CUNA FINAL RULE ANALYSIS
NCUA’s Field of Membership Rule

OVERVIEW

NCUA’s Chartering and Field of Membership Manual (the “Manual”) is incorporated as Appendix B to Part 701 of its regulations and implements the field of membership (“FOM”) requirements of the Federal Credit Union Act (the “Act”). As amended by the Credit Union Membership Access Act of 1998 (“CUMAA”), the Act provides for three different charter types: single common bond, multiple common bond and community common bond charters.

In December 2015, the NCUA proposed to modernize FOM requirements for Federal credit unions (“FCUs”), cut regulatory red tape and increase consumers’ access to affordable financial services. The proposed rule established fifteen substantive modifications to the rules affecting each of the FOM types the Act authorizes. On October 27, 2016, NCUA issued a final rule adopting many of the proposed modifications to its chartering and FOM rules to maximize access to FCU services. The final rule will become effective 60 days following its publication in the Federal Register. Key changes in the final rule include the following:

- Modernizing the definition of “multiple common bond” to streamline the process for adding new groups to a charter;
- Enlarging the pool of potential members by expanding the areas that may be served by a community charter;
- Updating the process of defining an “underserved area”;
- Revising the “rural district” definition to include populations of up to 1 million people; and
- Expanding the definition of a “trade, industry or profession” as a single common bond.

These changes are discussed in greater detail in the Requirements section below.

COVERAGE

All Federal credit unions.

REQUIREMENTS

COMMUNITY COMMON BOND CHARTERS

There are two types of community charters permitted under the Manual:

- A single, geographically defined Well-Defined Local Community; or
- A Rural District.

Well-Defined Local Community (“WDLC”)

Currently, the NCUA recognizes two presumptive WDLC’s:

- A Single Political Jurisdiction; and
- A Core Based Statistical Area.

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Changes to Single Political Jurisdictions ("SPJ")
The proposed rule sought to recognize individual Congressional districts as SPJ’s. The NCUA took no action on this proposal in the final rule. As a result, an individual Congressional district is not recognized under the final rule as an SPJ.

Changes to Core Based Statistical Areas ("CBSA")
Currently, in order for a CBSA (or a portion thereof) to qualify as a presumptive WDLC, the CBSA as a whole must have a population of 2.5 million or less. First, the final rule makes a technical correction to this definition. It allows a portion of the CBSA to qualify as a presumptive WDLC so long as the population of the portion is 2.5 million or less. The population of the CBSA as a whole is irrelevant to the portion seeking qualification.

Next, the proposed rule solicited public comment on whether or not to adjust the 2.5 million population limit. In its final rule, the NCUA decided not to adopt any changes to the population limit at this time. However, on November 9, 2016 the NCUA issued a proposed rule to increase up to 10 million the population limit on a community consisting of a statistical area or a portion thereof. Comments on this proposal are due by December 9, 2016.

The November 9th proposal also proposes to permit a credit union to designate a portion of a CBSA as its community without regard to the Metropolitan Divisions of the boundaries within the CBSA.

Since 2010, the NCUA has mandated that any CBSA include the “core area”, defined as the most populated county or named municipality in the CBSA’s title. The final rule removes this “core area” requirement.

Combined Statistical Area ("CSA")
In addition to the two presumptive WDLC’s identified above, the NCUA proposed a third presumptive community for community charters. With adoption of the final rule, a CSA, which combines two or more adjacent CBSA’s with substantial employment interchange will now be considered a presumptive WDLC so long as it has a population of 2.5 million or less. It should be noted that there are currently 174 CSA’s according to the White House Office of Management and Budget.

WDLC Adjacent Areas
With adoption of the final rule, the NCUA will permit credit unions to submit for approval a narrative, supported by objective documentation, that an adjacent area should be added to a WDLC. This narrative must demonstrate that the adjacent area is logically part of the WDLC due to common interests or interaction among residents on both sides of the perimeter.

RURAL DISTRICT DEFINITION
Under the current Manual, a rural district may qualify for a community charter if it satisfies the following two requirements:
• Requirement #1
  o The rural district’s total population is restricted to the greater of:
    ▪ 250,000 people; or
    ▪ 3% of the population of the state in which a majority of the rural district’s residents are located.

• Requirement #2
  o At least 50% of the rural district’s population must reside in geographic units designated by the census as rural; or
  o The rural district’s population density may not exceed 100 persons per square mile.

First, the NCUA’s final rule amends requirement #1 referenced above to read:
  • The rural district’s total population is restricted to 1 million people.
  The alternative 3% test has been eliminated.

Second, the final rule amends requirement #2 referenced above to read:
  • At least 50% of the rural district’s population resides in census blocks or other geographical units that are designated as rural by either the Consumer Financial Protection Bureau (“CFPB”) or the United States Census Bureau; or
  • The rural district’s population density does not exceed 100 persons per square mile.

Finally, the final rule sets a multistate expansion limit for rural districts. In order to qualify as a rural district, the area’s boundaries must not stretch beyond the borders of the states that are immediately contiguous to the state in which the serving credit union maintains its headquarters.

UNDERSERVED AREAS
In addition to community charters, the Manual also provides for single common bond charters and multiple common bond charters.

A multiple common bond chartered credit union is able to serve members residing in an underserved area provided that the credit union establish and maintain a facility in the underserved area.

To qualify as underserved, the area must be underserved by other depository institutions. Currently, the NCUA utilizes a Concentration of Facilities (“COF”) ratio to determine whether an area is indeed underserved. The final rule excludes the following from the COF ratio:
  • Non-depository banks (e.g. trust companies); and
  • Non-community credit unions.

In addition to the COF ratio, the final rule provides two additional methods by which an area may be classified as underserved:
  • If the area has been designated as underserved or within an underserved county according to a list maintained by the CFPB; or
  • The credit union may submit to the NCUA for approval using a metric of its own choosing so long as it is based on NCUA or other Federal banking agency data.
MULTIPLE COMMON BOND CHARTERS

In cases where the number of potential members is so small that a single common bond charter is not practical based on the economies of scale, the Manual permits for a multiple common bond charter. The multiple common bond charter serves a combination of distinct and definable occupational or associational groups provided that each group has its own common bond among group members.

For a group to be included in a multiple common bond charter it must be within a reasonable proximity to a service facility. Currently, a service facility is defined by the Manual as a place where shares are accepted for member’s accounts, loan applications are accepted or loans are disbursed. This definition includes but is not limited to: a branch, a mobile branch or a credit union owned ATM machine. The proposed rule sought to add to the definition of service facility online internet access in the form of a transactional website. However, the NCUA chose to defer action on this proposed change until a later date.

SEG Contractor
The final rule provides that a multiple common bond charter (based on occupation) may add to its membership persons who regularly work under contract for one of the Select Employee Groups (“SEG”) listed in the credit union’s charter. In order to qualify for membership in the multiple common bond chartered institution, there must be a strong dependency relationship between the independent contractor and the SEG.

What constitutes a strong dependency relationship is measured by the extent to which both the independent contractor and the SEG rely on one another. This is measured by the pattern with which they regularly conduct business together. This may be documented by the number, length and dollar volume of prior and pending contracts between the two parties.

Office/Industrial Park Employees
The final rule clarifies that under the current Manual, a group of SEG’s located in an industrial park, shopping mall, office park or office building may combine to form a multiple common bond charter provided that:
- Each of the SEG’s must have 3,000 or fewer employees who work at the office/industrial park; and
- In order to be eligible for membership, the employee must regularly work at the office/industrial park.

No rule change was required to make this provision available.

Stand-Alone Feasibility
Smaller groups looking to join an existing multiple common bond charter must seek approval from the NCUA to do so by demonstrating that they cannot feasibly and/or reasonably establish their own single common bond charter. Currently, the NCUA offers a streamlined application process for groups of 3,000 or less.

The final rule further streamlines this application process as follows:
- It retains the current streamlined application process for groups of less than 3,000;
• It adds a new level of streamlined processing for groups between 3,000 and 4,999; and
• It retains the full application process for groups 5,000 or larger.

Emergency Mergers
Under the current Manual, the NCUA may approve an emergency merger without regard to common bond or other legal constraints so long as the credit union to be merged is either:
• Insolvent; or
• In danger of insolvency.
Insolvency is specifically defined in Part 700.2 (Definitions) of the NCUA’s Rules and Regulations.

The final rule provides that NCUA will, in a separate rulemaking, consider how to define “danger of insolvency” for purposes of the emergency merger provision.

OTHER PERSONS ELIGIBLE FOR CREDIT UNION MEMBERSHIP
Historically, NCUA has always recognized a variety of persons who have been entitled to credit union membership by virtue of their relationship to a common bond group. Affinity groups are often members of the immediate family of a primary member of a credit union, credit union employees, retirees, and volunteers, among others. Since active duty and discharged military personnel and their families share a similar affinity, NCUA recognizes a multiple common bond or single common bond FCU has the option of serving active duty or retired United States Armed Forces personnel, if listed as a group in the credit union’s charter.

The final rule provides that honorably discharged veterans of any branch of the U.S. Armed Forces listed in a credit union’s charter are automatically granted membership eligibility. This eligibility for credit union membership continues beyond the member’s period of active duty service.

INCLUSION OF “STRONG DEPENDENCY” VENDORS AND SUPPLIERS IN A SINGLE COMMON BOND WITHIN A TRADE, INDUSTRY OR PROFESSION
Under existing requirements, a single occupational common bond within a trade, industry or profession (“TIP”) is based on employment of separately owned corporations or other legal entities that share a common bond by reason of producing similar products, providing similar services, sharing the same profession or trade or participating in the same industry. Thus, a TIP based common bond requires a narrow commonality of interests among TIP employees and a close nexus among the entities themselves.

In an effort to expand this common bond, NCUA proposed to include employees of entities that have a strong dependency relationship on, or whose employees work directly with employees of other entities within the same industry. “Strong dependency” relationship means that a significant economic impact is likely if one entity were unable to continue in its operations without doing business with the other. NCUA adopted this proposal in the final rule so that FCUs serving a TIP charter may now include employees of entities that have a strong dependency relationship with other entities within the same TIP. This means that FCUs that serve a TIP of a particular industry may now be able to serve third-party vendors, contractors and other suppliers serving that same industry.
TECHNICAL UPDATES
The final rule updates references to the recently renamed NCUA Office of Consumer Protection to reflect the new name, the Office of Consumer Financial Protection and Access ("OCFPA"). It also corrects statutory and regulatory citations and cross-references in the Manual and its appendices to reflect current information and practices.

EFFECTIVE DATE(S)
60 days after publication in the Federal Register.

CUNA CONTACTS
• For additional information related to CUNA’s advocacy efforts, please contact Lance Noggle, Senior Director – Advocacy & Counsel, Regulatory Affairs at 202-508-6705 or lnoggle@cuna.coop.
• For additional information related to compliance with the rule, please e-mail CUNA’s Compliance Department at cucomply@cuna.coop.

QUICKLINKS
• THE FINAL RULE
• CHARTERING AND FIELD OF MEMBERSHIP MANUAL
• CHARTERING AND FIELD OF MEMBERSHIP RESOURCES
• CUNA’S E-GUIDE: FIELD OF MEMBERSHIP