

# Missouri Bankers Association

207 E. Capitol Ave.  
Jefferson City, MO 65102

July 12, 2007

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

Re: National Credit Union Administration; Chartering and Field of Membership for  
Federal Credit Unions; 12 CFR Part 701

Dear Ms. Rupp:

These comments are being submitted on behalf of almost 400 Missouri banks and savings and loan associations by the Missouri Bankers Association (MBA), a Missouri trade association. The MBA is responding to the proposed rule published by the National Credit Union Administration ("NCUA") that would amend NCUA's Chartering and Field of Membership Manual ("Chartering Manual").

The MBA strongly objects to NCUA's proposal to classify statistical areas and rural districts as presumptively local well-defined communities. NCUA's proposed rule drastically expands the definition of community beyond any reasonable definition of "local" and clearly circumvents Congressional intent as expressed in the Credit Union Membership Access Act ("CUMAA"). It's therefore logical to conclude that this portion of NCUA's proposed rule exceeds the NCUA Board's statutory authority for chartering and establishing field of membership requirements for federal credit unions.

The proposed rule clearly ignores CUMAA's mandate to limit the field of membership boundaries of federal credit unions to **"a meaningful affinity and bond among members in the context of shared and related work experiences, interests, or activities, the commonality of routine interactions, and a well-understood sense of cohesion or identity."**

What's interesting is that the traditional banking community isn't the only group concerned about NCUA's abuse of the concept of community chartered credit unions. Small, traditional credit unions are also troubled by NCUA's abuse of the community charter. These are the credit unions that have stayed true to their original mission: to serve low and moderate income individuals with whom they share some sort of common bond.

In addition to the aforementioned issue, the members of the MBA also feel that it's imperative that the NCUA provide public notice for comment on community charter applications, particularly when a proposed charter does not meet the established presumptive definition of "local."

Moreover, the MBA believes that a 5-year limit on supporting documentation for approved communities is an improvement over current NCUA practices. Currently, a request for a proposed community charter, charter amendment, or charter conversion that would encompass the same exact geographic area as one previously approved by NCUA does not need to be accompanied by a narrative summary or documentation supporting the request. This is an information gap in need of filling.

### NCUA Proposed Rule Undermines "Local" Aspect of Community

Despite Congress' intent, the current Chartering Manual states that "any city, county, or smaller political jurisdiction, regardless of population size, meets the definition of a local community."

Rather than scaling back this already overly broad definition, NCUA is now proposing to create two additional categories that will meet the presumptive definition of a well-defined local community: (1) statistical area and (2) rural district. Again, not only does this proposal ignore the intent of Congress, it creates an environment in which community chartered credit unions may operate without meaningful geographic restrictions.

The NCUA Board, in effect, is proposing to eliminate the term "local" from the Federal Credit Union Act ("Act"). When Congress amended the Act by enacting CUMAA in 1998, it intentionally inserted this term as a means of limiting the geographic scope of community chartered credit unions.

There are reasons why Congress imposed the limits on community charters. Congress has provided credit unions with certain advantages (corporate tax exemption, minimal regulatory requirements), but with those advantages there are also limitations, such as the size and scope of community credit unions. It is not the expressed intent of Congress for credit unions to become an alternative, tax-exempt bank. Moreover, Congress understood that if a community credit union were going to fulfill its public mission, there needed to be a meaningful affinity and bond among members, manifested by a commonality of routine interactions. The Act defines the permissible membership for a community credit union as "persons or organizations within a well-defined **local** community, neighborhood or rural district." In adding the word "local" to the already existing term "well-defined," Congress clearly intended to impose finite and narrow limits on the area that a community credit union may serve.

### A Statistical Area Is Neither Local Nor Well-Defined

The NCUA Board proposes that a “statistical area” be designated as a well-defined local community in cases involving multiple political jurisdictions.

The NCUA proposes that an area considered to be a recognized core based statistical area (“CSBA”) would meet the statistical area definition. In the proposed rule the NCUA Board recognizes that an important characteristic of a local community charter is that there must be some geographic certainty to the community boundaries, i.e., the boundaries must be well-defined. The MBA believes that a CBSA does not meet this criterion. A CBSA with multiple political jurisdictions is inherently not well-defined, because it is subject to geographic change.

According to the Chartering Manual, “[a]lthough...state boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community.” The members of the MBA are concerned that the proposed statistical area definition could be inappropriately applied to a small state as a presumptive well-defined local community.

By adopting the statistical area definition as a de facto local community, NCUA broadens the nexus of the community charter despite Congressional intent to narrow the scope of community charters. CBSAs simply do not meet the statutory requirement that a community charter be local and well defined. Moreover, use of CBSA designation could lay the foundation for NCUA to treat an entire state as a local community, clearly not within the statutory language as amended by CUMAA.

#### A Rural District Does Not Meet the Requirement of Being Local.

NCUA is also proposing that a rural district be considered a presumptively well-defined local community provided certain criteria are met.

The MBA believes NCUA’s proposed definition of rural district is once again contrary to Congressional intent. In 1998, Congress found that “[t]o 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.”

It is important to note that the NCUA Board acknowledges that “it is proposing a definition that reflects an area that may lack the traditional characteristics of interaction or shared common interests.” The lack of meaningful affinity is clearly at odds with statute and would make it more difficult for credit unions to fulfill their public mission.

In addition, the geographic scope of a proposed rural district may be immeasurable. At the minimum, a territory with 1,000 square miles could meet the proposed standards. This circumvents the statute’s requirement that a community charter be local.

The MBA urges the NCUA Board to reject its proposal that a rural district constitutes a local well-defined community.

#### Public Notice Would Give NCUA Constructive Feedback on Community Charter Applications.

For a community charter application that does not meet the established presumptive definition of “local,” the NCUA Board is proposing to publish a 30-day notice and comment period in the Federal Register seeking comment on whether the proposed community charter application is a local well-defined community.

The MBA is supportive of NCUA’s public notice proposal, but believes there should be wider publication of the notice for comment. Rather than simply publishing the notice in the Federal Register, the notice for comment should also be published in local newspapers within the proposed community as are other notices in the banking environment as well as posting the notice for comment on its website. It is faulty logic to assume that the public-at-large reads the Federal Register. Limiting notice to the Federal Register simply provides far too limited notice to credit union members and potential members in the impacted areas. Expanding the proposed public notice rule would solicit more input from the community, and the benefits to the Board would outweigh the cost associated with the wider distribution of the notice for public comment.

Finally, the MBA strongly urges the NCUA to lengthen the proposed comment period from 30 days to 60 days. This would give those parties who wish to comment on the proposed community charter application sufficient time to analyze the proposed community and to give NCUA constructive feedback.

#### Five-Year Limitation Is Appropriate.

The Chartering Manual currently exempts a community charter applicant from submitting a narrative summary or documentation supporting a request of a proposed community charter, amendment, or conversion, with the same exact geographic area as one NCUA had previously approved for another credit union. The Board is now proposing a five-year limitation on a community charter applicant’s use of this exemption.

While the five-year limitation is an improvement over NCUA’s current policy, each community charter circumstance is different, even if a credit union is applying for the same community, and should be handled on a case-by-case basis.

The members of the MBA believe that NCUA should require a community charter applicant to provide narrative support or documentation that the community meets the well-defined local requirement if the Office of Management and Budget redefines the boundaries of a CBSA within the five-year time interval.

#### NCUA Needs to Re-evaluate its Policy that a Single Political Jurisdiction Is Local

The members of the MBA take exception to NCUA's policy that treats every city, county, or smaller jurisdiction as a presumptive well-defined "local" community and, therefore, eligible for a community charter.

Today, "any city, **county**, or smaller political jurisdiction, **regardless of population size**, meets the definition of a local community...any credit union that wants to serve such an area would **no longer need to provide a letter demonstrating how the area is a community or any other type of documentation demonstrating that the area is a community**. This is an **irrefutable presumption**, regardless of population size."

Hence, under this rule, the NCUA Board never considers any detailed analysis on the merits of a community charter application or conversion – even in cases where the likelihood of a single local community is in question. In fact, after the NCUA Board adopted the standard that any city, county, or smaller political jurisdiction met the requirement of being a local community, NCUA granted both credit unions a community charter for Miami/Dade County, even though the NCUA Board had earlier found that the community did not meet the requirements of being local.

The NCUA Board must reconsider its blanket exception that a single political jurisdiction is a presumptive local community.

#### Missouri's Solution to the Debate Over the Term "Local"

The MBA strongly recommends that NCUA look at the recent Missouri legislation (SB 591) passed during the 2007 legislative session which clearly defines a local community as counties contiguous to the headquarters' county. We believe this definition is a good compromise. In lieu of multiple jurisdictions and MSAs, this approach simply provides a clear definition and guidance for credit unions seeking to expand.

#### Conclusion

The members of the MBA urge NCUA to withdraw the proposed modifications to its community chartering regulation. These proposed standards completely contradict Congressional intent that community chartered credit unions be local and have a meaningful affinity and bond among members.

Thank you for the opportunity to comment on the above proposed rule. If I can be of additional assistance, please let me know.

Sincerely,

/Signed

Max Cook, President

