Associations

The Board states that NCUA will grandfather in existing members from all qualified associations currently part of an FCU's membership. We support this and also urge all existing associations currently being served by FCUs be grandfathered.

The Board further states that "NCUA will consider if there are any associations in an FCU's field of membership that need to be removed because they no longer meet the totality of circumstances test on a case-by-case basis." We are concerned with any possible removal of associations and urge the agency to only apply this approach to associations added after the rule takes effect, following an ample phase-in period and under the most limited circumstances as indicated above when no other remedies can be achieved.

Geographic Limitations

We also think that NCUA should not consider geographic limitations for associational common bond matters. As we all know, with the development of electronic delivery methods for financial services, geography, location and physical branches become less and less important. Most credit union members can access their accounts electronically and have a vast network of shared branches and ATMs at their disposal for the occasions when only a physical branch will do. Geographic requirements only serve to limit credit union access to consumers and curb innovation.

Advertising

NCUA has warned credit unions not to advertise that "anyone, without limitation, is able to become a member" of a credit union in Letter to Federal Credit Unions 13-FCU-03. While a statement that membership is "open to anyone" may not be true, credit unions should not be limited in how they advertise the process of joining an association to potential members.

Credit unions should not be precluded by Section 740.2 of NCUA's Accuracy of Advertising rule from advertising the method and process for a consumer to join a credit union. We understand that certain groups attack credit unions using associations to give more consumers access to credit union services. However, these complaints should not limit credit unions' abilities to advertise accurately the process to join an association and become a credit union member.

Conclusion

We support NCUA's intent to ensure associations that are added to an FCU's field of membership will not be subject to legal challenge and we support that effort. We urge the Board to approve the proposed approach for automatic additions of certain groups and to modify the proposal as we recommend. Thank you for the opportunity to comment. If you have any questions about our letter, please do not hesitate to give me a call at (202) 508-6736.

Sincerely,

Mary Mitchell Dunn

CUNA SVP & Deputy General Counsel