



January 22, 2010

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

**Subject: National Credit Union Administration Chartering of Field of Membership  
for Federal Credit Unions 12CFR Part 701 Proposed Rules**

Dear Ms. Rupp:

The proposed rules of the federal regulation referenced above create great concerns as it pertains to the federal application process. Particularly, the three barriers almost make a federal community charter impossible. These barriers are:

- Cap of 2.5 million for population.
- 50% or more of the jobs must reside in the hub of the Core Based Statistical Area (CBSA).
- One-third (1/3) of the population must also reside within the Core Based Statistical Area or otherwise known as hub.

These three barriers or requirements disqualify almost every major city in the United States. Specifically, St. Louis City and St. Louis County individually would not qualify to be a hub of a multiple community charter. In actuality, there is not one population hub in the state of Missouri that qualifies as a hub for a federal community charter which would exceed a single political jurisdiction. Therefore, the opportunity to diversify membership and grow is greatly hindered for members of the Missouri Credit Union Association if they chose to convert to a federal charter.

Not quite as challenging, but also to qualify for a rural district, a cap of 100,000 in population greatly impedes the ability to develop a field of membership in regions of Missouri, such as Branson or Springfield where the population may exceed the cap of 100,000.

Another alarming aspect of NCUA's proposed rules is the CRA-type requirement to serve underserved areas that must be supported with marketing plans. This requirement states a portion of the application for a federal charter or a community charter includes detailed marketing plans covering a three-year period and also authorizes the NCUA to assess the execution of that plan and, if not satisfied, to take

administrative action against the credit union. This particular section mirrors the Community Reinvestment Act of the banking industry. Please review this area in detail. The possibility of being held accountable for a three-year marketing plan is not practical in any environment. This requirement also restricts the opportunity for developing rural districts in the federal charter.

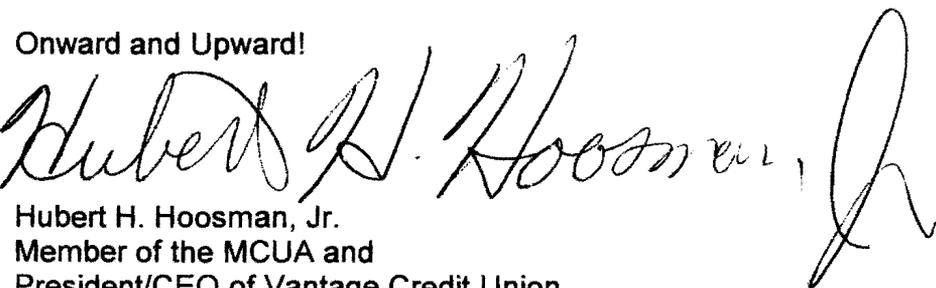
In summary, the proposed rules will accomplish restrictions on credit unions' growth that the bankers' attacks has failed doing over the years, which hinders growth opportunity and the long-term ability of serving communities for all small, mid-sized, and large credit unions. The potential standards of these proposed rules also reduce statistical areas to levels that many states would not have one statistical area which would qualify as a Core Based Statistical Area (hub) for a federal community charter. Missouri is such an example. Under the proposed rules, St. Louis City, St. Louis County and Kansas City would not qualify as a hub for a multiple political jurisdiction community. The City of Los Angles may not qualify as a community hub. A very important study would be to show what major cities and counties throughout the country would be left to qualify as a hub under this extremely restrictive standard. An unofficial estimate is that the eligible hubs for complex community charters in the country will be reduced by approximately 50%. If true, this impact is devastating to the long-term future of the federal community charter.

Although Missouri is a state which is heavily state-chartered, taking away the option of a federal charter is not to the benefit of our state or national movement. There are many benefits of a federal charter that could benefit current state chartered credit unions, such as the elimination of certain state taxes, the threat of unrelated business income taxes, existing field of memberships, and numerous other benefits.

The adoption of this proposed rule would be more detrimental than any attack ever proposed by bankers including taxation.

Please contact me at 314-264-5101 or by email at [hhoosman@vcu.com](mailto:hhoosman@vcu.com) if clarification of any topics covered is needed.

Onward and Upward!



Hubert H. Hoosman, Jr.  
Member of the MCUA and  
President/CEO of Vantage Credit Union

HHH/lmc

Enclosure (1)

Cc: Roshara (Rosie) Holub, Missouri Credit Union Association  
Peggy Nalls, Missouri Credit Union Association

## **Well-Defined Local Communities**

### **Single Political Jurisdictions**

- **Single political jurisdictions less than a state, (such as a county or city) or a defined portion of that single political jurisdiction are automatically approved communities regardless of population or geographic size.**
- **This is essentially the same as the current rule.**

### **Statistical Areas**

- **Multiple political jurisdictional communities are capped at 2.5 million population size.**
- **The community must be comprised of a recognized Core Based Statistical Area (CBSA), or in the case of a CBSA with Metropolitan Divisions, the area is a single Metropolitan Division.**
- **The proposed area must have a recognized hub (city, county or equivalent) with a majority of all jobs and at least 1/3 of the total population of the community.**
- **Can apply for a portion of a multiple political jurisdiction. However, the credit union must still demonstrate that the portion of the statistical area independently satisfies the criteria set forth above.**

### ***Talking Points***

- **The agency's position that a single political jurisdiction less than a state or a defined portion of that single political jurisdiction should automatically be approved as a community regardless of geographic size or population should be supported. This definition would also seem to imply that a smaller portion of a single county or city would likewise qualify as a presumed community.**
- **If a single political jurisdiction such as a city or county can be presumed to be a well-defined local community, then logic would dictate that a smaller portion of that presumed community should qualify under the presumption as well. As this seems to be the intent of the Board in this proposal, such a view should be supported and the Board should be urged to clarify this interpretation in the final rule so that there can be no confusion.**
- **The proposal would establish a statistical definition of a well-defined local community in cases involving multiple political jurisdictions. While one can appreciate the Board's desire to streamline this determination by assigning a statistical definition to a well-defined local community comprised of multiple political jurisdictions, the proposed definition is too**

restrictive, fails to take into account the individual characteristics of a proposed community and will result in a “one-size-fits-all” regulation.

### Recommended Alternative Action

- Rather than impose this narrow definition for communities comprised of multiple political jurisdictions, a better approach would be to simply presume that an area comprised of a Metropolitan Statistical Area (MSA) or a defined portion of that MSA automatically constitutes a well-defined local community.
- If the proposed statistical definition will be used to qualify an area as a well-defined local community, it is perplexing as to why the agency finds it necessary to restrict the size of the community based on its population. Either the proposed area qualifies under the statistical definition or it does not.
- An arbitrary population cap of 2.5 million residents for a multiple political jurisdictional community seems overly restrictive and is inconsistent with how the agency treats single political jurisdiction communities under the current rules and this proposal (which is no population limit).
- The population of a proposed community should not be the qualifier or disqualifier for a credit union desiring to serve a particular community. The test should be the credit union’s ability to serve that community. Therefore, the Board should remove from the proposal the 2.5 million population cap on communities comprised of multiple political jurisdictions.
- The proposal also states that a credit union can be approved for a portion of a multiple political jurisdiction provided that the credit union successfully demonstrates that the portion of the statistical area independently satisfies the proposed statistical criteria for multiple political jurisdictional communities. As the purpose of this proposed rule is to streamline the process, this requirement is unduly restrictive and should be eliminated from the final rule.
- As in the case with a single political jurisdiction, if a community consisting of a recognized Core Based Statistical Area that meets all of the criteria set forth in the proposal can be successfully demonstrated, it seems logical that a smaller portion of that well-defined local community should also be presumed a well-defined local community.
- Given that the data has already been compiled in conjunction with the proposal and in an effort to avoid confusion and to further enhance streamlining of the community charter application process, it would be helpful if the agency would post on the NCUA website a listing of all multiple political jurisdictional communities that will qualify under this rule.
- Additional efficiencies and streamlining can be achieved by removing the time consuming step of awaiting NCUA Board action by delegating field of membership decisions and determinations to the five respective NCUA Regional Offices. The Regional Offices, the Office of General Counsel and the Office of Examination and Insurance should review each

application for compliance; however, if the application meets the regulatory and statutory requirements, it should be approved in the most efficient and expedient manner possible without the necessity of waiting for a NCUA Board meeting.

A multiple common bond credit union converting to a community charter should be permitted to retain any SEGs that may fall outside the boundaries of the proposed community, especially if the proposed population cap is to remain in the final rule that will establish an absolute limit on community size. If this cannot be accomplished by regulation, then the Board should be encouraged to make this a leading legislative priority in their dealings with the Congress.

### **Narrative Approach**

- **Though the use of a narrative was still available in the May 2007 proposal to document a potential community that did not meet the statistical criterion outlined, the current proposal eliminates the use of narrative statements in their entirety to support or document that a proposed area meets the definition of a well-defined local community.**
- **The 2007 proposal also provided that when the narrative approach was required to support the existence of a well defined local community, a public notice and comment period would be used to inform the public about the application and assist NCUA in determining if the area was a WDLC. Since the narrative approach has been eliminated in its entirety the proposal also eliminates the public and notice comment period requirement previously proposed.**

### *Talking Points*

- The elimination of the use of a narrative statement with documentation to support the credit union's assertion that an area containing multiple political jurisdictions meets the standards of interaction and common interests to qualify as a well-defined local community is a positive step, and the Board deserves commendation on their efforts in this regard.
- If the proposed criteria for establishing an area as a well-defined local community are adopted and implemented by the Board, the need for narrative statements will largely be eliminated. However, there will be instances where a proposed community will not meet the statistical definition included in the proposal.
- In those cases, a credit union should have the option to submit additional documentation, if they so choose, to support their assertion that the proposed area should be classified as a well-defined local community.
- While the Board's efforts to streamline the community charter documentation and application process are notable, these efforts would

deny a credit union of its ability to utilize other verifiable criteria to demonstrate that an area meets the definition of a well-defined local community. Every community is unique and although many will be able to meet the proposed criteria, provisions should be included in the rules that will allow a case to be made for that significant number of communities that do not fit precisely in the proposed statistical definition of a multiple political jurisdictional community.

### **Grandfathered Well-Defined Local Communities**

- **Previously approved communities are “grandfathered” and shall be deemed automatically approved provided the credit union seeking a conversion adopts the exact community that was previously approved.**

#### *Talking Points*

- The “grandfathering” of previously approved communities and the ability of credit unions to apply for all previously approved communities should be supported.

### **Rural District**

- **NCUA is proposing a different definition of “rural district” from that in the May 2007 proposal.**
- **The NCUA Board proposes to define a rural district as a contiguous area that has more than 50% of its population in census blocks that are designated as rural and the total population of the area does not exceed 100,000 persons.**

#### *Talking Points*

- It is indeed a positive step that the agency is attempting to define *rural district*, long allowed by the statute. In general, the agency’s efforts in establishing a definition that is intended to reflect that an area may lack the traditional characteristics of interaction or shared common interests should be supported.
- However, the 100,000 cap on population is too low and is unnecessarily restrictive. As in the case with multiple political jurisdictional communities, no persuasive or compelling reason has been demonstrated as to why a population cap should be placed on an area that qualifies as a rural district. Either the area qualifies or it does not. The population of the area should not be a qualifying factor.

## Recommended Alternative Action

- The Board should eliminate the population cap in its entirety.
- If the Board is intent on including a cap, a more reasonable limitation would be 500,000 residents.

### **Ability to Serve and Marketing Plans**

- **The proposal outlines specifically that a meaningful marketing plan must demonstrate in detail:**
  - **How the credit union will implement its business plan to serve the entire community;**
  - **The unique needs of the various demographic groups in the proposed community**
  - **How the credit union will market to each group, particularly underserved groups;**
  - **Which community-based organizations the credit union will target in its outreach efforts;**
  - **The credit union's marketing budget projections dedicating greater resources to reaching new members; and**
  - **The credit union's timetable for implementation, not just a calendar of events.**
- **The proposal also imposes "CRA type" requirements on the credit union to serve the proposed community. Upon approval of a community charter the credit union will be examined for three consecutive years to determine if it is meeting its business and marketing plan to serve the entire community especially those residents residing in underserved areas. Failure to do so could result in supervisory /administrative actions against the credit union.**

### *Talking Points*

- Given the proposed streamlining measures as they relate to establishing well-defined local communities, it is likely that the proposal will ultimately result in a greater emphasis on a credit union's ability to serve a community.
- This is an appropriate area of focus for the agency and measures that will clarify the Board's expectations for marketing and business plans associated with community charter applications should be generally supported.
- ~~Whereas there are distinct differences in communities that make a "one size fits all" list of community documentation standards problematic, there are certain financial and service extension commitments that should be a~~

part of any community charter application. Although this is required under current rules for any credit union seeking to convert to a community charter, there is some value for credit unions to know in regulation what those requirements are.

- Without question a credit union seeking to serve a community based field of membership should make reasonable and diligent efforts to serve the entirety of the membership. The key is the implementation.
- It is absolutely imperative that the agency, in evaluating an application for community charter, recognize that budgets, branching plans, marketing plans, product enhancements, etc. must be fluid and not rigid.
- In assessing the adequacy of a business and marketing plan the agency should analyze each credit union's ability to serve on an individual basis. Unfortunately, as currently drafted, the proposal implies that the asset size of a credit union and the population of a particular community are, in and of themselves, determinant in assessing whether a credit union has the ability to serve the community (*i.e.* "a credit union with \$150 million in assets could not be reasonably expected to serve a community of 1.5 million people").
- The agency should refrain from such statements and instead evaluate the credit union's ability to serve on the merits of its business plan and general principles of safety and soundness.
- While the proposal attempts to clarify what will be expected in an acceptable marketing and business plan going forward, the proposal goes too far by implementing what could be considered by some as "CRA type" requirements on credit unions that have been approved for a community charter.
- There is no question that a credit union should be well positioned to serve the entire community in a safe and sound manner. However, questions do exist relative to the requirement that upon approval of a community charter a credit union will be subjected to an examination for three years to determine if it is meeting its marketing and business plans.
- The proposal indicates that a credit union's failure to satisfy the terms of its business and marketing plans will subject it to supervisory action, but is silent as to what those supervisory actions may be. Will the credit union have the ability to appeal an adverse finding by the Region to the Board? Can a credit union lose its community charter status if it fails to meet the specifics of its business plan? Will exceptions be granted for extenuating circumstances such as a downturn in the local economy?
- Without clarification, this leaves a very open-ended set of supervisory options on the table - many of which would not be appropriate in what will by its nature be a subjective examiner decision.
- As currently drafted, the proposal negates the objectivity in the application process that the Board seeks from streamlining the community validation requirements by imposing a subjective standard for determining whether a credit union has satisfactorily met its business and marketing plan. The

Board should be asked reconsider this aspect of the proposal and the provision should be removed in its entirety.

### Timing

- **NCUA will accept community charter applications based only on grandfathered well defined local communities, as discussed above, and single political jurisdictions between the issuance of this proposal on December 17, 2009 and the effective date of any final amendments the Board adopts regarding the Chartering Manual. NCUA will accept all community charter applications, based on any permitted criteria, on or after that effective date. Those applications will be considered under the revised version of NCUA's community chartering policies as amended by this proposal.**

### *Talking Points*

- The Board's decision not to accept any multiple jurisdictional community charter applications (except those that have been previously approved) until the proposed rules have been finalized is concerning. Even though the agency employed similar action in its most recent proposal regarding the process to adopt underserved areas, this is a significant departure from recognized agency practice that fails to cite a compelling reason as to why such drastic action is justified.
- When a credit union makes a good faith decision to proceed with an application under existing rules the edicts of fair play dictate that the application should be honored as long as those rules remain in place.
- The current moratorium placed on multiple political jurisdictional 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 that are in the process of preparing an application to convert to a community charter.
- Not only does the proposed moratorium on these approvals violate the practices of regulatory good faith with those who operate under the existing rules approved by the agency, the decision to defer approvals until the end of the rulemaking process 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

## **Emergency Mergers**

- **The proposal provides clarification on what constitutes a credit union in “danger of insolvency” means for purposes of determining whether NCUA may permit an emergency merger to occur.**
- **In order to declare an emergency merger, NCUA must first determine that a credit union is either insolvent or in danger of insolvency before it makes the additional findings that an emergency exists, other alternatives are not reasonably available, and that the public interest would be served by the merger. However, the statute does not define what “danger of insolvency” means.**
- **The proposal would define “danger of insolvency” if a credit union falls into one or more of the following three categories:**
  - **The credit union’s net worth is declining at a rate that will render it insolvent within 24 months.**
  - **The credit union’s net worth is declining at a rate that will take it under 2% net worth within 24 months**
  - **The credit union’s net worth, as self reported on its Call Report, is significantly undercapitalized, and NCUA determines that there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months.**

### *Talking Points*

- The clarifications included in the proposal on what constitutes a credit union in “danger of insolvency” for purposes of determining whether NCUA may permit an emergency merger to occur should be supported.
- The proposal should go further as it relates to mergers in general.

### *Recommended Alternative Action*

- Community credit unions should be allowed to voluntarily merge with any credit union when the merger results in better member service and a stronger financial position for the combined credit union. Whether the merger partner might be a single sponsor, multiple common bond or community credit union, the ability of the combined credit union to safely and soundly serve all of the members should be the determining factor.
- **When a credit union is in emergency status, NCUA rightly waives field of membership restrictions in order to facilitate a merger with the best possible merger partner. That same standard should be applied when the**

merger arises from two credit unions that do not wish to ever find

themselves in emergency status.

The best way to avoid desiring financial performance is often a strategic  
voluntary merger. As a safety and soundness regulator, NCUA should

help facilitate these voluntary mergers when the two credit unions agree

that a merger is in their members' best interests.

With this in mind, NCUA should continue to look for ways to be more

flexible with interpretation and determinations of what constitutes an

emergency merger and should explore ways to address concerns as long as they

are within the letter and spirit of the existing credit union act. It has the

financial responsibility to serve the membership.