



Credit Union National Association

CUNA Issue Summary

FIELD OF MEMBERSHIP

ISSUE: The National Credit Union Administration (NCUA) revised its field of membership regulations on June 22, 2006, to limit the addition of financially underserved areas within the field of membership of federal credit unions only to credit unions with multiple common-bond charters. The action effectively prohibits 56% of federal credit unions with single-group and community charters from extending credit union services to lower-income areas and groups that are not adequately served by other traditional financial institutions. It would also preclude over 200 credit unions that currently serve some 800 underserved areas throughout the nation from serving new underserved areas or communities in the future.

NCUA's action was a response to litigation initiated by the banking industry in 2005 urging the federal courts to very narrowly interpret language in the Federal Credit Union Act to restrict NCUA's authority to approve new underserved area expansions only to multiple common bond credit unions. The language in question was added by Congress in the *Credit Union Membership Access Act of 1998* (CUMAA) to codify and encourage use of an existing (1994) NCUA policy of permitting federal credit unions "of any type" to include low-income groups within their field of membership as part of the credit unions' broader mission "to ensure that adequate credit union services are provided to all persons in the community."

Section 101 of CUMAA authorized a new category of federal credit union charter, the multiple common bond credit union, and specifically permitted these credit unions to include persons and groups residing in underserved communities, neighborhoods or rural districts within their field of membership. The absence of detailed report language, however, has permitted varying interpretations of this section as expressing Congress' intent either to limit all additions of underserved areas only to multiple common bond credit unions, or to provide new multiple common bond credit unions with equal authority to serve underserved areas, as all prior credit unions under existing NCUA policy.

Rep. Paul Kanjorski (D-PA), an original sponsor of the CUMAA legislation, sought to dispel any confusion on this point during House floor consideration of the legislation, remarking that Congress was "not in any way restricting the ability of NCUA to allow community and single group credit unions to include underserved areas in their field of membership." Precluding community credit unions from serving underserved "would be contrary to their reason for existence," Kanjorski noted, and precluding either type of credit union from serving underserved areas "was never intended, and would make no sense."

Since 2001, some 220 single-group and community charter credit unions have received approval from NCUA to serve individuals and groups in more than 800 areas that meet required thresholds of poverty, economic distress and lack of alternative financial services under various federal statutes. A March 2006 survey of these credit unions by the Credit Union National Association estimated that 1.6 million actual credit union members had been served in these underserved areas at a total investment to the credit unions of \$1.3 billion. The credit unions have provided an estimated 315 branch offices within underserved areas and 153 branches near underserved areas, 142 shared service centers within or near underserved areas, and have placed more than 1,200 ATM machines within or near these underserved areas. As of year-end 2005, credit union members residing in underserved areas had an estimated \$4 billion in outstanding loans and \$3.4 billion in savings deposits with their credit unions.

While NCUA's revised regulation would apply prospectively and would not affect credit union services in previously approved underserved areas, the continued uncertainty surrounding Congress' intent in adopting Section 101 of CUMAA will inevitably subject these programs to continued legal challenge by the banks. At stake is not only the loss of substantial investment by the participating credit unions, but the potential loss for millions of lower income families of their only alternative to the high cost financial products provided by unregulated check chasers, payday lending, finance companies and pawn shops.

All three members of the NCUA Board have expressed support for Congressional action to address the problem. According to NCUA Chairman JoAnn Johnson, "to fail to act expeditiously and decisively would send a message that Americans who live in underserved communities do not deserve broad access and choice in financial services."

CUNA POSITION: CUNA supports a legislative remedy that would allow NCUA to consider all federal credit union charter applications that seek to expand credit unions' fields of membership to include underserved areas.

STATUS/OUTLOOK: The *Credit Union Regulatory Improvements Act of 2007* (CURIA) was introduced in the House of Representatives on March 15, 2007 and in the Senate on May 1, 2008. A provision in Title II of the bill would allow NCUA to consider any application by a federally chartered credit union to add to its field of membership.

In order to enhance the ability of credit unions to assist underserved communities with their economic revitalization efforts, CURIA would make three important changes in current law. First, it would revise a provision of the 1998 *Credit Union Membership Access Act* that has been incorrectly interpreted as expressing Congressional intent that only multiple group credit unions are eligible to expand credit union services to areas with high unemployment and below median income that have traditionally been underserved by other traditional depository institutions. CURIA would provide all Federal credit unions with an equal opportunity to expand services to individuals and groups working or residing in areas that meet the income, unemployment and other distress criteria identified by the Treasury Department.

Second, it would allow a credit union to lease space in a building, or on property in an underserved area in which it maintains an office, branch or other physical presence, to other parties, including commercial businesses, on a more permanent basis. The provision is intended to allow a credit union branch or facility to become a focus point and catalyst for broader commercial and economic development in the area.

Third, CURIA would expand the criteria for determining whether a community or rural area qualifies as an underserved area. The bill's definition of a qualified underserved area includes not only areas currently eligible as "investment areas" under the Treasury Department's Community Development Financial Institutions (CDFI) program, but also census tracts qualifying as "low income areas" under the New Markets Tax Credit targeting formula adopted by Congress in 2000.

Another piece of legislation that would lift the NCUA moratorium on non-multiple common bond credit unions from applying for underserved additions to their fields of membership is H.R. 3113, a bill introduced in the House of Representatives on July 19, 2007 by Rep. Jose Serrano (D-NY). The *Affordable Financial Services Enhancement Act* (H.R. 3113) would strike a reference to multiple common bond credit unions in the Federal Credit Union Act that has allowed the banker lobby to argue that Congress intended Sec. 109 of the law to apply only to those types of credit unions.

H.R. 5519, the *Credit Union Regulatory Relief Act* (CURRA) is another piece of legislation to provide regulatory relief for credit unions. It includes several of provisions from CURIA as well as two new provisions. H.R. 5519 was introduced on March 3, 2008. The House Financial Services Committee held a hearing on the "Need for Credit Union Regulatory Improvements" on March 6, 2008, during which both this legislation as well as H.R. 1537, the *Credit Union Regulatory Improvements Act*, were discussed extensively.

This legislation (H.R. 5519) was put on the House calendar for a vote during the week of April 28, 2008. The House leadership placed the bill on the "suspension calendar", a list of bills that are usually noncontroversial and usually pass by voice vote. If a recorded vote is requested, the bill must receive a two-thirds vote in favor of the bill. In the week previous to the vote, House Financial Services Committee Chairman Barney Frank (D-MA) indicated that he would place allow a House vote on CURRA and a bill to benefit banks and thrifts (H.R. 5841). The Chairman requested that the trade associations representing the banking industry and the credit union movement not attack either of the bills and not approach Members of Congress requesting a recorded vote. Both sides agreed and both bills were placed on the calendar for the following week. However, the bank lobby quickly shifted gears, mobilizing their grassroots against CURRA and seeking a Member of Congress who would request a recorded vote on CURRA.

As a result, House Majority Leader Steny Hoyer (D-MD) pulled both bills from consideration. CURRA was expected to be the first package of credit union regulatory relief legislation to move through the House of Representatives in the 110th Congress and paired with similar regulatory relief for banks and thrifts.

However, on June 19, 2008, Reps. Kanjorski, Royce, and Dennis Moore (D-KS) introduced H.R. 6312, the [Credit Union, Bank and Thrift Regulatory Relief Act of 2008](#). The bill combines most of CURRA ([with minor modifications](#)) with H.R. 5841, *Bank and Thrift Regulatory Relief Act of 2008* (as modified). The bill passed the House of Representatives by voice vote on June 24, 2008. CUNA continues to urge the Senate to act quickly on this bill before the end of this year.

Among other provisions, H.R. 6312 permits the NCUA to allow FCUs of any charter type to serve underserved areas, while modifying the definition of an underserved area. It also codifies FCUs' ability to provide short-term loans as an alternative to payday loans to anyone within their fields of membership. Finally, it excludes MBLs provided in underserved areas from the MBL cap.

The National Credit Union Administration's record is not sufficient to sustain its decision granting a six county area community credit union expansion in Pennsylvania. That is what Chief Judge Yvette Kane for the U.S. District Court, Middle District of Pennsylvania, ruled on July 21, 2008 in the case, *American Bankers Association et al., v. the National Credit Union Administration, Members First Federal Credit, New Cumberland Federal Credit Union and AmeriChoice Federal Credit Union*. As a result, the Judge granted the bankers' motion for summary judgment and has given the parties thirty days to file motions for the appropriate remedy. Such remedy could include remanding the issues back to NCUA to review the current record or require new applications in which a new record would have to be developed. The defendants could also consider an appeal. As stated in the opinion, the Judge determined that its task was to "decide whether the NCUA's findings (that the area in question constituted a well-defined local community, parenthesis added) is "arbitrary, capricious an abuse of discretion or otherwise not in accordance with law.... The Court finds...after a careful review of the record, that the NCUA's analysis is insufficient in this case...."

The Court determined the analysis was not adequate on two grounds: (1) NCUA did not provide an explanation for discrediting evidence that was contrary to its findings that the area constituted a single trade area and (2) the agency did not explain why it ignored the existence of numerous political jurisdictions in approving the application for Members First, which was then relied upon by the other two credit unions to expand. NCUA had previously rejected Members First applications for an eight county area and then a six county area, before the final application was approved in April 2003. The Court concluded that "under all the circumstances, the decision of the NCUA is arbitrary and capricious and must be set side."

CUNA is working closely with the Pennsylvania League, and the affected credit unions to make every effort to pursue a remedy or alternative course of action that will best protect the credit unions and their members. In addition, CUNA continues to work in Congress to advance legislation to provide regulatory relief for credit unions. In addition, CUNA continues to push for CURIA, including capital reform and raising the general member business loan limit.

In a related development, CUNA wrote a [comment letter](#) to the NCUA on August 18, 2008, stating that it does not support NCUA's proposal that would dramatically alter the current federal regulatory process for approving multiple group credit unions' applications to serve underserved areas. CUNA has a fundamental disagreement with the basic rationale for the proposal and the analysis of the *Federal Credit Union Act's* provisions regarding underserved areas that underlie the proposal.

The letter states, "While we appreciate efforts to clarify and update rules, we are not aware of problems with the current process that indicate that the (field of membership) FOM Manual provisions on underserved applications are not clear and which would justify a broad new regulation on underserved areas and the application process." CUNA noted that under *Federal Credit Union Act*, a federal credit union must have a field of membership that is a single common bond, multiple common bond, or which encompasses a community field of membership (FOM). The Act provides an exception for underserved areas. As these provisions indicate, and as NCUA's current FOM provisions recognize, Congress envisioned a process for approving underserved areas that first starts with a determination that a recognizable geographic area -- a local community, neighborhood or rural district (i.e., community) – exists. The letter added that the legislative history to the *Credit Union Membership Access Act* reinforces that vision but added that the proposal would erroneously rely on geographical, rather than economic, criteria from the Community Development Financial Institutions Fund's regulations.

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RELATED DOCUMENTS:

[Text of the Credit Union, Bank and Thrift Regulatory Relief Act of 2008](#)

[Section by Section Summary of H.R. 6312, the Credit Union, and Thrift Regulatory Relief Act of 2008](#)

[Section by Section of H.R. 5519, Credit Union Regulatory Relief Act](#)

[March 6, 2008: Written Testimony of Tom Dorety on Behalf of CUNA on "The Need for Credit Union Regulatory Relief and Improvements," Before the House Financial Services Committee](#)

[Press Release from Representative Paul Kanjorski \(D-PA\) Announcing the Introduction of H.R. 5519, the Credit Union Regulatory Relief Act](#)

[April 28, 2008: Letter from CUNA President and CEO Dan Mica to House Non Cosponsors of H.R. 1537 \(CURIA\), urging support for H.R. 5519 \(CURRA\)](#)

[April 25, 2008: Letter from CUNA President and CEO Dan Mica to House Cosponsors of H.R. 1537 \(CURIA\), urging support for H.R. 5519 \(CURRA\)](#)

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