

MINUTES OF THE HOUSE INSURANCE AND FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 P.M. on January 31, 2008 in Room 527-S of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Ken Wilke, Revisor of Statutes Office
Sue Fowler, Committee Assistant

Conferees appearing before the committee:

Marlee Carpenter, Kansas Chamber
Doug Wareham, Kansas Bankers Association
Lloyd Culbertson, First National Bank & Trust, Phillipsburg
Shari Weber, Community Bankers Association of Kansas
Frank Suellentrop, Legacy Bank
John Fowler, First State Bank
Matt Goddard, Heartland Community Bank
Michael Fahrback, BankHaven
Joseph Hoytal, Capital City Bank
Michael Fahrback, BankHaven
Joseph Hoytal, Capital City Bank

Others attending:

See attached list.

Introduction of Bill:

Marlee Carpenter representing The Kansas Chamber, NFIB-Kansas, Wichita Independent Business Association and Topeka Independent Business Association, (Attachment #1), introduced a bill regarding Small Business Health Insurance. Representative Neighbor moved for introduction of the bill. Seconded by Representative Carlson. Motion carried.

Hearing on:

HB 2676 **Credit union membership, defining**

Melissa Calderwood, Legislative Research Department, gave an overview on **HB 2676**.

Opponents:

Doug Wareham, Kansas Bankers Association, (Attachment #2), presented testimony before the committee in opposition to **HB 2676**.

Lloyd Culbertson, First National Bank & Trust, (Attachment #3), appeared before the committee in opposition to **HB 2676**.

Shari Weber, Community Bankers Association of Kansas, (Attachment #4), gave testimony in opposition to **HB 2676**.

Frank Suellentrop, Legacy Bank, (Attachment #5), presented testimony before the committee in opposition to **HB 2676**.

John Fowler, First State Bank, (Attachment #6), appeared before the committee in opposition to **HB 2676**.

CONTINUATION SHEET

MINUTES OF THE House Insurance and Financial Institutions Committee at 3:30 P.M. on January 31, 2008 in Room 527-S of the Capitol.

Matt Goddard, Heartland Community Bank, (Attachment #7), gave testimony in opposition to **HB 2676**.

Michael Fahrbach, BankHaven, (Attachment #8), presented written testimony to the committee in opposition to **HB 2676**.

Joseph Hytal, Capital City Bank, (Attachment #9), presented written testimony to the committee in opposition to **HB 2676**.

Hearing closed on **HB 2676**.

Next meeting will be Monday, February 4, 2008, 3:30 PM, in Room 527-S.

Meeting adjourned at 5:17 PM.

**Insurance and Financial Institutions Committee
Guest Sign In Sheet
Thursday, January 31, 2008**

Name	Representing
Kathy Olsen	Ks Bankers Assn.
Chuck Stones	" "
Matthew Goddard	Heartland Community Bankers Assoc.
Shari Kaba	Community Bankers Assn of KS
Paul Forks	VHGA
Halcy Dava	KCUA
Jonathan Stokes	KAS
Frank Spellerberg	Community Bankers / Kansas Bankers
John Collette	KBA
Justin Hobbs	First State Bank
John Brown	First State Bank
Jerel Wright	KCUA
E. Kent Culbertson	First National Bank & Trust - Phillipsburg
Kenneth Jones	Kansas Super Chief Credit Union
Tim Roha	KSCCU
Scott Guffitt	INTRUST Bank
Craig Meader	First Natl Bank of Kansas
Lisa Schmidlein	KSCCU
Anna Eiskamp	KSCCU
Katie Hoffman	KSCCU
Angie Forbes	KSCCU
Misty Nimz	KSCCU
Jamie Beaton	KSCCU
Ron GACHES	GBBA
Maria Marsh	KCUA
Michelle Peterson	Capital Strategies

**The Kansas Chamber
NFIB-Kansas
Wichita Independent Business Association (WIBA)
Topeka Independent Business Association (TIBA)**

Small Business Health Insurance Proposal

- Expansion and real-time use of the current health care tax credit.
- Enactment of a "mandate-lite" health insurance package for small businesses that have not previously offered health insurance.
- Ability of individuals to use pre-tax dollars to purchase individual health insurance, similar to the law Missouri passed last session. This will also help with the portability of health insurance.

Chapter 40.--INSURANCE
Article 22.--UNIFORM POLICY PROVISIONS

40-2246. Same; employer income tax credit, computation of amount, reduction of deductions, election to claim, refunds; no inclusion of employer expenses in employee income; application date. (a) A credit against the taxes otherwise due under the Kansas income tax act shall be allowed to an employer for amounts paid during the taxable year for purposes of this act on behalf of an eligible employee as defined in K.S.A. 40-2239 and amendments thereto to provide health insurance or care and amounts contributed to health savings accounts of eligible covered employees.

(b) (1) For employers that have established a small employer health benefit plan after December 31, 1999, but prior to January 1, 2005, the amount of the credit allowed by subsection (a) shall be \$35 per month per eligible covered employee or 50% of the total amount paid by the employer during the taxable year, whichever is less, for the first two years of participation. In the third year, the credit shall be equal to 75% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fourth year, the credit shall be equal to 50% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fifth year, the credit shall be equal to 25% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. For the sixth and subsequent years, no credit shall be allowed.

(2) For employers that have established a small employer health benefit plan or made contributions to a health savings account of an eligible covered employee after December 31, 2004, the amount of credit allowed by subsection (a) shall be \$70 per month per eligible covered employee for the first 12 months of participation, \$50 per month per eligible covered employee for the next 12 months of participation and \$35 per eligible covered employee for the next 12 months of participation. After 36 months of participation, no credit shall be allowed.

(c) If the credit allowed by this section is claimed, the amount of any deduction allowable under the Kansas income tax act for expenses described in this section shall be reduced by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with law. If the credit allowed by this section exceeds the taxes imposed under the Kansas income tax act for the taxable year, that portion of the credit which exceeds those taxes shall be refunded to the taxpayer.

(d) Any amount of expenses paid by an employer under this act shall not be included as income to the employee for purposes of the Kansas income tax act. If such expenses have been included in federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Kansas income tax act.

(e) The secretary of revenue shall promulgate rules and regulations to carry out the provisions of this section.

(f) This section shall apply to all taxable years commencing after December 31, 1999.

History: L. 1990, ch. 157, § 8; L. 1999, ch. 110, § 4; L. 2005, ch. 118, § 4; July 1.

(a)(1)

(a) (2) Beginning July 1, 2008, a credit against any tax owed by the employer to the state of Kansas shall be allowed to an employer for amounts paid during the taxable period for the purposes of this act on behalf of an eligible employee as defined in K.S.A. 40-2239 and amendments thereto to provide health insurance or care and amounts contributed to health savings accounts of eligible covered employees.

(b)(3) For employers that have established a small employer health benefit plan or made contributions to a health savings account of an eligible covered employee after December 31, 2007, the amount of credit allowed by subsection (a) shall be \$100 per month per eligible covered employee for the first 12 months of participation, \$75 per month per eligible covered employee for the next 12 months of participation, \$50 per eligible covered employee for the next 12 months of participation and \$25 per eligible employee for the next 12 months. After 48 months of participation, no credit shall be allowed.

HOUSE BILL No. 2367

By Representatives Carter, Brown, Huy, E. Johnson, Kelley, Kiegerl,
Kilpatrick, Kinzer, Merrick and Pilcher-Cook

2-9

10 AN ACT concerning insurance; relating to health insurance plans for
11 small employers.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) (1) For a period commencing on the effective date of
15 this act and ending on June 30, 2007, any small employer which has not
16 offered any health benefit plan to such employer's employees during the
17 six month period next preceding the date upon which a health benefit
18 plan is offered, may offer a health benefit plan under the provisions of
19 this section. The health benefit plan shall be offered only to eligible em-
20 ployees, including dependents thereof, of such employer.

21 (2) Any health benefit plan by a health insurer developed for a small
22 employer under this act in accordance with paragraph (1) of subsection
23 (a) which is delivered, issued for delivery, amended or renewed on or
24 after July 1, 2005, may contract for coverage within the scope of this act
25 notwithstanding any mandated coverages otherwise required by state law.
26 Except for preventative and health screening services, the provisions of
27 K.S.A. 40-2,100 to 40-2,105, inclusive, 40-2114 and subsection (i) of 40-
28 2209 and 40-2229 and 40-2230, and 40-2,163, 40-2,164, 40-2,165 and 40-
29 2,166, and amendments thereto, shall not be mandatory with respect to
30 any health benefit plan developed under this act.

31 (b) No health benefit plan which is delivered, issued for delivery,
32 amended or renewed on or after July 1, 2005, shall be required to provide
33 for or include any additional benefit or coverage in addition to the benefit
34 or coverages required by subsection (a).

35 (c) No provision of subsection (a) shall be construed to prohibit an
36 employer from providing a health benefit plan containing any coverage
37 or benefit in addition to the coverage required by subsection (a).

38 (d) No provision of subsection (a) shall be construed to prohibit any
39 health benefit plan from providing any additional benefit or coverage in
40 addition to the benefits or coverages required by subsection (a).

41 (e) No provision of this section shall be construed to prohibit any
42 small employer from renewing any health benefit authorized by this
43 section.

1 Sec. 2. For the purposes of this act: (a) "Dependent" means the
2 spouse or child of an eligible employee, subject to applicable terms of
3 the health benefits plan covering such eligible employee and the de-
4 pendent eligibility standards established by the board.

5 (b) "Eligible employee" means an employee who works on a full-time
6 basis, with a normal work week of 30 or more hours, and includes a sole
7 proprietor, a partner of a partnership or an independent contractor, pro-
8 vided such sole proprietor, partner or independent contractor is included
9 as an employee under a health benefit plan of a small employer but does
10 not include an employee who works on a part-time, temporary or substi-
11 tute basis.

12 (c) "Small employer" shall have the meaning ascribed to it in K.S.A.
13 40-2209d and amendments thereto.

14 (d) "Health benefit plan" shall have the meaning ascribed to it in
15 K.S.A. 40-4602 and amendments thereto.

16 Sec. 3. This act shall take effect and be in force from and after its
17 publication in the statute book.

Summary of HB818 relating to the Portability and Accessibility of Health Insurance
Rep. Doug Ervin

Consider that nearly 98% of all firms in Missouri are small businesses employing over half of all employees in the state – and this is also where two-thirds to three-quarters of all new jobs are created, yet less than half of Missouri small businesses do not offer coverage for their employees, whereas 96% of all businesses with more than 50 employees do.

We are also aware that approximately half of Missouri's uninsured work for small businesses.

Also consider that up to 40% of workers who get their health insurance through their employer never advance their career by going to another company, they never start a small business, or engage in an entrepreneurial activity, because they are afraid of losing their health insurance.

Our current health care delivery model is extensively regulated with a substantial reliance on third-party payment systems that distort incentives coupled with the lack of transparency in prices and quality measures limiting the effectiveness of competition. Add in the fact that societal attitudes towards health care are different from other goods and service sectors and you have an environment that is difficult to transform.

The key components of such a paradigm shift will embrace the market and seek to improve it through ownership and transparency. Ownership is only possible when the market distortions are leveled for consumers in the marketplace. It will also require consumers to “come to grips” with the public consequences of their private actions. In the treatment of health insurance tax equity and portability must be addressed.

The proposal begins to fundamentally change our paradigm from an employer-sponsored health insurance model to an ownership model for the purposes of health insurance in the small group market.

We already enjoy ownership of our car, life, and homeowners insurance. They are not connected to the workplace and they follow us from job to job. Our health insurance should not be connected or dependent upon our place of employment.

This ownership of health insurance is possible when we have a market and regulatory environment that promotes the portability of health insurance, i.e. the ability to “take it with you” from job to job, and tax equity – the ability to leverage the federal and state tax codes for all consumers in the health insurance market.

This new ownership approach is a way to reorient the state's health care policy toward the objectives of the individual and away from the employer, insurers, providers, and government.

It provides an alternative for small employers who would rather make defined-contributions to employees versus the traditional small group plan offerings and it allows individuals who own an individual policy to “take it with them” from job to job.

Under this approach,

- All employees working for small businesses in Missouri will now have the same pre-tax payment advantages as those working for large companies.
- Employees are given the ability to shop the market for the health insurance plan that best fits the needs of their families while promoting competition among plans.
- Under this plan, employees will enjoy the promise of continuity in coverage.
- And they will be able to choose their doctor and hospital networks providing for the continuity of care.
- And they will own their health insurance and be able to take it with them if they choose to move from job to another.

And for the employers:

- Small employers can opt to make defined-contributions to employees versus purchasing a traditional small group plan.
- This results in lower administrative costs and better predictability of future costs for the small employer and it effectively gets them out of the health insurance business and back to their core business.
- The small employer may also see higher satisfaction from their employees as they choose the plans that best fit their needs.

This approach allows small employers to assist their employees in purchasing and owning the health insurance plan that best fits the needs of the employee and it levels the playing field across all employers – large and small – giving all employees the same federal and state tax advantages for the purchase of health insurance.

It also requires us to bring the Missouri Health Insurance Pool, or MHIP, into HIPAA compliance resulting in a lower threshold for one to be considered “uninsurable” resulting in an affordable option as the carrier of last resort.

Current MHIP eligibility is allowed for individuals:

1. Who were turned down for individual health insurance or HMO coverage within the past six months because of medical condition or health history.
2. Who were offered individual health insurance or HMO coverage within the past six months at a premium that exceeded 300% of the standard rate for individual coverage.
3. Who was previously covered under another state's medical high risk pool and applies for MHIP coverage within thirty days of becoming a Missouri resident.
4. Who was previously covered under an employer's group health plan under COBRA but attained the maximum coverage period.

5. Who was involuntarily terminated from prior health coverage for any reason. An example would be if an insurance carrier chose to withdraw from the Missouri health insurance market.

NEW MHIP eligibility:

1. An individual is rejected by at least two insurers.
2. An individual is refused coverage with a rate in excess of the standard plan rate.
3. A federally defined eligible individual who has not experienced a significant break in coverage.
4. A trade act eligible individual.
5. Each resident dependent of a person who eligible for the high risk pool.
6. Any person whose health insurance coverage was involuntarily terminated and who has not had a signification break in coverage.
7. Any person whose rates have increased and now exceed 150% or more of the standard rate.

The premiums charged by the MHIP under current statute range from 150% to 200% of the market rate with the average being about 170% of market.

Under this proposal individuals would be eligible if the individual health insurance premium or HMO coverage offered within the last six months exceeds 150% of the market rate. The premiums charged would be lowered from a range of 150% to 200% of market to 125% to 135% of market.



Date: January 31, 2008
To: House Insurance & Financial Institutions Committee
From: Doug Wareham, Senior Vice President-Government Relations
Re: Opposition to H.B. 2676

Chairman Shultz and members of the House Insurance and Financial Institutions Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 347 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. Thank you for the opportunity to provide comments in opposition to House Bill 2676.

Looking specifically at the history and relevance of credit union field of membership requirements, I would like to focus on two important areas:

Credit Union Privileged Tax Status: I believe it would be a mistake to review Kansas law regarding credit union field of membership requirements without understanding the relationship between credit union fields of membership and the tax-exempt status that credit unions enjoy. Credit unions, unlike their bank and savings and loan competitors, are exempt from federal income tax and the Kansas privilege tax. The relevance of the historic relationship between a credit union's field of membership and a credit union's tax-exempt status has been recognized by Congress, by the Kansas Legislature and despite what you heard yesterday, by the legal system.

You heard yesterday, the State of Missouri addressed the very question we are grappling with today. The Missouri State Legislature revised their state's credit union field of membership law after a Cole County (Missouri) District Court found that the Missouri Department of Credit Unions had allowed the expansion of credit union fields of membership beyond what was authorized by Missouri state law. At this time, I would like to highlight the text from a Cole County District Court Ruling that I believe should be considered by this committee. In its ruling, the District Court judge stated the following:

Credit Unions sprang from the Great Depression. Credit unions are member-owned and not-for-profit and owing to their genesis they have traditionally provided financial services to people of modest means. Thus, Congress granted them tax exemption. The state (Missouri) provides such an exemption as well. However, in order to prevent credit unions from unfairly competing with banks, who do pay state and federal taxes, both Congress and the Missouri legislature have restricted credit unions to include only those persons who reside or work in a well-defined local neighborhood, community, or rural district or share a common occupation, association, or employer. (A complete copy of the Cole County District Court ruling is attached).

I felt I needed to reference this portion of the Judge’s ruling to provide some historical background as to our interest in credit union expansion. Also included in my testimony (**see green attachment**) is a one page document that shows Missouri’s Credit Union Field of Membership Code and Kansas’ law pertaining to field of membership restrictions. Just as the Cole County District Court judge decreed in Missouri, we believe Kansas law (K.S.A. 17-2205) was designed to limit Kansas credit unions to credible occupational groups and meaningful geographic areas. Failure to enforce field of membership requirements places tax-paying financial institutions at a significant disadvantage.

Serving People of Modest Means: A fundamental change has occurred within the credit union industry that has separated the industry into two distinct groups – diversified conglomerate credit unions that have implemented aggressive growth strategies and traditional credit unions that continue to embody Congress’ original charge of serving “people of modest means” and holding true to common bond requirements. During the interim legislative hearings on this topic and at yesterday’s hearing, it was stated the Kansas Department of Credit Unions has no statutory or regulatory role in ensuring credit unions focus their efforts on low income Kansans. Why is this relevant to today’s discussion?

In 2003, a United States Government Accountability Office (GAO) Report (**see blue attachment**) indicated the percentage of middle/upper income customers was actually higher for credit unions (64%) than banks (58%). The same report showed that while only 16% of credit union customers fell into the “low income” category, the percentage of low income customers for banks stood at 26%. These GAO statistics are further substantiated by a report published in 2005 by the National Community Reinvestment Coalition (NCRC), which criticized the credit union industry for serving fewer households of modest means than other financial institutions. The NCRC report was equally critical of large bank-like credit unions and stated that **they were benefiting politically from the efforts of those staying true to the traditional credit union philosophy while avoiding the responsibility to do so.**

Allowing credit unions to lose focus on their original affinity groups, and in Kansas allowing statewide fields of membership, would seem to further remove credit unions from their original charge – serving people of modest means. It also brings into question the justification for the tax-exempt status enjoyed by large credit unions that are competing with both locally-based traditional credit unions and tax-paying community banks. I looked up the five state-wide credit unions cited in the post audit report, along with Community American Credit Union, to create a better picture of the size of organizations we are talking about.

<u>Credit Unions w/ Statewide Fields of Membership</u>	<u>Total Assets</u>
Community America (Kansas City, Mo.)	\$1,517,641,000
Golden Plains Credit Union (Garden City)	\$209,808,000
Kansas Super Chief Credit Union (Topeka)	\$139,721,000
Mid-American Credit Union (Wichita)	\$117,910,000
Hutchinson Credit Union (Hutchinson)	\$105,709,000
Credit Union 1 of Kansas (Topeka)	\$74,749,000

The statistics I’m sharing were pulled from the National Credit Union Administration’s website and I share them to compare the size of these organizations with the median asset size of Kansas credit

unions, which is only \$7,657,000. Clearly these large, statewide organizations are a breed apart from traditional credit unions and are in fact larger than 59% of the banks currently operating in Kansas.

I hope you will agree that the credit union field of membership requirements are a fundamental requirement adopted by the Kansas Legislature in the form of K.S.A. 17-2205 to keep credit unions focused on their intended mission and to protect the integrity of financial institutions in Kansas that are required to pay the federal income tax and the Kansas privilege (income) tax. The introduction of H.B. 2676 is simply an attempt by the Kansas Credit Union Association to abandon that fundamental requirement and should be rejected by this committee.

For the record, Kansas bankers are not opposed to paying these taxes, although eliminating them would create the level playing field we are seeking. We understand the important role state and federal income taxes play in supporting our state and nations infrastructure. We cannot, however, sit idly by when tax-exempt competitors and their regulator first ignore Kansas law (K.S.A. 17-2205) designed at least in part to protect tax-paying financial institutions and now, when faced with a State Legislative Post Audit Report that sheds light upon the credit union industry's non-compliance, they simply ask the Kansas Legislature to codify their actions.

Are credit union field of membership requirements relevant? Yes! In light of the Department's unwillingness to enforce the law as currently written, more prescriptive requirements regarding credit union fields of membership needs to be adopted by the Kansas Legislature. Additionally, state standards that will foster greater transparency and accountability of the Department's internal approval processes for branching and field of membership modifications also need to be adopted. **Greater transparency of the process will lead to better compliance.**

On behalf of the Kansas Bankers Association, I want to inform you that we have introduced legislation to establish credible and enforceable field of membership and transparency requirements for state-chartered credit unions in Kansas. Our proposal, which is modeled after federal requirements adopted by Congress for federally-chartered credit unions, has been introduced in the Senate. A Senate Financial Institutions & Insurance Sub-Committee comprised of Senator Dennis Wilson, Senator Karin Brownlee and Senator Jim Barone has been appointed to search for a compromise on this issue. We hope the Kansas Credit Union Association will come to the table and work toward a reasonable and equitable outcome.

Once again, we urge this committee to refrain from taking action upon H.B. 2676, which we believe would virtually eliminate field of membership or common bond requirements for state-chartered, tax-exempt credit unions in Kansas. We encourage this committee to oppose this one-sided proposal and we look forward to continuing this discussion when a fair and credible solution is identified. Thank you for the opportunity to appear in opposition to H.B. 2676 and I am happy to respond to any questions you might have.

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

MISSOURI BANKERS ASSOCIATION and)
CENTURY BANK OF THE OZARKS,)
Plaintiffs,)

v.)

Case No.: 01CV325296

DIRECTOR OF THE MISSOURI DIVISION OF)
CREDIT UNIONS, THE CREDIT UNION)
COMMISSION OF THE STATE OF MISSOURI,)
SPRINGFIELD TELEPHONE EMPLOYEES)
CREDIT UNION, and MISSOURI CREDIT)
UNION SYSTEMS,)
Defendants.)

v.)

MISSOURI BANKERS ASSOCIATION and)
BANK OF WASHINGTON,)
Plaintiffs,)

v.)

Case No.:02CV323401

DIRECTOR OF THE MISSOURI DIVISION OF)
CREDIT UNIONS, THE CREDIT UNION)
COMMISSION OF THE STATE OF MISSOURI,)
SOUTH COMMUNITY CREDIT UNION, and)
MISSOURI CREDIT UNION SYSTEM, INC.,)
Defendants.)

v.)

MISSOURI BANKERS ASSOCIATION and)
HAMILTON BANK,)
Plaintiffs,)

v.)

Case No.: 02CV323402

DIRECTOR OF THE MISSOURI DIVISION OF)
CREDIT UNIONS, THE CREDIT UNION)
COMMISSION OF THE STATE OF MISSOURI,)
CENTRAL COMMUNICATIONS CREDIT)
UNION, and MISSOURI CREDIT UNION)
SYSTEM, INC.)

Defendants.)
)
 STATE OF MISSOURI, ex rel., MISSOURI)
 BANKERS ASSOCIATION and ALLEGIANT)
 BANK, f/k/a The South Side National Bank and)
 The Bank of St. Charles,)
 Plaintiffs,)
)
 v.)
)
 DIRECTOR OF THE MISSOURI DIVISION OF)
 CREDIT UNIONS, THE CREDIT UNION)
 COMMISSION OF THE STATE OF MISSOURI,)
 EDUCATIONAL EMPLOYEES CREDIT UNION,)
 and MISSOURI CREDIT UNION SYSTEM, INC.,)
 Defendants.)
)
 v.)
)
 STATE OF MISSOURI, ex rel., MISSOURI)
 BANKERS ASSOCIATION and WOOD)
 HUSTON BANK,)
 Plaintiffs,)
)
 v.)
)
 DIRECTOR OF THE MISSOURI DIVISION OF)
 CREDIT UNIONS, THE CREDIT UNION)
 COMMISSION OF THE STATE OF MISSOURI,)
 and CITY UTILITIES EMPLOYEES' CREDIT)
 UNION,)
 Defendants.)

Case No.: 02CV324797

Case No.: 03CV323001

JUDGMENT AND ORDER

The instant matter comes before this court upon the consolidation of five cases. By agreement of all parties, the matter ripe for final order and judgment is Count I of the First Amended Petition filed on April 22, 2004. At issue is the relationship between § 370.080.2(2), RSMo. and 4 CSR 105-3.010. § 370.080.2(2) states that a credit union may include both persons

who reside or work “in a well-defined local neighborhood, community, or rural district as such terms are defined by the Commission.” The Commission referred to in § 370.080 is the Credit Union Commission of the State of Missouri (“CUCOM” or “Commission”). The Commission defined “local neighborhood, community, or rural district” as “a city, township, county, telephone area code, zip code, or other geographical areas with clearly defined boundaries, and/or in an area which includes persons with common interests.” 4 CSR 105-3.010(1). This definition is but one of five definitions authored by the Commission in 4 CSR 105-3.010. That regulation also defined: immediate family; household; underserved community; and low income area.

It is the judgment of this court that the definition of a well-defined local neighborhood, community, or rural district, as pronounced by the Commission in 4 CSR 105-3.010(1) is illegal because it conflicts with the authorizing statute. It is the further judgment of this court that the other definitions found in 4 CSR 105-3.010 cannot be severed from it and therefore it is the order of this court that 4 CSR 105-3.010 is stricken in its entirety as unlawful and invalid.

INTRODUCTION

The plaintiffs in the five consolidated cases now before this court include the Missouri Bankers Association and several banks chartered by the State of Missouri. The defendants in these five consolidated cases include the Director of the Missouri Division of Credit Unions, the Credit Union Commission of the State of Missouri, and various credit unions chartered by the State of Missouri.

As noted, the legislature authorized the Commission to define the terms “neighborhood” “community” or “rural district.” § 370.080.2(2). However, by that section the legislature required that the Commission’s definitions be confined to persons who reside or work in “well-

defined local" neighborhoods, communities, or rural districts. Thus, the authorization by the legislature to the Commission to define such terms as "neighborhood," "community," or "rural district" was not unlimited. Those definitions had to be of a well-defined local nature. The local nature of credit unions was a paramount feature in their creation and is a guiding principle in their present incarnation.

Credit unions sprang from the Great Depression. Credit unions are member-owned and not-for-profit and owing to their genesis they have traditionally provided financial service to people of modest means. Thus, Congress granted them tax exemption. The state provides such an exemption as well. However, in order to prevent credit unions from unfairly competing with banks, who do pay state and federal taxes, both Congress and the Missouri legislature have restricted credit unions to include only those persons who reside or work in a well-defined local neighborhood, community, or rural district or share a common occupation, association, or employer. § 370.080.2(1)(2), *RSMo*.

When the Commission defined a local neighborhood, community, or rural district to include such areas as those within a telephone area code or a zip code, it changed fundamentally the mission of a credit union as envisioned by both Congress and the legislature. That mission was to meet the credit needs of people with modest means who were associated with one another. Because of the Commission's definition it changed the nature of a credit union; instead of members with a common interest and bond in association with one another, the Commission authorized the formation of a new entity – one where a myriad of people from all walks of life, with no particular association with one another, and in large and demographically diverse geographical zones deposit their money, borrow money, and have their other banking needs

fulfilled.

Consequently, individual banks, and the Missouri Bankers Association, representing the interest of approximately three hundred eighty (380) commercial banks and savings and loan associations located throughout the State of Missouri (the banks), challenged the Commission's adoption of 4 CSR 105-3.010(1). Essentially, Plaintiffs argue that the broad expansion of geography and number envisioned by said regulation flies in the face of the purpose of credit unions, all of which are not-for-profit, to be owned by members who share a common occupation, association, or employer, or reside or work in well-defined, neighborhoods, communities, or rural districts.

Specifically, the banks contend that 4 CSR 105-3.010 should be declared invalid and unlawful because: 1) it lacks statutory authority; 2) it conflicts with the authorizing statute; 3) it is an attempt to improperly modify the statute; 4) it is vague and ambiguous; 5) it is an abuse of discretion; 6) it is unreasonable; 7) it is arbitrary and capricious; and, 8) it violates due process.

In light of this court's judgment that the rule is illegal because it conflicts with the authorizing statute, all others grounds advanced by plaintiffs are denied as moot.

DECISION

Credit unions in Missouri may draw customers, who become members, from one of two different kinds of fields of membership. They may either seek customers from individuals who belong to a group sharing a common occupation, association or employer, or they may seek customers from a group of persons "who reside or work in a well-defined local neighborhood, community, or rural district . . ." § 370.080.2, *RSMo*.

The clear intention of the legislature, as found in § 370.080.2(2), was to limit Missouri

credit unions to meaningful local **geographic areas**, in furtherance of the long-standing credit union objectives of serving members who know each other and who share common values and concerns. This intention was reflected in the substantially similar federal statute applicable to federal credit unions. *P.L. 105-219, § 2, 112 Stat. 913.*

It is particularly noteworthy that Congress determined that the mission of credit unions was to meet the credit needs and savings needs of customers of modest means. *Id.* Congress stated that in order for this mission to be fulfilled it was essential that credit unions have 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 long-understood sense of cohesion or identity.” *Id.*

The insertion of the word “local” before the words “community, neighborhood, or rural district” in 12 USC § 759(b)(3) was construed by the National Credit Union Administration in 63 Fed. Reg. 72, 012(1998) as follows:

“[T]he addition of the word ‘local’ to the previous statutory language was intended as the limiting factor and . . . a more circumspect and restricted approach to chartering community credit unions appears to be the congressional intent.”

No words in the phrase “well-defined local neighborhood, community, or rural district” are defined in § 370.080.2(2), RSMo. Instead, the legislature authorized the Commission to define those words. However, the Commission cannot define the words in a way such as to be inconsistent or in conflict with the statute. Thus, the definitional rule issued by the Commission must not conflict with its governing statute, otherwise it is invalid under § 536.014(2), RSMo. As stated in *State Ex Rel Doe Run Company v. Brown*, 918 S.W. 2d 303, 306 (Mo.App. E.D.

1996), “[I]t is well settled that a regulation may not conflict with a statute and if it does, the regulation must fail.”

Because the definition of a “well-defined local neighborhood, community, or rural district” as set out in 4 CSR 105-3.010(1) conflicts with § 370.080.2(2) it is invalid because it is in conflict with the governing statute.

DICTIONARY MEANING

Because none of the words “well-defined local neighborhood, community, or rural district” is defined in § 370.080, the plain and ordinary meanings of these words is to be derived from the dictionary. *Lincoln Industrial Inc. v. Director of Revenue*, 51 S.W. 3d 462, 465 (Mo.Banc. 2001).

The plain, usual, and ordinary meaning of “neighborhood” is “the quality or state of being immediately adjacent or relatively near to something.” *Webster’s Third New International Dictionary of the English Language Unabridged* (1993), p. 1514.

The plain, usual, and ordinary meaning of “community” is “a body of individuals organized into a unit or manifesting usu[ally] with awareness of some unifying trait: . . . the people living in a particular place or region and usu[ually] linked by common interests; people with common interests living in a particular area. *Webster’s Third New International Dictionary of the English Language Unabridged* (1993), p. 460; *Webster’s New Collegiate Dictionary* (1979), p. 226.

The plain, usual, and ordinary meaning of “rural district” is “a subdivision of an administrative county that usu[ally] abrades several county parishes and is governed by a council.” *Webster’s Third New International Dictionary of the English Language Unabridged*

(1993), pp. 1990 and 66.

The plain, usual, and ordinary meaning of "local" is "characterized by, relating to, or occupying a particular place; characteristics are confined to a particular place: not general or wide spread." *Webster's Third New International Dictionary of the English Language Unabridged* (1993), p. 1327.

Finally, with regard to the initial words of the phrase – "well-defined" – it is defined as "clearly outlined, characterized, or delimited." *Webster's Third New International Dictionary* (1993), p. 592.

TELEPHONE AREA CODE

The telephone area code portion of 4 CSR 105-3.010(1) conflicts with § 370.080.2(2) because a telephone area code is not a "well-defined local neighborhood, community, or rural district," and thus this portion of the rule will permit something which the statute does not permit.

A telephone area code is merely a prefix attached to telephone numbers for the purpose of directing long-distance calls to telephone company subscribers. Each "code" is nothing more than a 3 number designation corresponding to a geographic area that is used to begin the dialing sequence for purposes of reaching a telephone located outside of the dialer's area. *In the Matter of Investigation into the Exhaustion of Telephone Numbers and the 314 Numbering Plan Area*, 3 MO. P.S.C. 3d 459 (1995). Therefore, a "telephone area code" is not a geographic area at all, and thus it cannot be a "neighborhood, community, or rural district," each of which constitutes, in this context, a geographic area. Consequently, including a "telephone area code" in the Commission's definition is not consistent with the statute, in conflict with it, and beyond its

authorizing scope.

This portion of 4 CSR 105-3.010(1) has been construed and applied by the Commission to mean “the geographic area to which a telephone area code has been assigned,” or something similar to that; however, even if those additional words were supplied to the rule, that would not save this kind of area from inconsistency with and conflict with the governing statute. Telephone area code areas do not fit into the plain meaning of the statutory words – “well-defined local neighborhood, community, or rural district.” For instance, the areas assigned to the six different telephone area codes in Missouri are as follows:

1. Have very large populations. They included the following in 2000:
 - a. 573 area code – 1,034,736
 - b. 314 area code – 1,364,504
 - c. 636 area code – 639,258
 - d. 417 area code – 901,874
 - e. 816 area code – 1,160,148
 - f. 660 area code – 456,200

Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2, H-6, and H-13.

2. Cover very large geographic areas. Those include the following:
 - a. 573 area code – 23,272 square miles
 - b. 314 area code – 61 square miles
 - c. 636 area code – 3,204 square miles
 - d. 417 area code – 16,677 square miles
 - e. 816 area code – 4,829 square miles

- f. 660 area code – 18,507 square miles

Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-3.

3. Contain municipalities that are quite distant from one another, including, for example, the following:

- a. 350 miles between Kennett and Canton in the 573 telephone area code;
- b. 248 miles between Thayer and Rich Hill in the 417 telephone area code;
- c. 287 miles between Butler and Kahoka in the 660 telephone area code;
- d. 91 miles between Harrisonville and St. Joseph in the 816 telephone area code; and
- e. 88 miles between Warrenton and DeSoto in the 636 telephone area code.

Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-1 and H-2.

4. Are made up of large numbers of many different governmental and non-governmental districts and entities, including the following:

- a. Multiple legislature districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2, H-10, and H-11);
- b. Multiple judicial districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-12);
- c. Multiple municipalities (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-5);
- d. Multiple school districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-8);
- e. Multiple institutions of higher education (Joint Exhibit 1, Joint Stipulation

- of Facts, Exhibits H-2 and H-9);
- f. Multiple counties (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-1, H-2, and H-13);
 - g. Multiple zip codes (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-14);
 - h. Multiple newspapers, radio stations, and television stations (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-15);
 - i. Multiple local chambers of commerce (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-16);
 - j. Multiple public water supply districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-17);
 - k. Multiple fire districts and fire departments (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-18);
 - l. Multiple police departments (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-19);
 - m. Multiple hospitals (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-20);
 - n. Multiple industrial development authorities (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-21);
 - o. Multiple congressional districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-22); and
 - p. Multiple commercial and retail districts (Testimony of Max Cook).

5. Have boundaries that change relatively frequently, given the creation of three new area codes in the second half of the 1990s and the likely division of four of the six current telephone area codes in Missouri within the next ten (10) years. (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2, H-3, and H-4).

For purposes of illustrating the lack of "common interests" among people who live and work within the geographic area of a telephone area code, and some of the many important things that the people there do not have in common, the area assigned to the 417 telephone area code has:

- a. 23 districts of the Missouri house of Representatives and 8 districts of the Missouri Senate (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2, H-10, and H-11);
- b. 12 districts of Circuit Courts and 2 districts of the Court of Appeals (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-12);
- c. 93 municipalities (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-5);
- d. 121 school districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-8);
- e. 14 institutions of higher education (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-9);
- f. 23 counties (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-1, H-2, and H-13);
- g. 114 zip codes (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and

- H-14);
- h. 54 newspapers, 42 radio stations, and 8 television stations (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-15);
 - i. 34 local chambers of commerce (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-16);
 - j. Multiple public water supply districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-17);
 - k. 236 fire districts and fire departments (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-18);
 - l. Multiple police departments (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2, H-5, and H-19);
 - m. 27 hospitals (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-20);
 - n. Multiple industrial development authorities (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-21);
 - o. Multiple congressional districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-2 and H-22); and
 - p. Multiple commercial and retail districts (Testimony of Max Cook).

Telephone area code areas clearly are not "rural districts," because every telephone area code area in the state includes one or more good-sized municipalities and numerous smaller ones, and because a majority of the areas of telephone area codes have customers in urban areas. (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-1, H-2, and H-3). Neither can such an area be

considered a "neighborhood," given the fact that neighborhoods are primarily subareas of municipalities, and many cities and towns having multiple neighborhoods are included within each telephone area code area. Nor can a telephone area code area be construed as being a "community" in the context of the location restrictions in § 370.080.2(2), because each of them is so large and far flung, contains so many other smaller areas and represents no important "common interests" of the people living within that area, since the *only* thing they share in common is a three-digit prefix to their long-distance telephone numbers.

There is an inherent inconsistency in the defendants' argument that a small area is a community and then that a large area containing many such small "communities" is also a community, particularly when no nexus among them is provided other than a shared long-distance prefix. People who live in the area of a telephone area code simply do not thereby share any important common interests. Furthermore, these are not stable areas, and their boundaries will likely change dramatically before long, just as they have in the recent past. Therefore, the area of a telephone area code is inconsistent with and conflicts with § 370.080.2(2) because it is an attempt to permit a large area which is not a "well-defined local neighborhood, community, or rural district" to serve as an area for general membership in a credit union, and thus would permit what the statute does not permit.

ZIP CODE

The inclusion by Commission of a "zip code" in the definition of the statutory language is also inconsistent with and in conflict with the statute. First, a "zip code" is not a geographic area at all. "ZIP" is simply an acronym for "Zone Improvement Plan." *Joint Exhibit 3, Deposition of Donald Knoth, p. 6, Ex. 2.* Zip codes are categories created for mail processing services in order

to have an efficient mail delivery system, and they were established by the United States Postal Service. *Joint Exhibit 3, Deposition of Donald Knoth, pp. 8-9.* Therefore, a “zip code” by itself cannot be considered a “neighborhood, community, or rural district,” because it has nothing inherently in common with any of those things. Including this second type of “code” as one of the kinds of geographic areas to which geographic area credit unions are limited by § 370.080.2(2) again tries to mix disparate things, and that makes it inconsistent with and in conflict with the statute.

Furthermore, while one type of zip code does apply to a geographic area the Postal Service has three other types of zip codes which do not pertain to any geographical area at all. Post office box zip codes, unique zip codes, and firm zip codes simply do not apply to geographic areas. *Joint Exhibit 3, Deposition of Donald Knoth, p. 9; Plaintiffs’ Deposition Exhibit 1, pp. 191.* Therefore, the term “zip code” in the rule is in yet another way inconsistent with and in conflict with the statute, once again for its failure to identify local geographic areas for potential credit union group membership.

Some other characteristics of postal area zip code areas also make the inclusion of “zip code” in the rule invalid. For one thing, there can be questions about the specific areas covered by one of them. For example, in some locations people are only assigned a zip code number if and when they ask for local mail delivery. *Joint Exhibit 3, Deposition of Donald Knoth, pp. 26-28, 31-32.* In certain circumstances along boundaries between postal area zip code areas, places where people work may be located in the geographic area of one postal area zip code, but the businesses may receive their mail using the adjacent zip code. *Joint Exhibit 3, Deposition of Donal Knoth, pp. 16-21.* In addition, even the postal service itself does not have maps of each

five digit postal area code delivery area. *Joint Exhibit 3, Deposition of Donald Knoth, p. 24.*

Furthermore, zip codes are not stable areas, because if postal usage increases beyond a certain level, a postal area zip code area will be divided, and part of that area would be assigned a new postal area zip code number. *Joint Exhibit 3, Deposition of Donald Knoth, pp. 10-14.* Zip code areas are subject to change if and whenever the postal service determines that it would be appropriate to do so, which is done solely for purposes of the postal service's own efficiency, (*Joint Exhibit 3, Deposition of Donald Knoth, pp. 10-14, 41-42*) thus having little if anything to do with whether any changed area may include or be a "local neighborhood, community, or rural district."

Postal area zip codes may and do cross city and county lines. *Joint Exhibit 3, Deposition of Donald Knoth, pp. 14, 22-23.* People who work or reside in a postal area zip code area simply do not thereby really have any common interests or common identifying features.

All of these facts about zip codes show that they are not necessarily "neighborhoods" or "communities" or "rural districts." It cannot be said that the 65109 zip code area of Jefferson City and the 63101 zip code area of St. Louis and the 64456 zip code area of Worth County are each thereby either a separate "neighborhood" or a separate "community" or a separate and distinct "rural district." Perhaps the boundaries of zip codes would be a useful way to help identify the outer limits of a given neighborhood, community or rural district; but first the proposed area would have to become qualified in some other way as a neighborhood, community, or rural district. Simply picking out one zip code or a group of zip codes does not, by itself, conclusively show that the area so limited really is a neighborhood, community, or rural district. Therefore, the inclusion of "zip code" in 4 CSR 105-3.010(1) attempts to permit

something that the statute does not permit and is inconsistent with and in conflict with § 370.080.2(2), RSMo.

COUNTY

Another area included in the rule by the Commission was a "county." Missouri's counties have wide ranges in populations, from 2,382 for Worth County to 1,016,315 for St. Louis County. *Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-6 and H-13.* They also have internal characteristics that show how they do not all necessarily fit into the required statutory slots of a neighborhood, community, or rural district. All Missouri counties include:

- a. Multiple municipalities (*Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-1, H-5 and H-13*);
- b. Multiple zip codes (*Joint Exhibit 1, Joint Stipulation of Facts, Exhibit H-4*);
- c. Multiple school districts (*Joint Exhibit 1, Joint Stipulation of Facts, Exhibit H-8*);
- d. Multiple fire districts and/or fire departments (*Joint Exhibit 1, Joint Stipulation of Facts, Exhibit H-18*); and
- e. Multiple police departments (*Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-5 and H-19*).

In addition, some Missouri counties have:

- a. Multiple legislative districts (*Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-10 and H-11*);
- b. Multiple institutions of higher education (*Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-5 and H-9*);
- c. Multiple newspapers, radio stations, and television stations (*Joint Exhibit 1, Joint*

- Stipulation of Facts, Exhibits H-5 and H-15);
- d. Multiple local chambers of commerce (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-5 and H-16);
 - e. Multiple public water supply districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibit H-17);
 - f. Multiple hospitals (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-5 and H-20);
 - g. Multiple Industrial Development Authorities (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-5 and H-21);
 - h. Multiple congressional districts (Joint Exhibit 1, Joint Stipulation of Facts, Exhibit H-22);
 - i. Different work-commuting patterns (Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-7 and H-23); and
 - j. Multiple commercial and retail districts (Testimony of Max Cook and Richard Bagy).

Because of the multiplicity of differences that exist within them, not all Missouri counties can be deemed to be "communities," and clearly none of them would be a "neighborhood," and not all of them could be a "rural district." Therefore, this part of the rule also conflicts with § 370.080.2(2), RSMo.

TOWNSHIP

The Commission in 4 CSR 105-3.010(1) also identified a "township" as an area meeting the § 370.080.2(2) statutory restrictions. The first problem with the inclusion of this type of area

is its imprecision. In Missouri there are at least three kinds of townships. There are townships in township-organized counties under Chapter 65, RSMo.. Missouri has twenty-two counties with this kind of township. *Plaintiffs' Exhibit 1, State Auditor's Report No. 2003-30*. There are voting townships in other counties, whose function is merely to identify different subareas in a county for voting purposes. *Testimony of Marvin Register*. Voting townships have no other function or internal cohesion whatsoever. Additionally, there are congressional or survey townships. As a subdivision of land, a standard township consists of thirty-six sections and thirty-six square miles. *Judicial notice taken at the hearing*. Congressional townships were recognized very early in this state's history as being arbitrary divisions of territory. *Webb v. Lafayette Co., 67 Mo. 353 (1878)*. Because the rule does not identify which type of township is intended, and because none of these areas necessarily have any of the characteristics of a "well-defined local neighborhood, community, or rural district," the inclusion of "township" in the rule was also erroneous and inconsistent and in conflict with the statute.

CITY

"City" was another definition included in the rule by the Commission. A city, by definition, cannot be a "rural district." Furthermore, because "local neighborhoods" are primarily subareas of cities or towns, a city will not be a "neighborhood," either. The remaining question is whether each and every city in the State of Missouri can and should be considered to be a "community" for purposes of § 370.080.2(2), RSMo.

Two facts about cities in Missouri suggest otherwise. One is that not all municipalities in Missouri are "cities." Under Chapters 82, 81 and 82, RSMo., municipalities can be villages, towns, or cities of several different classes or types of organizations. In addition, there are wide

variations in characteristics among municipalities in this state, from their populations (from 29 in Lupus to 441,545 for Kansas City)(Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-6 and H-13) to the different kinds of governmental and non-governmental districts and entities that they may contain, for example, there are multiple legislative districts in Kansas City. *Joint Exhibit 1, Joint Stipulation of Facts, Exhibits H-10 and H-11.* Consequently, not every city in the state should be deemed to be a “local neighborhood, community, or rural district,” particularly without further information showing how and why it might qualify as one. Thus, this part of the definition found in 4 CSR 105-3.010(1) conflicts with § 370.080.2(2) and is inconsistent with it.

OTHER GEOGRAPHIC AREA WITH CLEARLY DEFINED BOUNDARIES

One of the final two areas included by the Commission in its rule – “other geographic areas with clearly defined boundaries” – is inconsistent with what a neighborhood is, or with a rural district is, or with what a community is, in the context of the subject statute. Such a nebulous area would not necessarily be a neighborhood or a rural district or have people with the types of common interests that can make a place a community. Therefore, this part of the rule is also inconsistent with and in conflict with § 370.080.2(2), RSMo. This is particularly true given that the legislative direction that these areas be “well-defined”; axiomatically, “other geographic areas with clearly defined boundaries” is poorly defined.

AREA WHICH INCLUDES PERSONS WITH COMMON INTERESTS

The second of these general definitions – “an area which includes persons with common interests” – is also flawed as inconsistent with, and in conflict with its governing statute. A group of people with common interests can include those who root for the St. Louis Cardinals, or the Kansas City Royals; or those who have an interest in golf, in gardening, or in any area of

narrow interest. However, such an area will not necessarily be a “neighborhood” or a “rural district,” and it will not necessarily be a “community” within the context of § 370.080.2(2), RSMo.

Indeed, the legislature has answered the question of what composes a “common interest” within the context of membership in a credit union: it is comprised of a group of people who share a common interest in an occupation, employment, or association. § 370.080.2(1), RSMo. The fact that some people who live in a certain geographic area share common interests does not mean that they should be able to open a geographic area credit union to all of the people who live and work there on that basis alone. If that interest is all they have in common, and if they wish to form a credit union, they should form one that would be limited to members of their association. Thus, enlisting this “common-interest area” as a separate definition in 4 CSR 105-3.010(1), the Commission again attempted to do something that is inconsistent with and in conflict with § 370.080.2(2), and has tried to permit something that the statute does not permit.

SEVERABILITY

Because this court has found 4 CSR 105-3.010(1) to be invalid, the entire regulatory definition is declared null and void as illegal. § 536.014, RSMo. It is stated in that statute that no department, agency, commission, or board rule shall be valid in the event that: 1) there is an absence of statutory authority for the rule or any portion thereof; 2) the rule is in conflict with state law; or 3) the rule is so arbitrary and capricious as to create a substantial inequity as to be unreasonably burdensome on the persons affected.

It is clear, pursuant to § 536.014, that an entire rule is to be declared invalid even if only a portion thereof has been found to be illegal. Erroneous regulations are a nullity. *Bartlett and*

Company Grain v. Director of Revenue, 649 S.W. 2d 220, 224 (Mo.App. 1983).

JUDGMENT

It is the judgment of this court that 4 CSR 105-3.010(1) is invalid and unlawful. That regulation issued by the Commission is in conflict with and in fact hostile to the mission of its governing statute § 370.080.2(2), RSMo. A credit union is a not-for-profit financial cooperative owned by members who share a common occupation, association, or employer, or who reside in a well-defined local neighborhood, community, or rural district.

The Commission issued a rule in conflict with the governing regulation of credit unions. The Commission, by its rule, attempted to authorize credit unions to expand in ways not contemplated by law and in contravention of the purpose and mission of credit unions.

Credit unions and banks are distinct entities. They have different governing rules and different tax rates. The Commission, by allowing credit unions to form in a way which makes them direct competitors of banks, is in violation of the structural framework declared by Congress and our state legislature.

ORDER

In accordance with this court's judgment, it is hereby declared that 4 CSR 105-3.010 is null and void. It is the further order of this court that this regulation shall be declared illegal in its entirety and no part thereof shall be severed therefrom. This Judgment is designated as being final for purposes of appeal, there being no just reason for purposes of delay.

Each party to bear its own costs.

Dated: March 24, 2006

By: Richard G. Callahan
Richard G. Callahan, Circuit Judge – Division II

Current Kansas Law

17-2205

Chapter 17.--CORPORATIONS

Article 22.--CREDIT UNIONS

17-2205. Membership of credit union. The membership shall consist of the organizers and such persons, societies, associations, copartnerships and corporations as have been duly elected to membership and have subscribed to one or more shares and have paid for the same, and have complied with such other requirements as the articles of incorporation may contain. **Credit union organizations shall be limited to groups (of both large and small membership) having a common bond of occupation or association or to groups residing within a well-defined neighborhood, community or rural district.**

History: L. 1929, ch. 141, § 5; L. 1951, ch. 204, § 2; L. 1972, ch. 57, § 2; July 1.

Missouri Law before the Cole County Court Judgment & before adoption of S.B. 591 by the Missouri Legislature in 2007

Missouri Revised Statutes Chapter 370 - Credit Unions

Membership of credit union, membership shares not to be pledged as security for loans.

370.080. 1. The membership shall consist of the organizers and such persons, societies, associations, copartnerships and corporations as have been duly elected to membership and have subscribed to one or more general shares, or one membership share and/or membership fee when required, and have paid for the same in the whole or in part, with the entrance fee as required by the bylaws, and have complied with such other requirements as the certificate of organization may contain.

2. A credit union shall be composed of one or more groups of persons. The members of each such individual group must share:

(1) A common occupation, association, employer or;

(2) A credit union may include those persons who reside or work in a well-defined local neighborhood, community or rural district as such terms are defined by the commission.



Highlights of GAO-04-91, a report to the Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

CREDIT UNIONS

Financial Condition Has Improved, but Opportunities Exist to Enhance Oversight and Share Insurance Management

Why GAO Did This Study

Recent legislative and regulatory changes have blurred some distinctions between credit unions and other depository institutions such as banks. The 1998 Credit Union Membership Access Act (CUMAA) allowed for an expansion of membership and mandated safety and soundness controls similar to those of other depository institutions. In light of these changes and the evolution of the credit union industry, GAO evaluated (1) the financial condition of the industry and the deposit (share) insurance fund, (2) the impact of CUMAA on the industry, and (3) how the National Credit Union Administration (NCUA) had changed its safety and soundness processes.

What GAO Recommends

With respect to the share insurance fund, GAO recommends that the Chairman of NCUA explore developing a risk-based funding system, improve the process for allocating overhead expenses, and refine the process for estimating future losses. To improve reporting, the Chairman should also use tangible indicators to determine whether credit unions are serving people in underserved areas. To help ensure safety and soundness, Congress may wish to consider making credit unions subject to internal control reporting and attestation requirements applicable to banks and thrifts and providing NCUA legislative authority to examine third-party vendors.

www.gao.gov/cgi-bin/getrpt?GAO-04-91.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard J. Hillman at (202) 512-9073 or hillmanr@gao.gov.

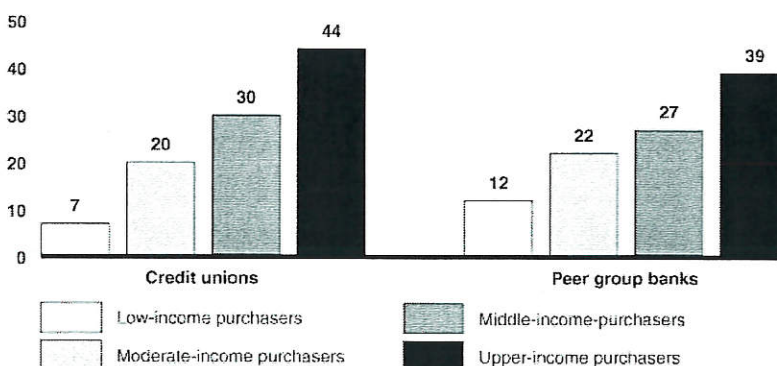
What GAO Found

The financial condition of the credit union industry has improved since GAO's last report in 1991, and the federal share insurance fund appears financially stable. However, a growing concentration of industry assets in large credit unions creates the need for greater risk management on the part of NCUA. The question of who benefits from credit unions' services has also been widely debated. While it has been generally accepted that credit unions have a historical emphasis on serving people of modest means, our analysis of limited available data suggested that credit unions served a slightly lower proportion of low- and moderate-income households than banks.

CUMAA and subsequent NCUA regulations enabled federally chartered credit unions to expand their membership, serve larger geographic areas, and add underserved areas. According to NCUA officials, these changes were necessary to maintain the competitiveness of the federal charter with respect to state-chartered credit unions. While NCUA has stated its commitment to ensuring that credit unions provide financial services to all segments of society, NCUA has not developed indicators to determine if credit union services have reached the underserved.

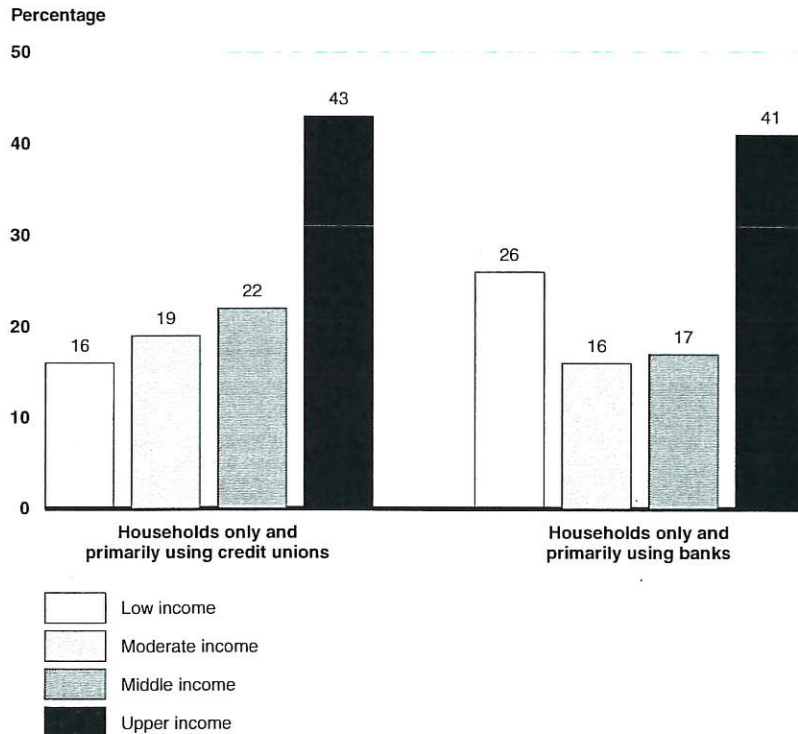
In response to the growing concentration of industry assets and increased services offered by credit unions, NCUA recently adopted a risk-focused examination and supervision program but still faces a number of challenges, including lack of access to third-party vendors that are providing more services to credit unions. Further, credit unions are not subject to internal control and attestation reporting requirements applicable to banks and thrifts. GAO also found that the insurance fund's rate structure does not reflect risks that individual credit unions pose to the fund, and NCUA's estimation of fund losses is based on broad historical analysis rather than a current risk profile of insured institutions.

Mortgages Made by Credit Unions and Banks, by Income Level of Purchaser, 2001
Percentage of loans



Source: 2001 HMDA database.

Figure 4: Income Characteristics of Households Using Credit Unions versus Banks, by Four Income Categories



Source: 2001 SCF.

Note: We found no statistical difference in the percentage of upper-income households when the only and primarily using credit union group and the only and primarily using bank group were compared.

We also attempted to further explore the income distribution of credit unions' members by separately analyzing households that only used credit unions or banks from those that primarily used credit unions or banks. However, the results were subject to multiple interpretations due to characteristics of the households in the SCF database. For example, when user groups are combined and compared, the results may look different than when the groups are separated and compared. Because such a high percentage of the U.S. population only uses banks (62 percent), the data obtained from the SCF is particularly useful for describing characteristics of bank users but much less precise for describing smaller population groups, such as those that only used credit unions (8 percent).

Key Provisions to KBA Bill:

1. **Field of Membership Clarification:** modeled after Federal Law

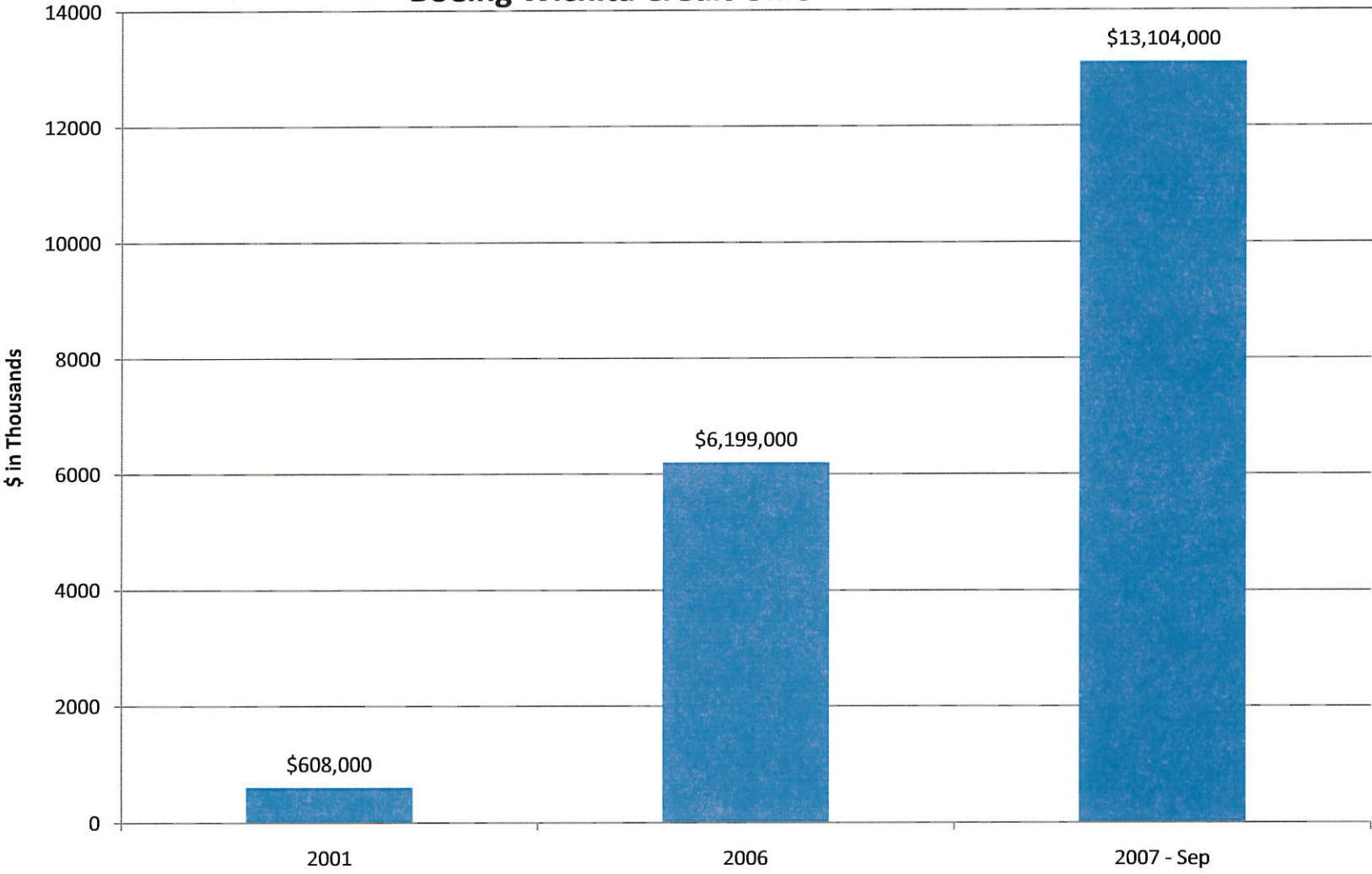
- CUs must make a choice to be either an occupational/associational CU or a community based CU
- CUs may have multiple occupational/association common bonds within limitations
- Community is defined to include: a city, township or county – however congressional districts and state boundaries are not included; multiple contiguous cities & counties with total population of 500,000 or less; or an MSA with a population of 1,000,000 or less.

2. **Transparency Provisions:** mostly modeled after the state banking code

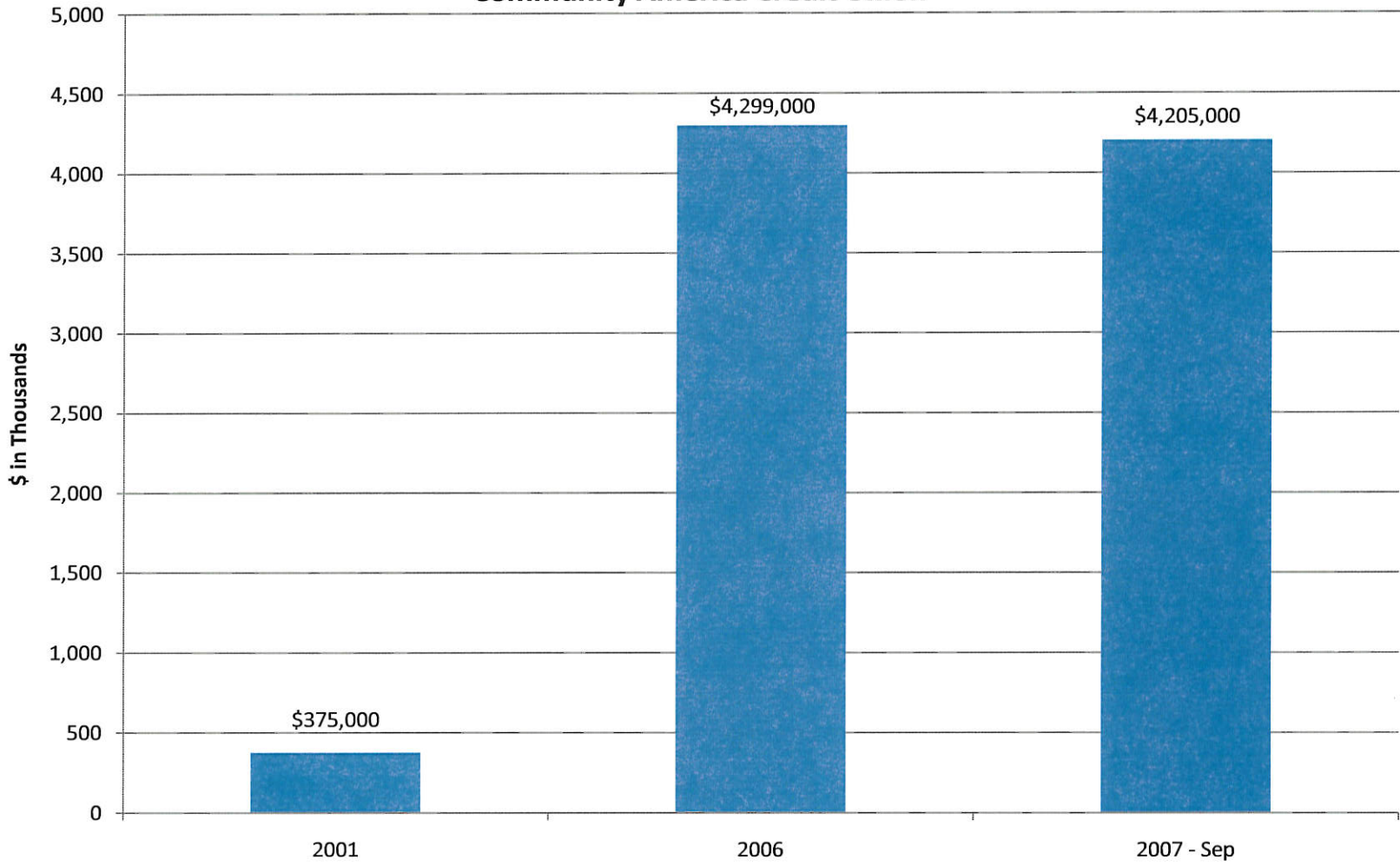
- Public notification in a local newspaper will be required under the following circumstances:
 - ✓ A change in a CU's place of business,
 - ✓ Application for a Kansas charter by a federally-chartered CU or CU chartered in another state,
 - ✓ Application by a "foreign" CU to do business in Kansas,
 - ✓ Mergers, and
 - ✓ Application for a new branch within the state.
- Publication in the *Kansas Register* will be required when an application to change an existing field of membership is submitted. (*This requirement does not exist under the banking code as banks do not have a field of membership restriction.*)

3. **Grandfathering of Existing CU Members:** Any person or organization currently a member of a CU will be able to maintain that membership to infinity.

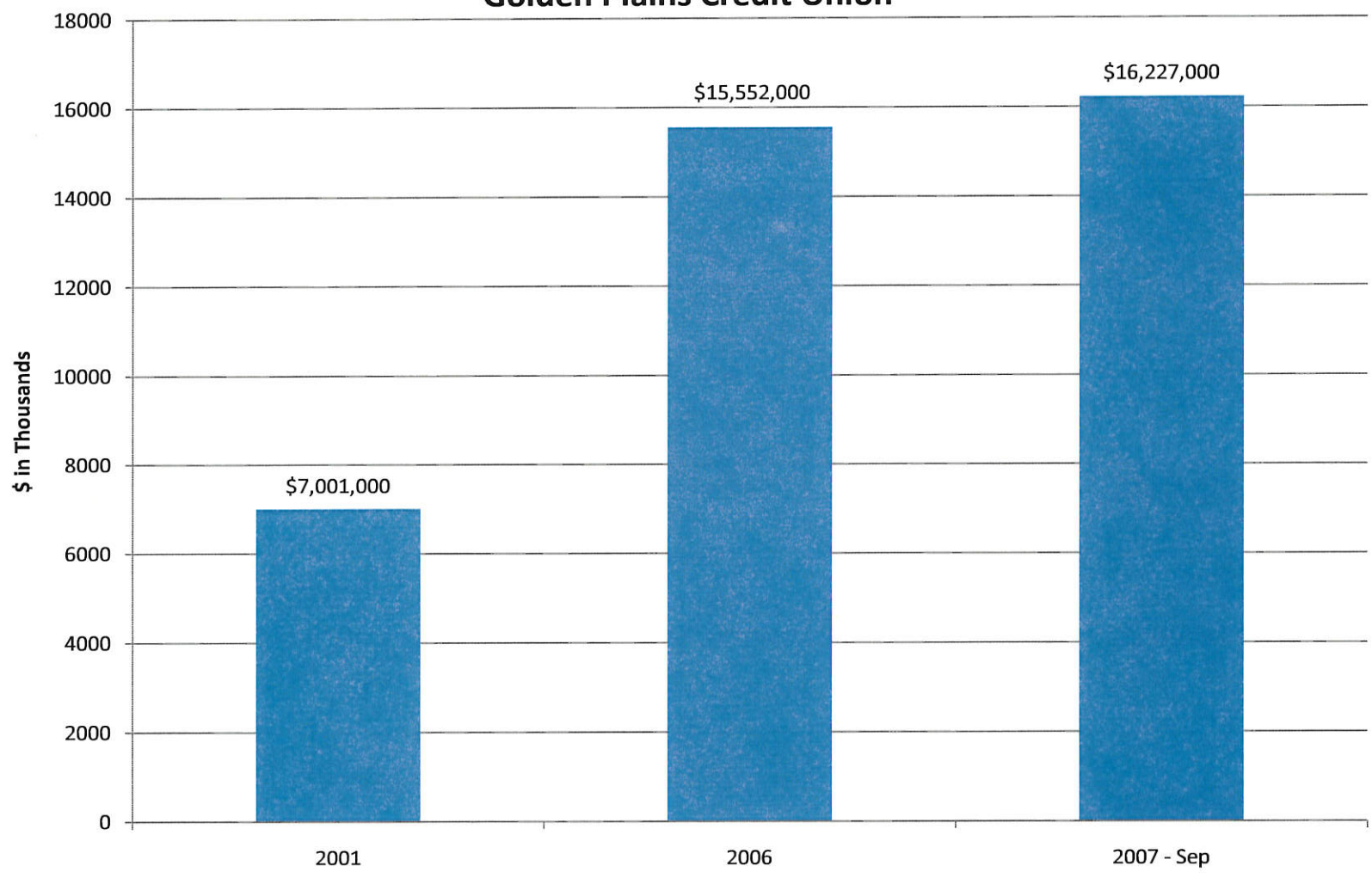
Credit Union Business Loans Boeing Wichita Credit Union



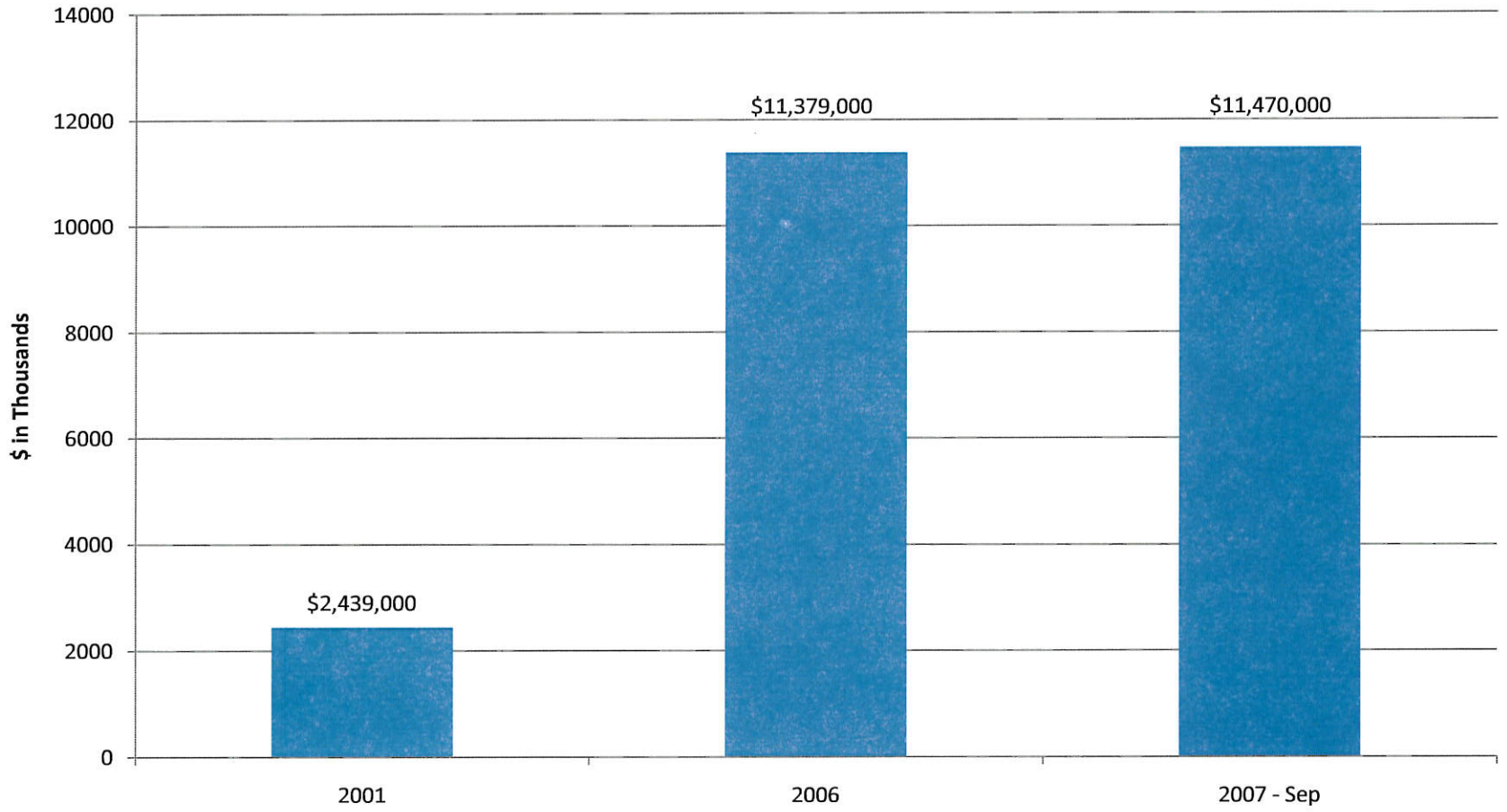
Credit Union Business Loans Community America Credit Union



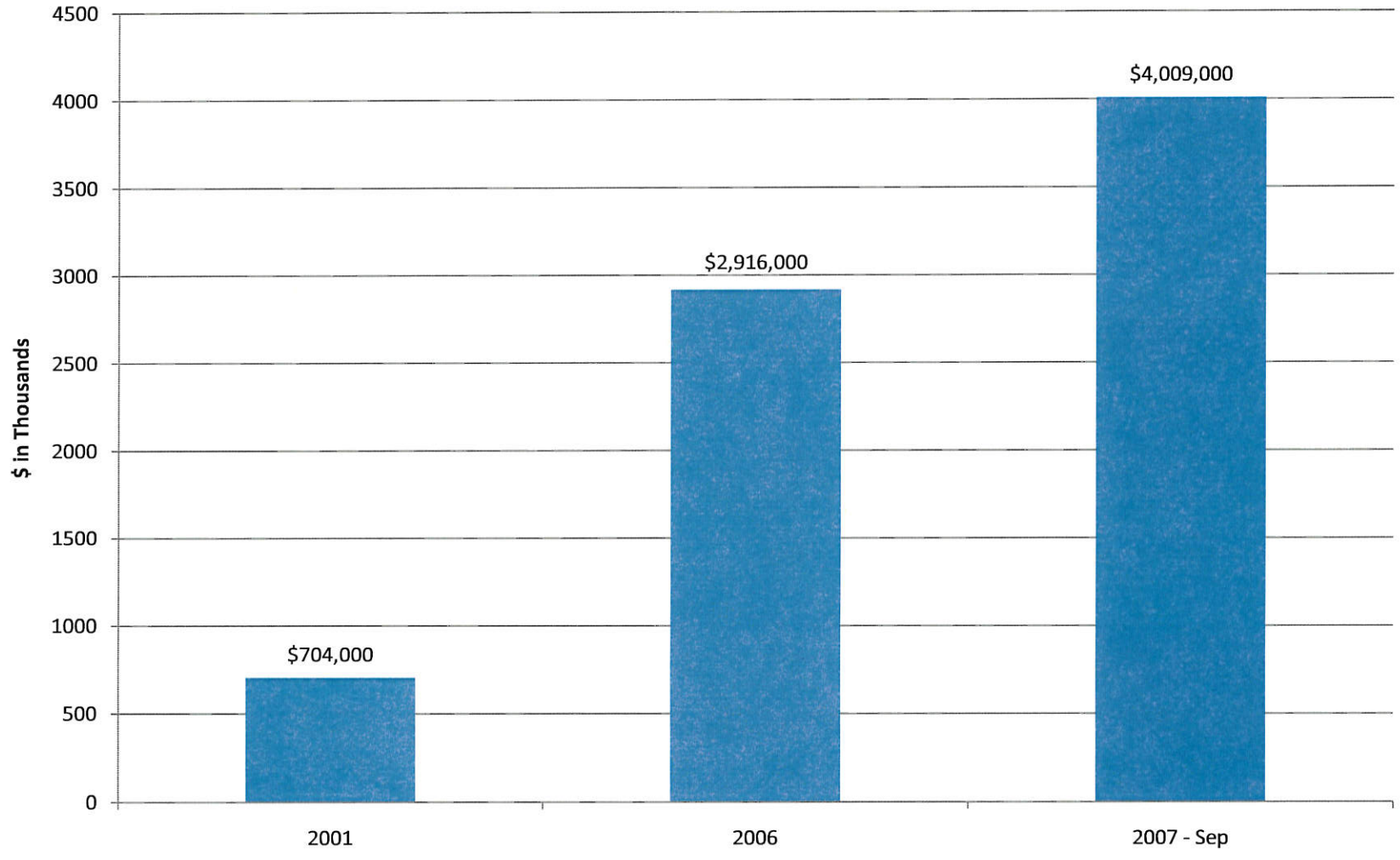
Credit Union Business Loans Golden Plains Credit Union



Credit Union Business Loans Hutchinson Credit Union



Credit Union Business Loans First Choice Credit Union



FIRST NATIONAL BANK *and* TRUST

"Since 1884"

PHILLIPSBURG LOGAN LONG ISLAND
KANSAS

Date: January 31, 2008

To: House Insurance & Financial Institutions Committee

From: Lloyd K. Culbertson, President First National Bank & Trust
 Phillipsburg, Kansas

Re: **Opposition to H.B. 2676**

Chairman Shultz and members of the House Insurance and Financial Institutions Committee, I am Lloyd K. Culbertson with First National Bank & Trust of Phillipsburg, Kansas. Phillipsburg is a rural community in Phillips County having a population of 2,668, located in North Central Kansas.

First National Bank and Trust is a mostly agriculture bank with \$149 million in total assets. In addition to First National Bank and Trust, Phillipsburg is home to two other commercial banks, a savings bank, and a branch of a credit union.

The credit union is headquartered in Garden City, Kansas with total assets of \$209 million. This credit union has a total of 12 branches. Below is a list of the towns where this credit union has branches, the population of each town and the other financial institutions in that town.

Garden City: six branches. population 28,451; 7 commercial banks, 1 savings bank, 1 savings & loan and 1 additional credit union serve this market.

Hays: Population 20,013; 5 commercial banks; 1 savings & loan and 1 additional credit union serve this market.

Lakin: Population 2,316; 3 commercial banks

Liberal: Population 19,666; 4 commercial banks

Phillipsburg: Population 2,668; 3 commercial banks, 1 savings bank

Quinter: Population 961; 2 commercial banks

Ulysses: Population 5,960; 3 commercial banks

HB 2676

Page Two

As you can see, these branches are all located in towns with one or more institutions in each community – providing for very competitive financial markets. It is my understanding that the credit union industry has stated that statewide, it has 5% of the market share. I can tell you from experience - from being a head-to-head competitor with the credit union in my community, I am not concerned with their percentage of statewide market share. What I am concerned about is how I am going to compete with an institution that pays no income tax and that is targeting my most affluent business and individual customers.

Credit Unions are able to price their deposit, loans, and other services without regard to any income tax expense. In 2005, First National Bank & Trust paid \$72,630 in state privilege taxes and in 2006, the bank paid \$70,336. In FY 2006 the State of Kansas collected \$31,058,000 in state privilege taxes, and in FY 2007 they collected \$31,126,000 in privilege tax from banks and savings institutions. In addition to the state privilege tax, banks and savings institutions have a federal income tax liability of 35%-38% of their profits. Credit unions did not pay any of these taxes which support many of the services that citizens of this state need.

I believe it is very important that we continue to encourage and support income tax paying businesses in the state. Our growth and profitability benefits our community and the entire state through the tax dollars we pay that help support the infrastructure and services that many enjoy.

Congressional history tells us that credit unions have been granted income tax exempt status from the Federal and State government in exchange for providing services to people who reside or work in well defined local neighborhoods, or share a common occupation, association or employer. Other co-ops in this state have similar restrictions on their service area in exchange for favorable tax treatment. Why have we allowed credit unions to be treated differently than other co-ops?

All banks and savings & loans are bound by Federal law to re-invest in the communities where they live and serve. This law requires each institution to declare its “community” and then prove that it is serving each segment of that geographic area. Credit unions have no such requirement. There is no one assuring that a credit union claiming the entire state as its “common bond” is, in fact, serving each segment of that geographic area.

I am respectfully asking this committee to refrain from taking action upon this bill, which would eliminate any field of membership or common bond requirements for state-chartered, tax exempt credit unions in Kansas. This does not present a level playing field to the tax paying businesses that are already serving these markets.

Thank your for the opportunity to appear in opposition to H.B. 2676. I am happy to respond to any questions you might have.

January 31, 2008

House Committee on Insurance & Financial Institutions

Chairman Shultz and Members of the Committee,

Today I appear before you on behalf of the member bankers of the Community Bankers Association of Kansas (CBA). My name is Shari Weber and I am CEO of CBA. I thank you for the opportunity to introduce our member bankers. Thank you for allowing us to appear today and discuss our opposition to HB 2676.

You have heard a great deal of testimony about the specifics of how banks and credit unions operate and are regulated over the past two days of the hearings on HB 2676.

The questions raised in this hearing are not just abstract issues but are very real for those who compete in the business environment of your communities. Failure to follow the law negatively impacts not only banks, but also the citizens in communities across the state. The expansion of credit unions' field of membership beyond what the law allows violates not only the public trust, but also the original intent for which credit unions were established.

In reviewing the issues raised in the Legislative Division of Post Audit report regarding credit unions' field of membership expansion, my concern, and that of the Community Bankers Association, is the safe and sound nature of financial institutions in Kansas. Therefore, we are pleased the Post Audit report noted that in general the financial systems for Kansans are both safe and sound. We are concerned, however, like many others, about the issues raised in the audit. In particular, we are concerned about the expansion of the field of membership beyond what current law allows for credit unions. HB 2676 simply asks you to change the law just to accommodate the credit unions' practice of being non-compliant with state statute for decades. Therefore, we strongly oppose striking the language in the current statute which holds credit unions accountable and outlines appropriate parameters for membership expansion.

Thank you for the opportunity to appear before you and I offer CBA members as a resource for any questions you may have regarding HB 2676 or the issues raised in Legislative Division of Post Audit report reviewing credit unions in Kansas.

We appreciate your service,



Shari Weber, CEO
Community Bankers Association of Kansas
Email: shari@cbak.com

House Insurance
Date: 1-31-08
Attachment # 4

Bank Members of Community Bankers Association of Kansas

First National Bank, Alma • Stockgrowers State Bank, Alma • Alta Vista State Bank, Alta Vista • First National Bank of Southern KS, Andale • Andover State Bank, Andover • First National Bank of Anthony, Anthony • Kanza Bank, Anthony • Farmers & Merchants State Bank, Argonia • Union State Bank, Arkansas City • Citizens National Bank, Arlington • First State Bank, Arma • Bank of Atchison, USB, Atchison • Citizens Bank of Kansas, N.A., Atlanta • Citizens National Bank, Attica • Farmers Bank & Trust, Atwood • Farmers State Bank, Atwood • State Bank of Bern, Axtell • Baldwin State Bank, Baldwin City • Community National Bank, Basehor • Bendena State Bank, Bendena • The Halstead Bank, Bentley • Peabody State Bank, Benton • State Bank of Bern, Bern • Midwest Community Bank, Beverly • Bison State Bank, Bison • State Bank of Blue Rapids, Blue Rapids • Citizens State Bank & Trust Co., Bremen • Farmers Bank & Trust, Brewster • Farmers National Bank, Buhler • Nekoma State Bank, Burdett • First State Bank, Burlingame • State Bank of Canton, Canton • State Bank of Carbondale, Carbondale • Cottonwood Valley Bank, Cedar Point • Citizens State Bank, Cheney • The Farmers State Bank, Circleville • Union State Bank, Clay Center • United Bank & Trust, Clay Center • First National Bank, Clifton • Community State Bank, Coffeyville • Peoples State Bank, Colby • Coldwater Native Bank, Coldwater • Legacy Bank, Colwich • United Bank & Trust, Concordia • State Bank of Conway Springs, Conway Springs • Montezuma State Bank, Copeland • Cottonwood Valley Bank, Cottonwood Falls • Swedish-American State Bank, Courtland • Downs National Bank, Down • State Bank of Downs, Downs • First Community Bank, Emporia • Union State Bank, Everest • Farmers State Bank, Fairview • Cottonwood Valley Bank, Florence • Union State Bank, Fort Scott • Fowler State Bank, Fowler • First National Bank, Frankfort • First National Bank, Fredonia • Freeport State Bank, Freeport • Farmers State Bank, Galva • Peoples State Bank, Garden City • Garden Plain State Bank, Garden Plain • First National Bank of Southern KS, Goddard • Peoples State Bank, Goodland • Community Bank of the Midwest, Great Bend • Signature Bank KC, Haddam • The Halstead Bank, Halstead • First National Bank of Anthony, Harper • Freeport State Bank, Harper • The First National Bank of Harveyville, Harveyville • BankHaven, Haven • The Trust Company of Kansas, Haven • Community Bank of Wichita Inc., Haysville • The First State Bank of Healy, Healy • First National Bank & Trust Co., Herington • Citizens State Bank, Hill City • First State Bank, Hill City • Hillsboro State Bank, Hillsboro • Denison State Bank, Holton • The Farmers State Bank, Holton • First National Bank, Hope • Union State Bank, Horton • First State Bank, Hoxie • Peoples State Bank, Hoxie • Denison State Bank, Hoyt • Citizens State Bank, Hugoton • Farmers National Bank, Inman • Johnson State Bank, Johnson • First National Bank & Trust Co., Junction City • Citizens Bank of Kansas, N.A., Kingman • Kanza Bank, Kingman • First State Bank, Kiowa • Nekoma State Bank, La Crosse • First Option Bank, La Cygne • Plains State Bank, Lakin • The Trust Company of Kansas, Lawrence • First National Bank, Le Roy • The Trust Company of Kansas, Leavenworth • State Bank of Lebo, Lebo • The State Bank of Leon, Leon • Midwest Community Bank, Lincoln • Farmers State Bank, Lindsborg • The Lyons State Bank, Lindsborg • United Bank & Trust, Linn • Little River State Bank, Little River • First National Bank & Trust, Logan • First National Bank & Trust, Long Island • Farmers & Merchants State Bank, Longford • Lorraine State Bank, Lorraine • First Option Bank, Louisburg • Lyndon State Bank, Lyndon • The Lyons State Bank, Lyons • First Community Bank, Madison • First National Bank, Manhattan • United Bank & Trust, Manhattan • State Exchange Bank, Mankato • Stockgrowers State Bank, Maple Hill • Tampa State Bank, Marion • United Bank & Trust, Marysville • First National Bank of Anthony, Mayfield • Peoples State Bank, Mc Donald • Citizens National Bank, McPherson • Farmers State Bank, McPherson • Home State Bank & Trust Co, McPherson • Fowler State Bank, Meade • Lyndon State Bank, Melvern • Denison State Bank, Meriden • Citizens State Bank, Miltonvale • Montezuma State Bank, Montezuma • Citizens State Bank, Morland • First National Bank of Southern KS, Mount Hope • United National Bank, Natoma • Midland National Bank, Newton • Midland National Bank, North Newton • First State Bank, Norton • Farmers State Bank, Oakley • Peoples State Bank, Oakley • Union State Bank, Olsburg • First State Bank, Osage City • First Option Bank, Osawatomie • Community Bank of the Midwest, Otis • First Security Bank, Overbrook • Kansas State Bank, Overbrook • Cornerstone Bank, Overland Park • First National Bank of Johnson County, Overland Park • Signature Bank KC, Overland Park • Midwest Community Bank, Palco • First Option Bank, Paola • Stockgrowers State Bank, Paxico • Peabody State Bank, Peabody • Farmers State Bank, Phillipsburg • First National Bank & Trust, Phillipsburg • Plains State Bank, Plains • First State Bank, Plainville • Midwest Community Bank, Plainville • Prescott State Bank, Prescott • Citizens Bank of Kansas, N.A., Pretty Prairie • The Bank of Protection, Protection • Union State Bank, Randolph • The Riley State Bank, Riley • Valley State Bank, Roeland Park • St. Marys State Bank, Rossville • United National Bank, Russell • Community National Bank, Sabetha • United Bank & Trust, Sabetha • First National Bank, Scott City • Kansas State Bank, Scranton • First National Bank, Sedan • Alliant Bank, Sedgwick • Baileyville State Bank, Seneca • Community National Bank, Seneca • United Bank & Trust, Seneca • Bank of Commerce & Trust Co., South Haven • First Option Bank, Spring Hill • Signature Bank KC, Spring Hill • First National Bank, St. Marys • St. Marys State Bank, St. Marys • Farmers National Bank, Stafford • Cottonwood Valley Bank, Strong City • Citizens Bank of Kansas, N.A., Sylvia • Tampa State Bank, Tampa • Community National Bank, Tonganoxie • Denison State Bank, Topeka • Lyndon State Bank, Topeka • Towanda State Bank, Towanda • 1st Bank of Troy, Troy • Troy State Bank, Troy • Citizens Bank of Kansas, N.A., Turon • Union State Bank, Udall • Grant County Bank, Ulysses • Johnson State Bank, Ulysses • Union State Bank, Uniontown • The Halstead Bank, Valley Center • Vermillion State Bank, Vermillion • Citizens State Bank, Wakeeney • Trego-Wakeeney State Bank, Wakeeney • Farmers & Merchants State Bank, Wakefield • The Walton State Bank, Walton • First National Bank, Wamego • Kaw Valley State Bank & Trust Co., Wamego • United Bank & Trust, Washington • Farmers State Bank, Wathena • Citizens Bank, Weir • Bank of Commerce & Trust Co., Wellington • Wellsville Bank, Wellsville • Andover State Bank, Wichita • Bankers' Bank of Kansas, N.A., Wichita • BankHaven, Wichita • Citizens Bank of Kansas, N.A., Wichita • Community Bank of Wichita Inc., Wichita • Farmers & Merchants State Bank, Wichita • First National Bank of Anthony, Wichita • Garden Plain State Bank, Wichita • Kanza Bank, Wichita • Legacy Bank, Wichita • The Trust Company of Kansas, Wichita • Citizens Bank of Kansas, N.A., Winfield • Union State Bank, Winfield • Citizens State Bank & Trust Co., Woodbine •



Fund your future.

Date: January 31, 2008

To: House Insurance & Financial Institutions Committee

From: Frank A. Suellentrop, President, Legacy Bank,
Colwich and Wichita, Kansas

Re: Opposition to H.B.2676

Chairman Shultz and members of the House Insurance and Financial Institutions Committee, I am Frank Suellentrop, President of Legacy Bank, located in Colwich and Wichita, Kansas. Colwich is a suburban community located six miles northwest of Wichita. Thank you for this opportunity to appear before you today to comment on H.B.2676.

Legacy Bank has 2007 year-end assets of \$185,000,000 and is chartered in Colwich with four branch locations in Wichita. We are members of both Community Bankers Association and Kansas Bankers Association.

My testimony today is in opposition to the passage of H.B.2676 and supportive of an "enforceable" field of membership for Kansas credit unions.

I would hope and expect that each of you know and understand the origins and purpose of the credit union industry. Without dwelling on those aspects, I would offer you some comparisons and impact to my Bank as Legacy Bank competes for its customer's loan and deposit relationships.

Legacy Bank's 2007 earnings prior to State and Federal taxes was \$2,735,000. Our 2007 taxes are \$905,000 – leaving a net income of \$1,830,000 – a 33% tax rate. In comparison, year-end 2006, the five largest Wichita area credit unions had assets of \$954mm with earnings of \$5.8mm – and paid \$0 State and Federal tax.

No one likes to pay taxes, but Legacy Bank, and all bankers, understand the need to pay taxes for support of our state and our country. I believe the \$905,000 in taxes paid should give us some protection from unfair competition. Current law says it should, though it is not being adhered to by the Kansas credit union industry and its regulators.

Using that \$905,000 tax, we could have offered our deposit customers almost a 1.00% higher rate, or our loan customers a rate that was over ½% lower. Those competitive differences are significant in our market as they would be throughout the communities in Kansas. We recently lost a \$320,000 deposit from a customer who has no ties to a credit union other than living in Sedgwick County. Legacy Bank is 90% loaned to funding. We compete daily for deposits to fund area real estate loans, commercial businesses, farms, and consumers.

I respectfully request that this Committee, and all our Kansas House members, reject the provisions of H.B.2676 and offer your support to a position equitable to tax-paying financial institutions and I ask your support in ensuring Kansas laws be adhered to as written.

Thank you, and I would be happy to respond to any questions you may have.

3711 N. Ridge Road
Wichita, KS 67205
316.260.3711

240 W. Wichita Ave.
Colwich, KS 67030
316.796.1221

8725 W. Central
Wichita, KS 67212
316.721.9595

7555 W. 21st
Wichita, KS 67205
316.260.3755

2055 N. Woodlawn
Wichita, KS 67208
316.687.6200

House Insurance
Date: 1-31-08
Attachment # 5



Member FDIC

Legacy Bank is a subsidiary of Colwich Financial Corporation. Established 1886.

www.legacy-bank.com

BURLINGAME, KANSAS 66413
115 S. Topeka • P.O. Box 5

Phone 785-654-2421
FAX 785-654-3567



OSAGE CITY, KANSAS 66523
18 Main • P.O. Box 275

Phone 785-528-3133
FAX 785-528-3160

Testimony before the Kansas House Finance Committee

On House Bill No. 2676

January 31, 2008

Chairman Shultz and members of the committee, I am John Fowler, President of the First State Bank of Burlingame, Kansas. Thank you for letting me speak before you today. Mr. Federico referred to credit unions as “mom and pops” being dominated by the banks being “Wal-mart.” I would have to say that my bank is a “mom and pop” as my pop is the Chairman of the Board and on our loan committee and my mom is also a director on our board. We are a small community bank with a lending committee made entirely of people who live or work here and our decisions are made locally. I am reminded of a quote I once heard that states “I have never seen a successful bank in an unsuccessful community.” I resent the implication that banks are compared to Wal-mart as though banks’ overall dominance in the market somehow makes our operation less difficult. I have nothing inherently against credit unions; however, in light of the Kansas Credit Union Association’s actions over the years, I do have several concerns over their current proposal and recent tactics.

House Insurance
Date: 1-31-08
Attachment # 6

My first concern is whether the credit union association believes this is the way to change laws in Kansas – you ignore the ones you don't like long enough and then ask for them to be dropped? This is what is happening as the Kansas Credit Union Association has denied non-compliance with K.S.A. 17-2205 for nearly two years, as brought out in the Legislative Post Audit Committee Report of May 2006, and now they want to change it to conform to their way of doing things. Not only does this set a terribly bad precedent if allowed, but the Kansas Credit Union Association has been disingenuous in recent emails and mailings (copies attached) by claiming that the banking industry is somehow at fault by wanting to further constrict "who" and "where" credit unions can serve. The truth is the credit union industry is the one that has stepped over its bounds by violating the law.

I was present during both Mr. Lackey's and Mr. Federico's testimony on January 30th and would have to question the logic of their assertions. They indicated that the credit union industry in Kansas has been operating as it currently is under the interpretation of 15 bank and credit union regulators over the last 60 years and that makes it o.k. That may be, but I would like to point out that Pluto was discovered in 1930, incidentally by a Kansan named Clyde Tombaugh, and his discovery was affirmed by scientists all over the world until 2006 when it was "re-interpreted" as a dwarf planet.

My point is that greater minds than commissioners and administrators have interpreted their facts wrong for many years over many generations. The Supreme Court of the United States seems to understand this as on February 25, 1998 they ruled that federal credit unions may not consist of more than one occupational group having a single common bond. In doing so they rejected the National Credit Union Administration's multiple group common bond policy as conflicting with the express language of the National Credit Union Act.

It is true that Congress has given certain entities the right to operate as a nonprofit business, but they and the IRS are very specific on the types of organizations and their qualities that can qualify to be nonprofit or tax exempt. A question I have is whether any thought would be given to any other tax exempt organization coming to you wanting to change its structure just because it didn't like that control anymore, but still wanted to be tax exempt?

My second concern is that most of this posturing is just a marketing ploy. Why do credit unions need "Anyone-Anywhere" membership? Can they not service their members and potential members properly within the confines of the law? Credit Unions were created with a TAX EXEMPT STATUS because they were to service specialized membership groups. Kansas Credit Union Association President & CEO Marla Marsh on January 22nd of 2008 circulated an email entitled "True Credit Union Facts #1." In this email Ms. Marsh compares Kansas bank growth and income to that of credit unions. I contend that credit union growth and income is irrelevant to this discussion. Why are credit unions concerned with growth if they exist to serve specific market sections? They should just be concerned with the needs of their employment groups or well-defined neighborhood groups. As far as profits go, I will refer to Ms. Marsh's own website which states:

"Credit unions are operated solely for the benefit of their members," and

The Credit Union Difference

1. Credit Unions are focused on people, not profits. The credit union slogan is:

"America's Credit Unions: Where people are worth more than money." Unlike banks, credit unions do not have to show a profit for people investing in them.

(emphasis added)

It is interesting to note the following chart of INCOME for selected large Kansas credit unions up to September 30, 2007:

<u>Credit Union</u>	<u>Total Asset</u>	<u>Net Income</u>	<u>Undivided Earnings</u>	<u>Fee Income</u>
Kansas Super Chief Credit Un	\$139,721,271	\$903,895	\$12,126,508	\$1,410,828
Educational Credit Union	\$96,753,808	\$491,287	\$3,968,461	\$576,929
Credit Unions United	\$95,018,749	\$210,972	\$9,805,133	\$445,702
Credit Union of America	\$240,886,810	\$2,068,760	\$23,733,455	\$2,141,695
Boeing Credit Union	\$506,091,809	\$2,557,009	\$38,540,242	\$3,736,891
Cessna Credit Union	\$117,978,100	\$1,860,152	\$18,271,921	\$1,588,050

The Kansas Credit Union Association website states that excess earnings are returned to members in better service (vague), higher savings rates (do not appear much different from bank rates offered), lower loan rates (they are many times more competitive) and convenient services at little or no cost (see fee income above). In reviewing financial reports of the credit unions listed above on the National Credit Union Administration website, it would appear that this claim does not “pan out”. Although I will admit that I don’t know exactly how a credit union operates, I would question the “non-profit” assertion in saying that income goes back to membership if you also look at undivided earnings. From what I can see from these figures, the net income reported above is the same as what a bank would report only TAX FREE!

I know some of you are from the Kansas City area and so you may have seen these banners. When I was at Oak Park Mall, Overland Park, Kansas, this December, there were several banners with the slogan "Credit Unions – The New Banks." (To borrow an analogy from Mr. Federico "Fords – The New Chryslers.") That is quite a contrast from the Kansas Credit Union Association's website that states: "**When you become a credit union member, you join a financial institution that is very different from a bank or savings & loan.**" You can't have it both ways.

My final concern is that of competition. I don't fear competition, everyone knows there are plenty of BANKS to go around. I also don't have anything against credit unions operating as they were intended – to serve people with a common employer or in a specific neighborhood or community. That is why they are TAX EXEMPT!!! My problem comes when Banks are expected (YES, I will say it) to compete on an "unlevel playing field" sponsored by the state. Mr. Federico used the analogy of Chrysler (Banks) going to Congress and asking them to pass a law regulating how Ford (Credit Unions) can make their cars. I think what is really going on is that Ford is asking Congress to pass a law allowing them to sell their vehicles at subsidized prices.

The tax exempt issue does become a factor in that should credit unions be allowed to operate as a bank, but not pay tax as a bank, it gives them a considerable advantage. An example would be if the Boeing Credit Union above paid 35% in tax @ \$894,953. They would have to make that up in higher loan rates, lower deposit rates or settle for lower income.

I respectfully ask that you consider my concerns and vote against the changes proposed by Kansas Credit Union Association, which I also believe would leave credit unions with very limited regulatory oversight.

Thank You.

To:
Subject:

Marla Marsh
True Credit Union Facts #1

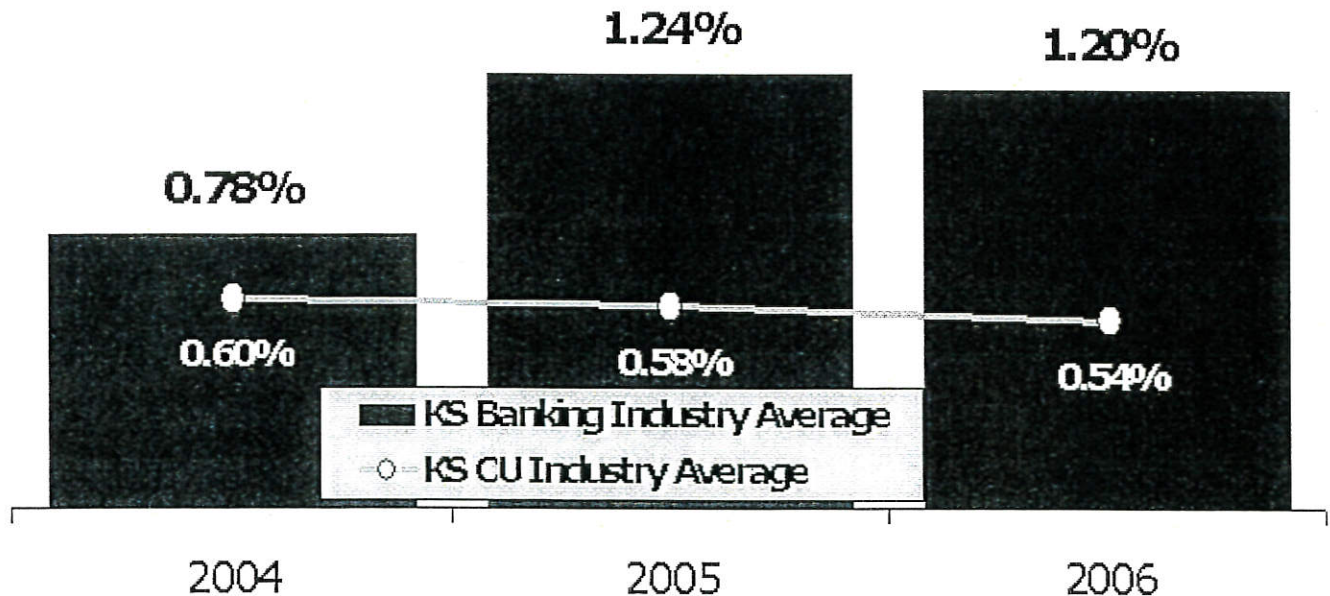
Are Credit Unions Hurting Bank Profits?

✓ Kansas banking institution deposits grew by nearly six billion dollars in the three years ending June 2006 - that's *over double* the amount credit unions have grown since they began operating in 1929.¹

✓ Kansas banks earned annual ROA above 1.00% for nine of the 10 years ending in 2006.²

Kansas Bank Earnings are High

Percent of Average Assets - FDIC



✓ A comparison of the top ten state-chartered banks vs. state-chartered credit unions show banks grew \$4.6 billion while credit unions only grew \$977 million over the same 10-year period--4 times as much growth.¹

✓ In the past decade, 21 new banking institutions have been chartered in Kansas compared to only 1 new credit union.¹

1. FDIC and NCUA. 2. FDIC. 3. FDIC. 4. FDIC. See Government Accountability Office, GAO-07-593R "Information on Selected Issues Concerning Banking Activities." for more evidence of recent banking industry financial success.



KANSAS CREDIT UNION ASSOCIATION

January 2, 2008

Credit Union Letter

Representative [redacted]
[redacted]
[redacted]

Dear Representative [redacted]

Due to aggressive activity generated by the various Kansas banking associations, the 2008 Legislative Session is going to be the most important session that Kansas credit unions have faced in decades. As a result of this threat, our credit union members across the state are extremely engaged and are eager to visit with you over the next several months.

What has our 550,000 credit union member/owners so upset?

As a logical next step to their efforts this summer and fall, we anticipate the banking community to make an aggressive push in the 2008 Session to further constrict "who" and "where" credit unions can serve.

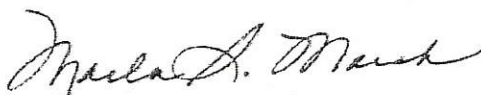
Our members are adamant that there is no problem! Credit unions have operated for over 65 years under the same rules and have not expanded to the banking industry's detriment. Credit unions in Kansas maintain a sparse 5% market share, compared to the banking industry's 95% market share. In today's environment where consumers want even more competition and convenience and where financial services from banks, thrifts and even payday lenders can be obtained on almost every street corner and over the Internet, the banking associations want to turn back the clock to 1929 for credit unions.

Credit union members will be contacting you with two obvious acceptable options: (1) either allow the credit union regulator to maintain the status quo by continuing to interpret the credit union statute as it has been since its inception, or (2) allow credit unions and the credit union regulator to address the credit union law without interference from bankers.

Kansas credit union employees, volunteers and members are angry, upset and ready to defend the important role that credit unions play in providing options for Kansas consumers to fit their financial services needs. In short, they will fight for the consumer's right to choose.

We look forward to working with you on this and other issues during the 2008 Session.

Sincerely,


Marla S. Marsh, President/CEO

Enclosure

650 S. Westdale Drive
Suite 100
Wichita, Kansas
67209-2570
1-800-362-2876
Tel 316-942-7965
Fax 316-266-2203

Topeka Office
816 SW Topeka Blvd
Topeka, Kansas
66612-1635
1-888-482-5282
Tel 785-232-2446
Fax 785-232-2730



Matthew S. Goddard, Vice President

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To: House Committee on Insurance and Financial Institutions

From: Matthew Goddard
Heartland Community Bankers Association

Date: January 31, 2008

Re: House Bill 2676

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Insurance and Financial Institutions to express our opposition to House Bill 2676.

During the interim hearings, HCBA asserted that the "common bond" had been stretched to the point of absurdity and in many credit unions was nonexistent. House Bill 2676 would codify that nonexistent standard by replacing the language that prompted a study by the Legislative Division of Post Audit and last summer's interim hearings with as broad a field of membership standard as possible.

The credit union industry would have you believe that the common bond exists in a vacuum and has no correlation with either a credit union's tax-exempt status or its lack of Community Reinvestment Act (CRA) obligations. HCBA disagrees with this and believes the common bond has been the traditional justification for exempting credit unions from income taxes and CRA. The common bond requirement should not be eliminated – or weakened to the point it is effectively eliminated - unless credit unions give up the benefits that come with it. House Bill 2676 does not do this.

Credit unions are not the only companies that do not issue capital stock and that are owned by depositors or customers instead of stockholders. Unlike credit unions, however, they still pay income taxes. In addition to mutual savings and loans that pay the privilege tax, mutual insurance companies like Blue Cross Blue Shield of Kansas and State Farm pay a premiums tax. According to its annual report, even the mutual insurance company that is affiliated with the Credit Union National Association pays income taxes. This would appear to indicate that the common bond has more to do with a credit union's tax exemption than its lack of capital stock and stockholders.

Sixty years ago, mutual savings and loans were exempt from taxation just like credit unions are today. In a 2001 report mandated by Congress, "Comparing Credit Unions With Other Depository Institutions," the Treasury Department explained why mutual savings associations lost their tax exempt status:

"In 1951, however, Congress removed the thrift tax exemption because these institutions had evolved into commercial bank competitors, and had lost their "mutuality," in the sense that the institutions' borrowers and depositors were not necessarily the same individuals. Congress determined that, under these circumstances, their tax exemption afforded them an unfair advantage over commercial banks."

A 1979 article published by the Internal Revenue Service as part of a continuing professional education series

focused on the tax-exemption of state-chartered credit unions. This was before the common bond began to warp beyond the point of recognition in the early 1980's. It noted that prior to 1951 credit unions "generally qualified for tax exempt status under revenue statutes exempting building and loan associations and cooperative banks." The article went on to state:

It follows that the purpose for the retention of the tax exempt status of credit unions in 1951 probably was the absence of any indications that credit unions had deviated from their original purpose and characteristics. Had credit unions resembled taxable financial institutions at that time, it seems probable that Congress might not have continued their exempt status while at the same time removing exempt status from mutual savings banks and savings and loans.

The major regulatory benefit that credit unions receive due to their supposed adherence to the common bond is that they are not required to comply with the Community Reinvestment Account. When Congress enacted CRA for banks and savings and loans in 1977 there was little justification for including credit unions because their borrowers and depositors were the same people. When credit unions adhered to a strict common bond requirement such as a single employer or a concentrated and well-defined neighborhood, it was a forgone conclusion that the credit union did a good job of meeting the needs of its customers. After all, a factory employees' credit union could only lend to workers at the factory and a neighborhood credit union could only take deposits from members of the neighborhood where it was making its loans.

The Office of Thrift Supervision, the regulator for HCBA members in Kansas, offers the following explanation of CRA on its website:

The CRA was enacted in 1977 to encourage financial institutions to help meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound lending practices. It extends and clarifies the longstanding expectation that financial institutions will serve the convenience and needs of their local communities. The CRA and its implementing regulations require Federal financial institution regulators to assess the record of each bank and savings association in helping to fulfill their obligations to the community and to consider that record in evaluating applications for charters or for approval of mergers, acquisitions, and branch openings. The Federal financial institution regulators are: Office of the Comptroller of the Currency; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision.

The law provides a framework for financial institutions and community organizations to work together to promote the availability of credit and other banking services to underserved communities. Under its impetus, banks and savings associations have opened new branches, provided expanded services, adopted more flexible credit underwriting standards, and made substantial commitments to state and local governments or community development organizations to increase lending to underserved segments of local economies and populations.

As credit unions have expanded their field of membership to include the entire state of Kansas in some instances, there is no regulatory oversight along the lines of CRA to ensure that credit unions are serving their entire market areas. For example, if a credit union's field of membership is anyone who lives, works or goes to school in the state, the Department of Credit Unions isn't making sure the credit union is actually serving people of all income levels in all four corners of the state.

In a CRA exam, regulators examine an institution's loans to make sure a bank or savings and loan are lending to lower income individuals in lower income census tracts and not just to upper income borrowers in upper income census tracts. This was not an issue when credit unions followed a narrow concept of the common

bond but it should be now that the common bond is more of a loose thread than a close knit group. Unfortunately, several national studies by community activist groups have shown that credit unions are failing when it comes to serving everyone in their communities:

“The leaders of the credit union movement are stepping away from the historic justification to serve people of modest means at the very same time that Congress and NCUA have been lifting restrictions on credit union operations.... Moreover, common bond requirements have been relaxed on an ongoing basis since the early 1980s, culminating in the significant expansion of the common bond in 1998. Absent clear instructions that the new powers are granted to enhance credit unions’ original mission, the credit union leadership has not only squandered these opportunities, but has formally turned its back on low-income people.”
Woodstock Institute, February 2002, “Rhetoric and Reality: An Analysis of Mainstream Credit Unions’ Record of Serving Low-Income People”

“However, the credit union industry has undergone a tremendous evolution since these early days when most were based in church basements, factory shops, and other community institutions. While a segment of the credit union industry remains focused on people of modest means, such as community development credit unions and low income credit unions, many have become expansive institutions increasingly resembling banks. Much of this change has been largely due to the swelling definition of “common bond” and the shrinking focus on serving those of modest means”.
National Community Reinvestment Coalition, 2005, “Credit Unions: True to Their Mission?”

Although some credit unions now seem to look upon the common bond as a by-gone relic of yesteryear, HCBA believes that history shows it is an essential part of being a credit union and, again, is the primary justification for the benefits credit unions receive that other financial institutions do not. Referring to the 1979 IRS continuing education article:

Credit unions historically have had certain features and legal requirements which generally distinguish them from other financial institutions. The first and most significant of these is the requirement of a meaningful, written, and enforced common bond for its members.

If credit unions want to be freed from what they apparently consider to be the oppressive yoke of the common bond and field of membership standards, then they should also be willing to give up the benefits that come with “limiting” their membership to groups having a true common bond. In 1951, the savings and loan industry chose the opportunity for future growth at the expense of taxation. Today, bank-like credit unions refuse to make that same choice.

Thank you for your kind consideration of HCBA’s opposition to HB 2676.

BankHaven

101 North Kansas Avenue
Haven, Kansas 67543

January 29, 2008

Representative Clark Shultz, Chair
House Insurance and Financial Institutions Committee

Mr. Chair and Members of the Committee:

Thank you for the opportunity to present written testimony on an important topic that has needed attention for many years.

Most of what I would like to communicate begins with a recent audit performed by the Kansas Legislature's Post Audit Division, which discovered the Kansas Department of Credit Unions has approved "fields of membership" that do not comply with existing Kansas law. Among these approvals were six credit unions that were approved to define their field of membership as **the entire State of Kansas!** One of them, Hutchinson Credit Union, operates a branch in my hometown.

Before assuming this is just another banker comment to be filed under "Bankers Whining About Competition", please consider this: In the early years of my banking career beginning in 1973, I recall no concern on the part of bankers of the credit union's tax exempt status, because they always operated within the original intent of their charters. The concerns that have built over the years result from continued, dare I say blatant abuse of the definitions of the field of membership. We bankers are simply becoming astounded at how the credit union charter can morph fields of membership, originally specifically targeted to a group, into fields of membership as non-restrictive as the entire State of Kansas, all the while retaining their tax exempt status with no whistle blowing by the legislature that originally set the restrictions. That's not whining about competition. That's a genuine, bona fide complaint of an unfair practice. And, now that light is finally being directed toward this issue, amazingly, the Kansas Credit Union Association has introduced H.B. 2676, specifically designed to eliminate any field of membership restrictions whatsoever.

Using the Hutchinson Credit Union as an example, they originally chartered under the name "Hutchinson Teacher's Credit Union", and membership was limited to that sector, teachers. Upon realizing their field of membership limited their potential growth, they redefined themselves as "Hutchinson Credit Union", and expanded their field to basically anyone living in the town heretofore limited to teacher designation. Today, with approval from the Kansas Department of Credit Unions, they operate with a field of membership defined, as their advertising states, "Membership open to all Kansans". All the while, retaining the same tax exempt status granted them upon chartering as an institution created to serve the teachers of their community. How can this State-wide, border to border definition possibly permit the awarding of continued tax exempt status?

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House Insurance
Date: 1-31-08
Attachment # 8

January 29, 2008
House Insurance and Financial Institutions Committee
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I personally have no complaint about competition, it's everywhere. It's on our own main street as well as in nearby cities, in the mail, and on the internet. It comes in all forms in the financial industry, and through in-house financial departments of retailers of just about any commodity. None of it, with the exception of the credit unions with ever-expanding fields of membership, is tax exempt. This legislation, introduced as H.B. 2676, is about wanting to continue to expand without restriction, while retaining a huge tax exempt advantage. I respectfully ask that you not vote in favor of it.

It is a genuine privilege to audience with the officials that are elected to make these tough decisions, and if I have left you with any question or need for further communication, I would be happy to spend any time you ask of me.

Respectfully,

Michael Fahrback

Michael Fahrback
President and CEO



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January 30, 2008

Rep. Clark Shultz, Chair
House Insurance & Financial Institutions Committee

Mr. Chair and Members of the Committee,

I am proud to be a Kansas Banker for 36 ½ years. Working 13 years in Kansas City, KS, I saw that there were credit unions serving certain, particular, common bond customers.

There was the Wyandotte County Teachers Credit Union. You had to be a Wyandotte County teacher or an immediate family member of one to be eligible to open accounts there. There was School Employees Credit Union, Police Department Credit Union and Christ the King Parish Credit Union, and others. Restrictions were, again, that common bond together with immediate family members.

I saw the benefit to the members of those credit unions and saw that they were operating within the intent of K. S. A. 17-2205.

For the past 12 years I have been involved in various committees of the Kansas Bankers Association and have been watching the credit union attempts to expand their membership beyond that common bond of occupation or association and beyond those groups residing within a well-defined neighborhood, community or rural district.

H. B. 2676 is the latest attempt to eliminate the field of membership restrictions. I am not in favor of this bill.

A recent audit performed by the Kansas Legislature's Post Audit Division discovered that the Kansas Department of Credit Unions has approved "fields of membership" that do not comply with existing Kansas law, including six state-wide fields of membership.

My bank and all other Kansas banks are required to pay state and federal income taxes unlike tax-exempt credit unions. The tax exemption for the credit unions causes the rest of us to carry a larger portion of the load.

In the past, Congress and the Kansas Legislature have prevented tax -exempt credit unions from unfairly competing with tax-paying banks by requiring the credit unions to adhere to common bond and field of membership standards. I want that adherence to continue.

House Insurance
Date: 1-31-08
Attachment # 9 Member FDIC

The stockholders of many banks would certainly appreciate some part of an additional 35 to 38% return to the bottom line if we didn't have to pay income taxes. Our customers' interest rates on loans could be lower and interest rates on deposits could be higher if we didn't have to pay income taxes on the interest spread and other income that we work so hard to obtain.

Thank you for taking time to read this.

Sincerely,

Joseph J. Hoytal

Joseph J. Hoytal
Executive Vice President
Commercial Lender