

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The NCUA Board is amending its chartering and field of membership manual to make two changes to ease the burden on applicants for community charters, expansions or conversions. First, applicants need not submit documentation to establish a community area that is the same as one the NCUA has previously determined to be a well-defined local community, neighborhood or rural district. Second, the Board is deleting the category of common characteristics and background of residents from the examples of acceptable documentation because it has proven to generate documentation of limited relevance.

DATES: Effective Date: This rule is effective March 20, 2001. Comment Date: Comments must be received on for before May 21, 2001.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Or, you may fax comments to (703) 518-6319, or e-mail comments to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, at (703) 518-6320 or Sheila A. Albin, Associate General Counsel, Operations, at (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

NCUA's chartering and field of membership policy is set out in Interpretive Ruling and Policy Statement 99-1, Chartering and Field of Membership Policy (IRPS 99-1), as amended by IRPS 00-01. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1. It is also published as NCUA's Chartering and Field of Membership Manual (Chartering Manual), which is the document most interested parties use and to which references in the following discussion are made.

The Chartering Manual requires community charter applicants to establish that an area is a "well-defined local community, neighborhood, or rural district." Chartering Manual, Chapter 2, V.A.1. It provides that an applicant may submit a letter describing how the area meets the standards for interaction or common interest for certain geographic and population sizes, namely, a single political jurisdiction such as a county with 300,000 or fewer people, or multiple, contiguous political jurisdictions with 200,000 or fewer people. Applicants must submit maps and information about population and the political jurisdiction. Regional directors

currently have delegated authority to approve charter applications or amendments of this size. NCUA Delegations of Authority, Chartering 3A and 3B.

For larger areas in terms of population and geographic size, the Chartering Manual provides for applicants to submit a narrative summary and documentation supporting the finding of interaction and common interests in the proposed community. The Chartering Manual provides examples of the type of documentation that an applicant may submit but does not require or specify particular documentation.

In 2000, the regional offices received 27 community expansions and 104 community conversion requests. Of these 131 requests, 15 required NCUA Board approval.

Presently, the preparation and processing of a community charter, expansion or conversion request that requires NCUA Board approval are extensive. Credit unions often take a year or more to prepare a community charter application and credit unions may also use outside consultants to assist them.

A significant part of any application requiring Board approval is the documentation supporting the finding that the requested area is a "well-defined local community, neighborhood, or rural district." NCUA's Chartering and Field of Membership Manual (Chartering Manual), Chapter 2, V.A.2 at p. 2-45. In this regard, applications contain detailed information to demonstrate the residents of the proposed area have common interests or interact sufficiently to meet the statutory "local" requirement, along with supporting documentation as suggested in the Chartering Manual. Often, this portion of an application runs hundreds of pages.

A practice has arisen in which applicants for an area that the Board has already approved as a community obtain copies of that portion of an earlier application addressing the community requirements and resubmit the identical documents as part of their own application. The NCUA has processed numerous requests for all or part of approved charter applications under the Freedom of Information Act.

The Chartering Manual provides examples of documentation that applicants may consider using to support the area as a community, neighborhood or rural district. One of these examples is: "common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age, group, etc.)." *Id.* at 2-46. This documentation has proven to be of limited relevance in determining whether the area meets the community requirements.

Although this category is only one of eight examples of the type of documentation that is acceptable, the Board is aware that applicants may feel compelled to provide documentation in all categories. Mere statistical data about religious beliefs, ethnicity, age or income may encourage questionable assumptions and, as a matter of public policy, the Board does not want to encourage the classification of credit union members on such bases. To the extent that meaningful similarities exist among residents, an applicant may address them under the last suggested example of documentation demonstrating that residents share common interests or interact.

### *The Amendments*

The first amendment provides that applicants for an area that is the same as one the NCUA has previously determined to be a well-defined local community, neighborhood or rural area need not submit a summary or any documentation to meet that requirement. The Board believes this amendment provides a common sense approach for documentation requirements by eliminating redundant proof by subsequent applicants for the same exact geographic area that either it or regional directors have already addressed. Applicants need only identify in their applications the fact of the prior approval and their reliance on the summary and documentation already part of the agency's records. Nevertheless, applicants may be required to submit their own summary and documents if the agency has reason to believe that the documents on file from previous applications are no longer accurate or are insufficient.

The second amendment is the deletion of the example of documentation for community requirements for common characteristics and background of residents. As discussed above, this documentation has proven to be of little value and, therefore, is an unnecessary burden for applicants and an administrative waste of time for NCUA staff.

These amendments will help reduce the time involved in the community application process, reduce costs for credit unions seeking to serve a previously approved community, and reduce regional and Board staff time and preparation.

The Board wants to note that these amendments only apply to required documentation to support the proposed area as a community. They do not eliminate any of the remaining requirements necessary to process a community application, such as addressing safety and soundness concerns and the requirement for business and marketing plans.

In conjunction with promulgation of this rule, the Board has approved a delegation of authority to regional directors to approve applications for new community charters and charter amendments, including expansions of existing community charters and conversions of any type of federal charter to community charter, regardless of the number of residents, where the Board has previously determined that the community requirements have been met for the same exact geographic area.

#### Interim Final Rule

The NCUA Board is issuing this amendment to its chartering regulation as an interim final rule because it is an interpretation of an existing regulation and merely addresses agency procedures for processing chartering applications. The Board believes the amendments further the public interest in removing unnecessary regulatory burden for the public and promotes the efficient use of agency resources and staff. Accordingly, for good cause, the Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule shall be effective immediately and without 30 days advance notice of publication. Although the rule is being issued as an interim final rule and is effective immediately, the NCUA Board encourages interested parties to submit comments.

REGULATORY PROCEDURES:

### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under \$1 million in assets). The amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

### Paperwork Reduction Act

The NCUA Board has determined that this interim final rule does not increase, and will in fact reduce, paperwork requirements under the under the Paperwork Reduction Act and regulations of the Office of Management and Budget.

### Small Business Regulatory Enforcement Fairness Acts

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The rule has been submitted to the Office of Management and Budget for its determination of whether this is a major rule.

### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will apply to some state-chartered credit unions, but it will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

### AGENCY REGULATORY GOAL:

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 8, 2001.

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Becky Baker  
Secretary of the Board

Accordingly, NCUA amends 12 CFR part 701 as follows:

## PART 701-ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601-3610.

Section 701.35 is also authorized by 12 U.S.C. 4311-4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 99-1, Chartering and Field of Membership Policy (IRPS 99-1), as amended by IRPS 00-1 and IRPS 01-1. Copies may be obtained by contacting NCUA at the address found in §792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133-0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 99-1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

3. Amend IRPS 99-1, Chapter 2, Section V. A.2 by adding the following paragraph as the eleventh paragraph in the section, immediately before the paragraph that begins “A community credit union is frequently . . .” as follows:

An applicant need not submit a narrative summary or documentation to support a proposed community charter, amendment or conversion as a well-defined local community, neighborhood, or rural district if the NCUA has previously determined that the same exact geographic area meets that requirement in connection with consideration of a prior application. Applicants may contact the appropriate regional office to find out if the area they are interested in has already been determined to meet the community requirements. If the area is the same as a previously approved area, an applicant need only include a statement to that effect in the application. Applicants may be required to submit their own summary and documentation regarding the community requirements if NCUA has reason to believe that prior submissions are not sufficient or are no longer accurate.

4. Amend IRPS 99-1, Chapter 2, Section V. A.2 by removing from the tenth paragraph in the section the seventh bulleted item that begins with the words “common characteristics.”