



Credit Union National Association

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Representative Lynn Westmoreland
U.S. House of Representatives
2433 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Westmoreland:

Thank you for your insightful questions at the Financial Services Committee's joint subcommittee hearing on H.R. 1697, the Communities First Act, earlier this month. I appreciate the opportunity to further expand on a question you had posed to me.

You had asked for a statutory definition of "underserved areas" as it relates to credit unions. It is important to note that "underserved areas" are not primary fields of membership under the Federal Credit Union Act ("FCU Act"), but only serve to supplement the fields of membership of multiple common bond Federal credit unions. Allow me to explain by first explaining precisely how a credit union is defined in terms of its mission and how its service may include, but is not limited to, underserved areas.

Credit Union Definition and Mission

The FCU Act, 12 U.S.C. §§ 1751-1795k, provides statutory definitions for credit unions. Specifically, 12 U.S.C. § 1752(1) defines the term "Federal credit union" as a "cooperative association organized in accordance with the provisions of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes..." Section 1.15 of the American Association of Credit Union League's Model Credit Union Act for State-Chartered Credit Unions also defines credit unions to mean "a cooperative, not for profit corporation, organized under this Act, for the purposes of providing provident and beneficial services to its members including, but not limited to: encouraging thrift, creating a source of credit at reasonable rates of interest, and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition."

In 1998, Congress specifically included in the FCU Act key findings regarding credit unions' purposes:

The Congress finds the following: (1) The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means. (2) Credit unions continue to fulfill this public purpose, and current members and



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Representative Lynn Westmoreland

November 30, 2011

Page Two

membership groups should not face divestiture from the financial services institution of their choice as a result of recent court action. (3) To promote thrift and credit extension, a meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well understood sense of cohesion or identity is essential to the fulfillment of the public mission of credit unions. (4) Credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means. (5) Improved credit union safety and soundness provisions will enhance the public benefit that citizens receive from these cooperative financial services institutions.¹

Both federal statute and regulation envision credit unions as financial cooperatives that exist to serve all members, especially, but not limited to, those of modest means. While credit unions serve areas that meet the federal regulatory definition of “underserved,” credit unions are not limited to providing services to those areas alone.

Field of Membership, including underserved areas

In order for a member to join a credit union, the member must be within the credit union’s field of membership, which for State-chartered credit unions is defined under state law or regulations. Field of membership for Federal credit unions is defined in 12 U.S.C. § 1759. The membership field includes:

- Single common bond credit unions – one group that has a common bond of occupation or association
- Multiple common-bond credit union – more than one group, each of which has a common bond of occupation or association and the number of members, each of which (at the time the group is first included within the field of membership of a credit union described in this paragraph) does not exceed any numerical limitation applicable under subsection (d).
- Community credit union – persons or organization within a well-defined local community, neighborhood, or rural district.

¹ Credit Union Membership Access Act, Pub. L. No. 105-219, Note to § 1751 (August 7, 1998).

Federal credit unions must be designated as having one of these fields of membership. Technically, underserved areas are treated under the FCU Act as an exception to the field of membership criteria. As a result of banker-group litigation, only multiple common bond Federal credit unions may include underserved areas at this time.

The statutory definition of underserved areas is found in 12 U.S.C. §1759(c)(2), but concerned about litigation challenging its previous more expansive treatment, the National Credit Union Administration Board has, by regulation, limited significantly the areas that can be considered “underserved” based on a census tract-by-census tract analysis. The statutory definition is as follows:

Exception for underserved areas.- Notwithstanding subsection (b), in the case of a Federal credit union, the field of membership category of which is described in the subsection (b)(2), the Board may allow the membership of the credit union to include any person or organization within a local community, neighborhood, or rural district if –

- (A) The Board determines that the local community, neighborhood, or rural district –
 - (i) is an “investment area”, as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994, and meets such additional requirements as the Board may impose; and
 - (ii) is underserved, based on data of the Board and the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), by other depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act; and
- (B) The credit union establishes and maintains an office or facility in the local community, neighborhood, or rural district at which credit union services are available.

The NCUA Board in 2008 set the current regulatory definition for “underserved areas” in Interpretive Ruling and Policy Statement (IRPS) 08-2.² NCUA’s regulatory definition of “underserved areas” adds numerous stringent criteria not found in the statute. These criteria are as follows:

² Available at <http://www.ncua.gov/Legal/Documents/IRPS/IRPS2008-2.pdf>

Representative Lynn Westmoreland
November 30, 2011
Page Four

To meet the “local community, neighborhood, or rural district” criteria, credit unions must comply with the Community Charter Requirements contained within Ch. 3, §§ V.A.1 and V.A.2, within NCUA’s Chartering and Field of Membership Manual.

To meet the definition of an “investment area,” credit unions must also comply with separate Investment Area criteria as outlined within Ch. 3, §§ III.B.2, III.B.2.a, and III.B.2.b of NCUA’s Chartering and Field of Membership Manual.

Finally, credit unions must adhere to additional criteria and requirements outlined in Ch. 3, § III.B.3 to meet the “Underserved by Other Depository Institutions” portion of the statutory definition.

Taking both the statutory as well as regulatory provisions and requirements into account, credit unions are then required to obtain approval from NCUA to service an “underserved area,” and will be issued an amendment to Section 5 of its charter upon such approval.

We believe Congress intended for credit unions to be able to serve underserved areas without having to jump through the numerous regulatory hoops that now exist. In September, NCUA Executive Director Dave Marquis testified before the House Financial Services Subcommittee in support of legislative efforts that would allow more federal credit unions to serve underserved areas than are currently permitted. CUNA strongly supports those efforts as well.

Thank you again for taking the time to request clarification on this issue. Should you have additional questions, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'Bill Cheney', with a long, sweeping tail extending to the right.

Bill Cheney
President & CEO