



February 3, 2016

Via email Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov)

**INDEPENDENT BANKERS  
ASSOCIATION OF TEXAS**

1700 RIO GRANDE STREET  
SUITE 100  
AUSTIN, TEXAS 78701  
P: 512.474.6889  
F: 512.322.9004  
WWW.IBAT.ORG

**ROGERS POPE, JR.**  
IBAT CHAIRMAN  
RPOPEJR@TEXASBANKANDTRUST.COM  
TEXAS BANK AND TRUST, LONGVIEW

**DARLA ROOKE**  
IBAT CHAIRMAN-ELECT  
DROOKE@JUNCTIONNATIONAL.COM  
JUNCTION NATIONAL BANK

**JOE KIM KING**  
IBAT SECRETARY-TREASURER  
JKK@BRADYNATIONALBANK.COM  
BRADY NATIONAL BANK

**MARK W. SHEFFIELD**  
LEADERSHIP DIVISION CHAIRMAN  
MSHEFFIELD@FIRSTLOCKHART.COM  
FIRST LOCKHART NATIONAL BANK

**WILLARD J. STILL**  
IBAT EDUCATION FOUNDATION  
CHAIRMAN  
WSTILL@AMBANKWACO.COM  
AMERICAN BANK, N.A., WACO

**JOHN W. JAY**  
IMMEDIATE PAST CHAIRMAN  
JWJAY@ROSCOEESTATEBANK.COM  
ROSCOE STATE BANK

**CHRISTOPHER L. WILLISTON, CAE**  
PRESIDENT AND CEO  
CWILLISTON@IBAT.ORG

**STEPHEN Y. SCURLOCK**  
EXECUTIVE VICE PRESIDENT  
SSCURLOCK@IBAT.ORG

**JULIE COURTNEY, CAE, CMP**  
SENIOR VICE PRESIDENT  
JCOURTNEY@IBAT.ORG

**JANE HOLSTIEN**  
SENIOR VICE PRESIDENT  
JHOLSTIEN@IBAT.ORG

**URSULA L. JIMENEZ, CAE**  
SENIOR VICE PRESIDENT  
UJIMENEZ@IBAT.ORG

**MARY E. LANGE, CAE**  
IBAT EDUCATION FOUNDATION  
PRESIDENT  
MLANGE@IBAT.ORG

**CURT NELSON**  
IBAT SERVICES PRESIDENT  
CNELSON@IBAT.ORG

**CHRISTOPHER L. WILLISTON, VI, CAE**  
SENIOR VICE PRESIDENT  
CLWILLISTON@IBAT.ORG

Mr. Gerard S. Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: RIN 3133-AE31; National Credit Union Administration (“NCUA”);  
Comments to Proposed Rule Relating to Chartering and Field of  
Membership (“Proposal”)

Dear Mr. Poliquin:

The following comments are submitted on behalf of the Independent Bankers Association of Texas (“IBAT”). IBAT is a trade association representing approximately 400 independent, community banks domiciled in Texas. Its members provide financial services in communities all around the State of Texas. We appreciate the opportunity to comment on the NCUA’s Proposal.

We have read the joint<sup>i</sup> comment letter the Independent Community Bankers of America (“ICBA”) and the American Bankers Association (“ABA”) sent to House and Senate leaders. We agree with the issues raised in that letter and support the relief requested.

As ICBA pointed out in its letter, the amendments NCUA is proposing to field of membership rules would nearly eliminate an already diluted common bond requirement. Among other changes, a community chartered credit union would be able to claim that a Congressional district was a “well-defined local community.” This would allow tax-exempt community credit unions in 43 states to serve large, strangely shaped areas that are not local and are not communities, and importantly, are subject to periodic change in the redistricting process. In the remaining seven states (Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming [see Appendix A]), community credit unions could serve the entire state. This NCUA proposal would make credit unions less restricted by geography and strengthen their tax-advantaged status over tax-paying community banks.

**NCUA rules allow federal credit unions to exceed their statutory limits**

Over the years, the NCUA has interpreted Congress’ statutory limits broadly and provided these tax-exempt organizations with opportunities that allow them to compete directly with tax-paying financial institutions without preserving the necessary statutory limits that keep them within the narrow confines of their stated purpose. Congress exempted credit unions from paying their fair share of federal income taxes **only** because of their unique and limited role in the financial services industry. In continually broadening the geographic and membership field limits placed on federal credit unions, the NCUA has lost sight of a basic tenet of statutory construction: statutory exceptions should be read narrowly.

If the NCUA cannot or will not narrowly interpret the limits Congress placed on these tax-exempt entities to keep them focused on their statutory purpose, then, yes, credit unions should either pay their fair share of income tax or convert to bank charters and disappear as a separate industry. Through their own lobbying efforts, credit unions are doing away with the very reason for their existence and tax exemption. While certainly an attractive and self-serving goal, it is simply not logical nor realistic to press to continue their regular business practices while enjoying freedom from stringent consumer compliance oversight, Community Reinvestment Act (CRA) responsibilities, and income (and a host of other) taxes.

For the federal government to allow a tax-exempt entity to provide a service that for-profit entities are providing, there must be a compelling need and reasonable limitations. While not perfect, the federal credit union membership law (12 USC §1759) provides some reasonable limits on federal credit union membership. Nevertheless, tax-exempt federal credit unions, dissatisfied with serving reasonable membership fields, have advocated and received gift-wrapped membership field amendments from NCUA that have slowly diluted the membership field limitations until they bear little resemblance to the underlying law.

One of the more disturbing developments is the ubiquity of the “sham membership loophole.” In many if not most cases, an individual can join a credit union regardless of whether the common bond is applicable by “joining” an alumni association, PTA group, unrelated association or an assortment of other creative measures. Exclusivity and sanctity of membership common bonds is a thing of the past, and the idea of further expansion is simply unacceptable.

### **Obliteration of well-defined, local community requirement**

NCUA’s proposed rules will be the nail in the coffin that obliterates Congress’ statutory requirement that a community credit union limit its membership to persons or organizations within a well-defined local community, neighborhood, or rural district. In its joint letter with ABA, ICBA did a superb job in describing our issues with considering “combined statistical areas,” “adjacent areas,” and “Congressional districts” as well-defined local communities. Appendix B to this letter shows examples of some of the so-called “well-defined, local communities” your proposed rule on Congressional districts would create. As they say, a picture speaks a thousand words.

It is difficult to choose a favorite. I really like MD-3, NC-12 and TX-35 because of their strange shapes, but I think my favorite “well-defined, local community” among these is Texas Congressional District 23. At 550 miles across, it would only take eight hours of driving time for the farthest “community” members to travel to visit each other.

The U.S. Census Bureau determines how many Congressional districts are within each state based on its decennial census figures. The boundaries of a state’s districts are usually determined through a partisan process controlled by the majority party of that state’s legislature. Additionally, some states’ Congressional districts are drawn pursuant to court order. A Congressional district may be “well-defined” for the purposes of electing a member to the U.S. House of Representatives, but neither the process nor the final result has anything to do with community credit unions or creating community or local boundaries. If the NCUA adopts this rule, then any well-defined boundary created for whatever federal purpose could be acceptable as a “well-defined local community.” It strips the phrase “well-defined local community” in 12 USC § 1759(b)(3) of any meaning whatsoever. Further, as previously mentioned, these boundaries are subject to significant change during the redistricting process.

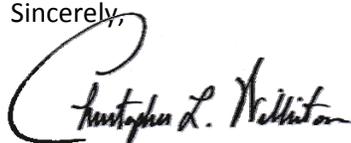
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Credit unions have lobbied ferociously to the point that statutory phrases such as “field of membership,” “well-defined local community,” and “common bond” have eroded into meaninglessness. Credit unions continue to strive to be “be banks” without the commensurate regulatory oversight, Community Reinvestment Act responsibilities, and tax obligations. If a credit union wishes to expand beyond the reasonable and necessary limits to serve its statutory purpose, we suggest it use its considerable lobbying power to overturn the unreasonable regulatory hurdles placed on conversions to bank charters.

Based on the foregoing, we request the NCUA abandon its efforts to adopt this Proposal.

Thank you for your consideration.

Sincerely,



Christopher L. Williston, CAE  
President and CEO

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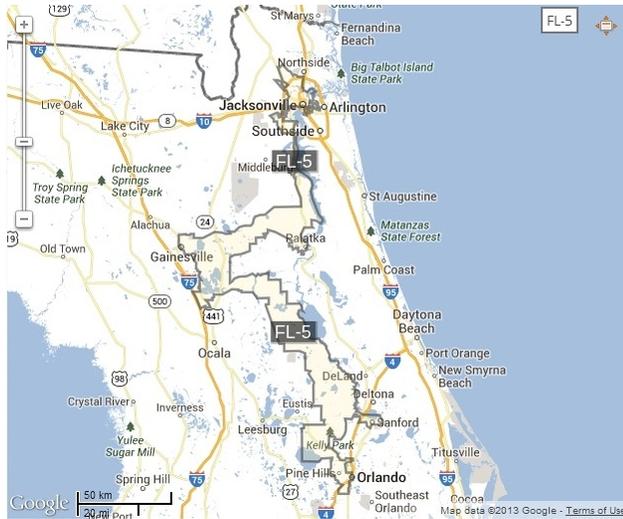
<sup>i</sup> Joint letter with the American Bankers Association, dated January 20, 2016



## APPENDIX B

The “well-defined, local communities” of Florida Congressional District 5, Louisiana Congressional District 2, Maryland Congressional Districts 3 and 6, North Carolina Congressional Districts 4 and 12, Texas Congressional Districts 23 and 35.

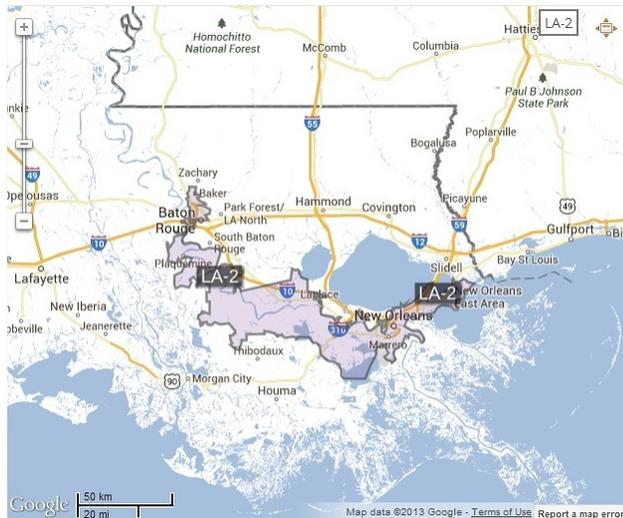
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MD-3



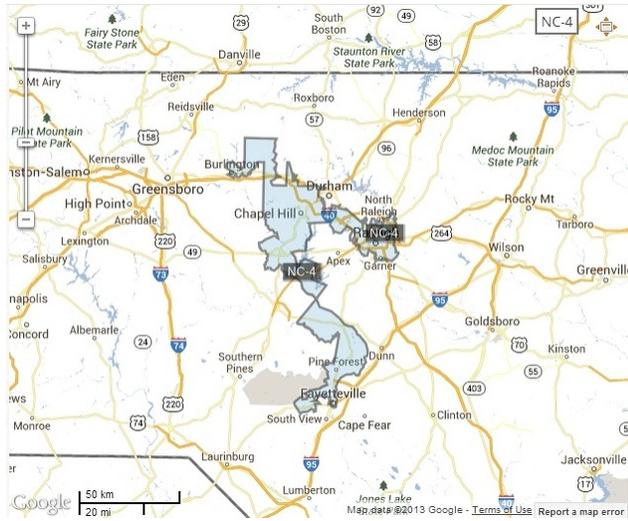
LA-2



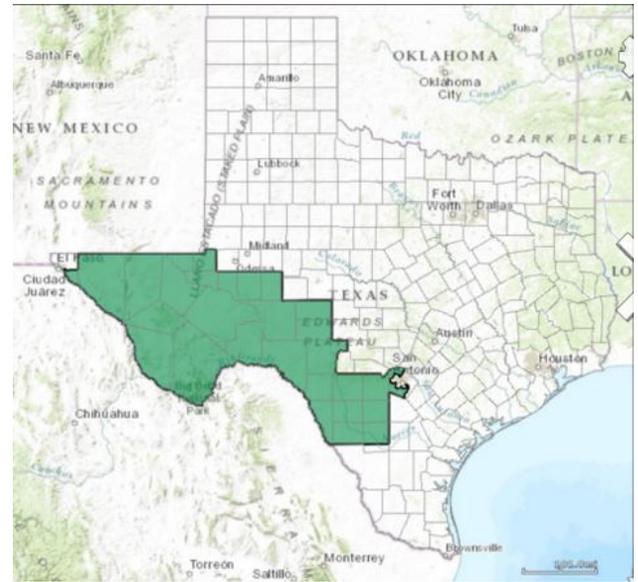
MD-6



NC-4



TX-23



NC-12



TX-35

