

January 20, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Paul Ryan
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
Washington, D.C. 20515

Dear Leader McConnell, Leader Reid, Speaker Ryan and Leader Pelosi:

This is in response to a letter that you recently received from the National Association of Federal Credit Unions mischaracterizing the National Credit Union Administration's (NCUA) proposal to reform its field of membership restrictions as a form of "regulatory relief." It is nothing of the sort. NCUA's proposal – by its own account – is the most comprehensive, sweeping, and substantive policy change in this area in its 45-year history. These quasi-legislative actions are being pursued by unelected bureaucrats because, in the words of NCUA's Vice Chairman, "Congress is deadlocked" on these issues.¹ NCUA is stealing the province of the legislature, in full view and without apology.

NCUA's sweeping proposal will have significant policy implications, dramatically expanding Federal tax subsidies, diminishing government revenues that support needed services, and causing substantial harm to taxpaying community banks who serve their communities without the benefit of such subsidies. *Credit unions were never intended to be tax-exempt banks.* That is why Congress established a statute that limits credit union membership and activities, requiring that service areas for community credit unions be both "well-defined" and "local."²

Unfortunately, the NCUA proposal totally ignores two key phrases, "well-defined" and "local", out of its statute in order to drastically expand credit union powers. For example, in the proposal, NCUA allows:

- **"Local" Communities That Are Not Local:** NCUA bootstraps a relatively recent creation of the Office of Management and Budget called "combined statistical areas" to be an acceptable "local" community for purposes of expanding the market footprint of a community credit union charter. However, as OMB's own description shows, these areas are "characterized as representing larger regions."³ A region is not a "local community." For example, the Boise City-Mountain Home-Ontario, ID-OR Combined Statistical Area would qualify as a well-defined local community under NCUA's proposal. This Combined Statistical Area crossing state borders, encompasses 8 counties with a *land*

¹ <https://www.ncua.gov/newsroom/Pages/proposed-field-membership-rule-metsger-remarks.aspx>

² 12 U.S.C. 1759(b)(3).

³ OMB Bulletin No. 13-01 (Feb. 28, 2013) at 2, <https://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf>.

area of 23,135 square miles, which is larger than the land area of ten states. To call this “local” is facially absurd.

- **“Well-Defined” Communities That Have No Definition:** NCUA’s proposal also permits credit unions to invent their own definition of a “well-defined” community. The proposal allows credit unions to support adding “adjacent areas” to otherwise objectively defined communities, such as those based on city or county boundaries. These “adjacent areas” can go across state lines, and potentially could cover entire states in 16 jurisdictions. Such piggybacking of “adjacent areas” are hardly the kind of limited community Congress intended when it looked to narrowly target its tax subsidies to “local” or “well-defined” communities.
- **“Local” Communities That Encompass Entire States:** NCUA is proposing that any Congressional district count as a well-defined local community. This would allow statewide credit unions in the seven states with only one Member of Congress. In rural America, Congressional districts tend to cover large geographic areas (including many independent communities that actually are local and well-defined in and of themselves), creating highly tenuous “bonds” between potential members in the context of targeting federal tax benefits under federal statute.
- **Core Based Statistical Areas That Have No “Core”:** The proposal would remove the requirement that community credit unions serve the “core” area of core-based statistical areas. This could permit credit unions in urban areas to decide to serve wealthy suburbs without serving the urban core. This opens a door that could allow credit unions to redline low-income, minority and underserved communities. Given credit unions are not covered by the Community Reinvestment Act—nor have any obligation to document publicly that they are meeting their chartered responsibilities to serve people of small means—this is an especially troubling part of the proposal.

These are just some of the proposed expansions that make a mockery of congressionally-imposed limits put in place to assure that credit unions adhere to their original mission. There are others. For example, for credit unions chartered to serve employer or associational groups, the proposal effectively relieves them of the statutory requirement to be in a “reasonable proximity to the location” of groups they are looking to serve.⁴ NCUA would allow a website to satisfy this requirement. This would allow a credit union in Florida to add employer groups in Texas or Wisconsin, paving the way for national online credit unions and further devaluing the notion of the common bond. The House Committee Report at the time shows this is not what Congress intended.⁵ NCUA’s proposal is squarely at odds with Congress’s policy choice.

This proposal is not “regulatory relief” – it is wholesale charter enhancement in contravention of Federal statute and policy intent. Coupled with NCUA’s other efforts to circumvent the legislative

⁴ 12 U.S.C. 1759(f)(1)(B).

⁵ Noting a “local preference,” the Committee “strongly believe[ed] credit union members who live, work and interact in the same geographic area are likely to have more of a meaningful affinity and common bond than those who do not. The NCUA’s regulations shall strongly favor placing groups with local credit unions and document in writing their compliance with the local preference requirement.” H. Rept. 105-472 (1998)

process and impose through administrative fiat what Congress will not (business lending expansion and capital investments from non-members), NCUA's proposal is the latest step to change the charter of credit unions to tax exempt banks. ***It bears repeating that as this massive tax exempt industry seeks to expand, it does so at the expense of taxpayers.*** Radical expansion of credit unions poses a major threat to the viability of taxpaying community banks from coast to coast, while adding to the federal deficit in lost tax revenue.

Congress should be very concerned at NCUA's recent actions. We hope NCUA will reconsider its statutory obligations and withdraw this proposal. Meanwhile, we urge Congress to aggressively exercise its oversight function and reorient this out-of-control agency.

Sincerely,

American Bankers Association
Independent Community Bankers of America

cc: The Honorable Richard Shelby
The Honorable Sherrod Brown
The Honorable Jeb Hensarling
The Honorable Maxine Waters
The Honorable Orrin Hatch
The Honorable Ron Wyden
The Honorable Kevin Brady
The Honorable Sander Levin
Members of the United States Senate
Members of the United States House of Representatives