

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: Final rule.

SUMMARY: The NCUA Board is amending its chartering and field of membership manual to make four changes to ease regulatory burden. 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 this category has proven to generate documentation of limited relevance. Third, an existing community charter need not document in writing how it plans on serving the entire community. Fourth, the Board is updating the definition of an investment area because of the release of new census data and updated Community Development Financial Institution Fund standards.

EFFECTIVE DATE: May 24, 2002

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Chairman, Field of Membership Task Force, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6540 or Regina Metz, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6540 or Lynn Markgraf, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6396.

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.

In 2001, the NCUA Board issued two interim final rules on chartering and field of membership. In this document the Board is finalizing both rules as IRPS 02-2. Each rule and each amendment is discussed separately below.

March Interim Final Rule

On March 8, 2001, the NCUA Board issued IRPS 01-1, an interim final rule with a sixty-day comment period, amending the Chartering Manual. 66 FR 15619 (March 20, 2001). The comment period ended on May 21, 2001. Nine comments were received. Comments were received from two federal credit unions, four state credit union leagues, one national credit union trade association and two bank trade associations. Almost all of the commenters supported both of the interim final rule's field of membership changes. Most of these commenters believe these amendments will reduce documentation requirements and save federal credit unions time and funds in converting to a community charter.

1. Previously Established Communities

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 the area's population and political jurisdiction.

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 the interim final rule, the NCUA Board stated that 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. Eight commenters fully supported this amendment. One commenter did not understand the amendment. The Board believes this amendment provides a common sense approach for documentation requirements by eliminating redundant proof by subsequent applicants for the same geographic area that either it or a regional director has already addressed. Therefore, the NCUA Board is adopting this interim final amendment without change.

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. The community area must be identical to a previously approved application. No variance is allowed. 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.

Two commenters stated that this policy should be revisited periodically since the community aspect of a geographic area may change over time. One commenter suggested five years and another suggested ten years. Another commenter asked that the agency provide further guidance on when the agency might require applicants to submit their own summary and other documents if the agency has

reason to believe the documents on file from previous applicants are no longer accurate or are insufficient. Basically, the agency will require more information if there has been a significant and quantifiable change in a community's characteristics. The NCUA Board believes that communities may change over time and will revisit the time frame for action when necessary.

One commenter requested that NCUA consider permitting a credit union converting to a community charter to add new members from their groups that are located outside the community boundaries. This comment is unrelated to the interim final rule but the NCUA Board has decided to continue its current policy on groups outside the community.

2. Documentation Requirements

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 was: "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. Therefore, in the interim final rule

the Board deleted 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. Eight commenters approved of this amendment, although one commenter believes this type of information can be useful in showing interaction or common interests. For the reasons stated above, the Board is adopting this amendment in final.

These two final 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.

December Interim Final Rule

On December 13, 2001, the NCUA Board issued an interim final rule with a sixty-day comment period amending the Chartering Manual. 66 FR 65625 (December 20, 2001). The comment period ended on February 19, 2002.

Although the Board actually received 494 comment letters or e-mail messages, NCUA staff has credited multiple comment letters from the same credit union or the same source as one comment, for a total of 428 comments. Comments were received from 260 federal credit unions, 120 state chartered credit unions, 4 national credit union trade associations, 23 state credit union leagues, 2 bank trade associations, 2 community groups, 1 financial group and 16 members or otherwise unidentified persons.

1. The Provision Commonly Referred to as the Community Action Plan (CAP)

In October 2000, the NCUA Board required an existing community charter to address, in either its marketing or business plan or other appropriate separate documentation, how it plans on serving the entire community, including how the credit union will market to the community and what products and services the credit union will offer to assist underserved members in the communities.

Some in the credit union community refer to this as the “community action plan” requirement or as “CAP”, though the final rule did not use that term. The NCUA Board stated in the preamble to the final rule that “existing credit unions will have until December 31, 2001, to have a plan in place addressing how the credit union will serve the entire community.” 65 FR 64512, 64518 (October 27, 2000). The Board implemented this rule even while recognizing that there was no tangible evidence that credit unions were not planning on serving their entire community. In fact, the NCUA Board stated that, based “on the comments of community credit unions and the submissions some of them provided, many community credit unions already have adopted plans and offer products and services designed to serve the entire community.” 65 FR 64512, 64517 (October 27, 2000).

The NCUA Board issued an interim final rule on December 13, 2001, eliminating this regulatory requirement, known as CAP. Four hundred and fifteen commenters supported the elimination of the regulatory requirement. Most of the commenters applauded the Board’s decision to repeal this unnecessary regulatory burden because they believe it is something credit unions are already doing. The commenters who supported the Board’s action primarily made the following points: (1) credit unions do not need a regulation requiring them to serve their members; (2) credit unions are serving low-income people by adding underserved areas to their fields of membership; (3) community charters naturally serve their entire communities; (4) Congress specifically rejected similar requirements in the Credit Union Membership Access Act; (5) there is no evidence that community credit unions are not serving their entire fields of membership adequately; (6) the rule is not directly related to safety and soundness; (7) the rule was costly and burdensome to implement; (8) the rule was similar to Community Reinvestment Act requirements.

Many commenters discussed how credit unions reach out and serve low-income members. Many commenters stated that “continued improvements in NCUA’s membership application process are more appropriate than a CAP rule and will do more to ensure all individuals, including disadvantaged groups, are eligible for credit union service.” The Board believes this comment addresses the fact that the agency has streamlined its SEG approval process and underserved area approval process. The Board will continue to study methods to streamline the field of membership process.

Twelve commenters opposed the repeal of CAP and requested that it be reinstated. One additional commenter, a credit union, was not sure of its position on this issue. The primary contentions of commenters opposing the repeal of CAP were that CAP is good for credit unions and its burden is minimal. They believe CAP is a simple requirement to help ensure that credit unions serve their entire communities. A few commenters objected to the process of using an interim final

rule to repeal CAP. A few commenters did not understand the rule and believe that, under CAP, a credit union would make its written plan available to the public.

In general, the Board agrees with the commenters who supported the repeal of CAP. Therefore, the Board is adopting this amendment as a final rule because the Board continues to believe that it is an unreasonable practice to require only certain credit unions to adopt specific written policies addressing service to the entire community, without any evidence these credit unions are failing to serve their entire communities. In addition, this regulatory requirement addresses few, if any, safety and soundness concerns.

This Board believes that a regulation that does not address a substantiated safety and soundness concern or a potential problem is unnecessary. In this case, the Board believes it is prudent to eliminate this regulatory requirement because there is no evidence that community charters are not marketing their services to their entire communities.

2. Underserved Areas

The addition of underserved areas, as defined in Chapter 3 of the Chartering Manual, to the field of membership of operating credit unions is a continuing priority of the NCUA Board. A federal credit union seeking to add to its field of membership an underserved area first must meet a three-prong test. First, the area must be a local community. Second, the area must also be classified as an investment area as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. 4703(16). Third, the credit union adding the underserved area must establish and maintain an office or facility in the area, or have a preexisting office within close proximity.

In October 2000, the NCUA Board made it less burdensome for federal credit unions to add underserved areas. 65 FR 64512 (October 27, 2000). Because of these changes and the credit union community's greater interest, the number of underserved areas added to federal credit union's field of membership increased from 50 in the year 2000 to 281 in 2001.

The Chartering Manual provides examples of an "investment area" for the purpose of adding an underserved area. The Federal Credit Union Act defines an "underserved area" as a "local community, neighborhood, or rural district" that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The 1994 law permits the Community Development Financial Institutions Fund of the United States Department of the Treasury (CDFI Fund) to further define investment areas. In the interim final rule, the Board updated the definition of an investment area in chapter three of the Chartering Manual by incorporating 2000 census data and the CDFI Fund's updated definition of an investment area.

Fifty-nine commenters generally favored NCUA's underserved area policies. Twelve additional commenters specifically favored updating the definition of an investment area. Most of these commenters believe this amendment will promote greater participation in serving underserved areas. Two commenters opposed the amendment. Both of these commenters appeared to misunderstand the statutory authority of NCUA to allow credit unions to serve underserved areas.

The NCUA Board is adopting the interim final rule in final with a minor modification. This final rule makes the Chartering Manual consistent with 2000 census data and the CDFI Fund's modifications. If the 2000 census data is not readily available for a particular category, the latest information from the Census Bureau may be used. In addition, the Board is permitting credit unions to submit other government data to demonstrate that an area is an investment area if this information is more readily available than census data. This alternative data must be issued after the year 2000. This one additional change along with the original amendments will ultimately make it easier for credit unions to add underserved areas and thus serve more members of modest means.

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 (those under one million dollars in assets). These final 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 Paperwork Reduction Act and regulations of the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

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 Office of Management and Budget has determined that the provisions contained in IRPS 02-1 do not constitute 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 does not apply to state-chartered credit unions and 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 final rule does not constitute a policy that has federalism implications for purposes of the executive order.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on April 18, 2002.

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 02-2. 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. In IRPS 99-1, Chapter 2, Section V.A.2 is revised to read as follows:

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union is unique in that it must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

“Well-defined” means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or

other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are also significant factors in determining whether the area is local in nature. A large population in a small geographic area or a small population in a large geographic area may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements. While this may most often be true, it does not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements.

Conversely, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being "local." In such cases, documentation supporting the interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, the "well-defined local community, neighborhood, or rural district" requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, i.e. a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

If NCUA does not find sufficient evidence of community interaction or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. The credit union must also provide evidence of the political jurisdiction(s) and population. Evidence of the political jurisdiction(s) should include maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas.

If the area to be served does not meet the political jurisdiction(s) and population requirements of the preceding paragraph, or if required by NCUA, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district. It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- the defined political jurisdictions;
- major trade areas (shopping patterns and traffic flows);
- shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- organizations and clubs within the community area;
- newspapers or other periodicals published for and about the area;
- maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas;
- other documentation that demonstrates that the area is a community where individuals have common interests or interact.

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.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a

detailed and practical business and marketing plan to serve the entire community for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plan submitted with their application.

4. In IRPS 99-1, Chapter 3, Section III is revised to read as follows:

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for serving underserved areas in the Federal Credit Union Act. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

The "well-defined local community, neighborhood, or rural district" requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000 or (2) the area to be served is in multiple contiguous political jurisdictions, i.e., a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria and meets the definition of an investment area that is underserved, then it is presumed to be a local community, neighborhood, or rural district.

An investment area includes any of the following (as reported in the most recently completed decennial census or equivalent government data):

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
- An area where the unemployment rate is at least 1.5 times the national average;

- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;
- An area located outside of a Metropolitan Area with a county population loss between the most recent decennial census and the previous decennial census of at least 10 percent;
- An area located outside of a Metropolitan Area with a county net migration loss (out-migration minus in-migration) over the five-year period preceding the most recent decennial census of at least 5 percent;
- An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met

as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

WITHDRAWN