

June 30, 2008

Gary A. Grinnell, President and Chief Executive Officer  
*Via FedEx*

Ms. Mary Rupp  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: Proposed Amendments to Chartering and Field of Membership Manual (IRPS 08-2)

Dear Ms. Rupp:

On behalf of the Board and Management of Corning Federal Credit Union, I would like to take this opportunity to comment on the proposed changes to NCUA's Chartering and Field of Membership Manual (IRPS 08-2) regarding the process for approving underserved areas.

As a multiple common bond credit union currently serving underserved areas included in its field of membership, Corning Federal Credit Union is concerned that the proposed rule will have a chilling effect on the ability of federal credit unions to adopt future underserved areas. We commend the Board's efforts in updating the rules regarding underserved areas to ensure that this service opportunity remains for federal credit unions. However, we are deeply concerned that this proposal will result in making it more difficult for a credit union to serve an underserved area.

Considerable attention has been focused on serving the underserved in recent years with Congress, regulators, and community based organizations strongly encouraging credit unions to do more to reach out to those of modest means. While there is no question that more needs to be done, successful initiatives like NCUA's Access Across America program, PALS, and others clearly demonstrate that credit unions are meeting this challenge. Despite these efforts and successes, recent regulatory actions such as the promulgation of the rule prohibiting community and single common bond credit unions from adopting underserved areas have made it increasingly more difficult for credit unions to serve underserved areas. Instead of creating additional regulatory burden, obstacles and prohibitions, NCUA should do more to enhance and promote the extension of credit union services into underserved areas. Unfortunately, the proposed rule offers very little in the way of clarification and only makes the process for serving underserved areas more cumbersome and complex. Although we appreciate any efforts that could be undertaken by the NCUA Board and staff to improve the process associated with the expansion of credit union services into underserved areas, we cannot support the proposed rule in its current form for a number of reasons.

## Definition of a Local Community

If implemented, the proposed rule would apply the same standard to underserved area expansions as required under current community charter rules relative to a requirement that credit unions must go through the extensive letter submission process. This process, along with the documentation that must accompany the letter, is a burdensome deterrent to serving underserved areas as it requires the applicant credit union to support the existence of a “presumptive community,” as well as validating that the area is underserved by having met the CDFI or other qualifying criteria.

Frankly, we see no reason why the agency would seek to require underserved areas to be documented in the same way communities are currently documented. In our view the issue is quite simple. Either an area is underserved, or it is not. Stated another way, either an area needs access to lower cost financial services from a credit union willing to provide such services, or it does not. We are of the opinion that the term “underserved” infers that the area is in need of more service.

Determining if an area is underserved should be an objective exercise, not a subjective one. NCUA does not make the determination of whether certain census tract(s) are underserved or not. That is determined by the CDFI, census data, or other applicable criteria. To force an area to both be validated as underserved and also to meet community documentation standards, removes the focus from “service to the underserved” and places it on documenting the interaction of a community which was clearly never the intent of extending credit union service into underserved areas. It is important to note that an underserved area adoption is not, and never was intended to be, a community charter. Therefore, an underserved area should not require the extensive and burdensome documentation NCUA normally requires for approval of community charters.

The proposed requirement for credit unions to produce a letter to support a “presumptive community” is redundant because a regulatory presumption should stand on its own. Requiring a separate letter with considerable supporting documentation to validate the presumption, is simply not necessary to support the existence of a “presumptive” community in underserved areas. The presumption should be just that – a presumption without the necessity for additional documentation.

The Board indicated that among the reasons to include a letter supporting a presumptive community for underserved areas was to ensure consistency with current community charter requirements. While the goal to achieve consistency in the rules is often good policy, consistency for the sake of consistency is not persuasive in this case. This is especially true when one considers the requirement with which the proposal seeks to achieve consistency as being unnecessary. A better way to achieve consistency would be to simply remove the requirement in the manual for community charter applicants to provide a letter to establish a “presumptive” local community. Again, a presumption should be just that – a presumption on its face.

## Criteria for Economic Distress

This proposed rule attempts to clarify the factors that constitute an area as economically distressed for purposes of establishing an area as underserved. However, the proposal goes beyond mere clarification and has the effect, perhaps intended, of eliminating the possibility that an entire city located within a metropolitan statistical area can be classified as a qualified underserved area. Many cities currently qualify under existing rules as underserved in their entirety based on a number of current qualifying criteria. The proposed rule would prohibit the classification of a city in its entirety as an underserved area simply because it may be located within a metropolitan statistical area (MSA) unless it can be qualified by census tracts, a block group or American Indian or Alaskan Native area. This is an extremely narrow view. If the entire city meets the same criteria used to qualify individual census tracts as underserved areas, then it should qualify as underserved. Removing the ability to qualify cities within an MSA in their entirety will make it difficult for credit unions to take advantage of clearly recognized geographic and political boundaries in making their products and services available to the underserved.

We support the Board's position that credit unions that have previously been approved to serve an underserved area will be "grandfathered" under this proposal. This is good public policy and properly recognizes the time, effort, and expense that credit unions have dedicated to serving the underserved in these areas. Unfortunately, the proposal does not "grandfather" underserved areas themselves that have previously been approved as underserved. Under the proposal each submission by a credit union to serve an underserved area will require new documentation of the area, rather than being allowed to utilize previously approved areas by NCUA. It is our opinion that the "grandfather" provision should extend to the actual "underserved area" as well as the credit union previously approved to serve it. There is no reason to require a credit union seeking to serve an underserved area to duplicate underserved area documentation already on file and previously approved by NCUA.

## Significant Unmet Needs for Loans or Financial Services

It has long been the position of NCUA that if a proposed underserved area has been deemed "distressed," then a presumption exists that there are significant unmet needs in the area. The establishment of such a presumption was good public policy and it is still appropriate today.

However, in a major departure from current practice, the proposal would remove the presumption that unmet needs exist and would require a credit union seeking to serve an underserved area to demonstrate the area has "significant unmet needs." This would be achieved by submitting a one page narrative statement in its business plan supported by statistical data reflecting, among other things, loan and financial services activity already existing in the proposed area. The proposal also indicates that the number of other depository institutions already serving the area must be taken into consideration as well.

The proposal also states that the narrative can be supplemented by testimonial evidence, although it is unclear to what extent a credit union may rely on such evidence.

At first glance the requirement to submit a one-page narrative letter does not seem to present much in the way of additional burden. However, when examined in greater detail, one finds that the one-page narrative being proposed is actually a requirement for considerably more documentation than a simple letter. The proposal would require significant documentation requirements to be attached to the one-page narrative that will unquestionably be extensive and will needlessly increase regulatory burden. A case can be clearly made, without the need for additional redundant documentation, that an area that has met the criteria as underserved is *prima facie evidence* that consumer needs are going unmet regardless of the services currently being offered in the area or the number of financial institutions already offering those services.

The proposed requirement to demonstrate significant unmet needs is an unnecessary and overly burdensome exercise in an attempt to establish a subjective fact that can be objectively presumed by the area's designation. Therefore, we would urge the Board to retain the presumption currently in place that correctly presumes significant unmet needs do in fact exist in areas that have been deemed to be economically distressed by their qualifying criteria.

**Underserved by Other Depository Institutions**

In addition to the requirement that credit unions demonstrate "significant unmet needs" in qualifying an underserved area, the proposal cites the Credit Union Membership Access Act 's (CUMAA) demand that a "proposed area be "underserved...by other depository institutions" which focuses on the presence of providers of products and services within the area to be served. It is important to note that CUMAA did not specify a methodology for making such a determination and instead broadly referred to unspecified "data of the NCUA Board and Federal banking agencies."

The proposed rule contends that in the last decade data regarding the location of depository institutions has become more readily available and accessible. In fact, the footnotes of the proposal include various internet website addresses where much of this data can be obtained. However, our experience with a number of the websites cited in the proposal indicates that information is not readily available in a usable format based on census tracts. Much of the information is broken down by zip codes and entire cities rather than by census tracts making the information difficult to use. Attempting to convert this information into a format that would break the information down by census tracts, while perhaps possible, will be a time consuming, labor-intensive process which will produce little in the way of solid evidence to support whether an underserved area exists beyond the qualifying criteria already being used.

The mere presence and access to financial products and services are not, in and of themselves, determinant of whether an area is underserved or not. History has demonstrated by the fact that many of these census tracts have been qualified as

underserved for decades, mere access to products and services, many of which are inferior and high cost, is one of the contributing factors to an area being classified as underserved. Disqualifying an underserved area's residents from additional choices in financial services, simply because their previous set of unsatisfactory choices was extensive, seems to be arbitrary and punitive. Persons of modest means should not be relegated to only modest choices in financial products. More choice benefits all consumers, but those additional choices benefit underserved consumers the most.

In an attempt to assist applying credit unions in this regard, the proposal would establish a matrix for determining whether an area is adequately served according to the concentration of depository financial institutions within the area. Unfortunately, the matrix misses the mark and attempts to place a one-size fits all procedure on a process that, if ultimately deemed necessary, should properly take into account the individual characteristics of the proposed underserved area rather than by applying a benchmark or standard that may produce different outcomes if applied in a sparsely populated rural area versus a highly populated urban area. More simply stated, the methodology proposed by the NCUA Board is flawed and mistakenly assumes that the mere presence of a depository institution within a proposed area automatically equates to service and the extension of products and services to the underserved.

In short, the methodology proposed for determining the concentration of depository institutions is cumbersome and complex. It should be removed in its entirety from the final rule.

If the agency is intent upon retaining the proposed methodology for determining the concentration levels of depository institutions in the final rule, then it seems totally inconsistent and quite contradictory to include ATMs and shared branches in the calculations of depository institutions presently serving an underserved area when credit unions cannot utilize ATMs and shared branches as acceptable facilities in their own business plans for establishing a physical presence to serve consumer needs in an underserved area.

### **Pending Applications to Serve an "Underserved Area"**

We are perplexed as to why the Board would choose to defer action on all underserved area applications during the comment period of this proposal and any subsequent rulemaking process that may result from the comments. This is a significant departure from recognized agency practice that fails to cite a compelling reason as to why such hasty action is justified.

When a credit union makes a good faith decision to proceed with an application under existing rules, we feel strongly that the application should be honored as long as those rules remain in place. The current moratorium placed on underserved area approvals flies in the face of the historical practice of NCUA and other regulatory bodies to permit institutions facing potential rule changes to operate under existing rules until those rules have been changed or modified. No one would argue that applications submitted after

the effective date of the rule change must be in compliance with the new rules; however, suspending those existing rules through what could be an elongated promulgation process for new rules is unfair to those credit unions who have developed strategic plans to extend their services into underserved areas as have been allowed under existing rules since 1994.

Not only does the proposed moratorium on underserved area approvals violate the practices of regulatory good faith with those who operate under the existing rules approved by the agency, but the decision to defer approvals until the end of the rulemaking process also diminishes the importance of the comment period by presuming a particular outcome before all of the comments have been considered. This process of negating a final rule that has been in place for years through a proposed rule that has not yet received comments seems to be inconsistent with the spirit, if not the letter, of the federal Administrative Procedures Act.

### Conclusion

Overall, we are deeply concerned and sincerely disheartened by this proposed rule. We are perplexed as to what is driving the timing of these proposed changes or the changes themselves. We in the credit union industry are facing unprecedented challenges associated with intense competition, an unstable economy, and an increasingly complex and burdensome regulatory environment combined with the heightened needs and expectations of our members. Credit unions must meet all these challenges and remain safe and sound while operating within the confines of our charters and markets. Historically, our growth opportunities as credit unions have been limited compared to our banking competitors. Industry statistics reveal that credit unions still only hold about 10% of the total consumer credit market in this country and about 6% of total assets. Clearly, we are not having a significant impact on our banking competitors.

As a result, we find it puzzling why NCUA would choose to issue such an ill-advised proposal rather than taking more affirmative measure to support credit unions in our efforts to meet these pressing challenges. A regulatory approach that empowered credit unions to reach out to the underserved would be more commensurate with NCUA's role of protecting the long-term safety and soundness of all credit unions. Instead, it appears that with this proposal NCUA has acquiesced to the demands of credit union critics and is prepared to take action that will place credit unions at a greater competitive disadvantage that will result in further limitations on future charter/market opportunities thus limiting our ability to serve people of modest means.

16  
Finally, we would like to highlight the trend on the approval of underserved areas over the last several years.

- 2004 - 240 underserved areas approved with 27 million potential members
- 2005 - 179 areas with 24 million potential members
- 2006 - 97 areas with 17 million potential members
- 2007 - 77 areas with 14 million potential members
- 2008 (Q1) - 11 areas with 1.9 million potential members (and a moratorium placed on future approvals)

This is an alarming trend coupled with the fact that average membership growth in the credit union industry is less than 2% per year. With the implementation of this proposed rule, our growth opportunities will be limited further, and our membership numbers will continue to decline. By limiting our ability to compete and grow, NCUA is creating a safety and soundness issue for credit unions.

We implore NCUA to resist implementing this proposed rule. We see no compelling reason that any of the recommendations included in this rule should become regulation. Thank you for your consideration of our thoughts and comments on the proposed changes. We would be happy to discuss any of our positions and concerns at your convenience.

Sincerely,



Gary A. Grinnell  
President and CEO

: Vice Chairman Hood  
Board Member Hyland