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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed Amendments and Request for Comments to Interpretive Ruling and Policy Statement 94-1 (IRPS 97-1).

SUMMARY: The NCUA Board requests comment on the issue of field of membership overlaps and the use of exclusionary clauses. Also, the NCUA Board proposes to update the requirements for obtaining a community charter. The proposal clarifies the documentation requirements necessary for a new, expanding or converting community charter. Most importantly, the credit union must document its plan to serve all segments of the community. The proposal also clarifies the authority of the NCUA Board to take supervisory and/or administrative action against a credit union that fails to follow its marketing plan and/or business plan to serve all segments of the community.

DATES: Comments on Section B of the Supplementary Information regarding the proposed amendments to Section 701.1 of NCUA's regulations and IRPS 94-1 must be received by [30 days after Federal Register publication]. Comments on Section A of the Supplementary Information regarding the request for comments must be postmarked or received by [60 days after Federal Register publication].

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. Fax comments to (703) 518-6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, President, Asset Management and Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759, or telephone (512) 795-0999; Stephen E. Austin, Director of Supervision, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia, or telephone (703) 518-6360; Lynn K. McLaughlin, Program Officer, at the above address and telephone number; Michael J. McKenna, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Overlaps and Exclusion Clauses

Overlaps in credit union fields of membership have increased in recent years due to a number of factors. The overlaps primarily are a result of more credit unions either being chartered as community credit unions, or existing occupational/associational based charters making application to convert to community charters. Also, many state regulators routinely permit overlaps of not only state chartered credit unions, but also federally chartered credit unions. As a result, issues relating to the competitive relationship between overlapped credit unions, particularly a community charter and any occupational/associational based credit union within the community charter's area of operations, are being reviewed. Data on the implications to both the credit unions and the members of federal credit unions directly competing with one another is limited but it is recognized that credit unions are an integral part of a dynamic and constantly changing financial marketplace. It is, therefore, important to identify all potential issues as they relate to the policy on overlaps. For example:

- From the perspective of the credit union member, what harm or benefit is derived from exclusionary clauses?
- Is overlap protection necessary for a credit union properly serving its members?
- What confusion, if any, is created for a credit union member when he or she is unable to join a community credit union because he/she is part of an excluded group?
- Do overlapping fields of membership increase or decrease services to the member?
- Should the NCUA Board consider safety and soundness concerns in the advent of credit unions with overlapping fields of membership?
- Will small credit unions and credit unions chartered to serve low-income areas be affected by overlapping fields of membership?
- Do overlapping fields of membership affect the "cooperative spirit" philosophy as articulated and practiced in the credit union movement?
- Should other factors, such as mutual consent, be taken into consideration in allowing or not allowing overlaps?
- Should federal credit unions gain tangible, quantifiable regulatory competitive protection from other federal credit unions, but not from state chartered credit unions?
- What are state policies and experience on overlaps?
- Do newly chartered, low-income, or any other types of credit union need overlap protection?
- Should the size of either the overlapped or overlapping credit union be taken into consideration in permitting or not permitting the overlap?

Issues relating to overlaps must be thoroughly analyzed in order to develop a revised policy on overlaps. Accordingly, the Board invites comments on the issues related to NCUA's overlap policy and the use of exclusion clauses.

B. Community Service Amendments

NCUA's community chartering policy is not affected by the injunction issued in the consolidated cases of *First National Bank and Trust Co., et al. v. NCUA and the American Bankers Association v. NCUA et al.*, which was partially stayed by the Court of Appeals on December 24, 1996. Current policy requires that a community

charter must be based on "a well-defined neighborhood, community, or rural district." Given the diversity of community characteristics throughout the country, NCUA's policy is to limit the community to a single, geographically well-defined area where residents have common interests or interact. NCUA recognizes four types of affinity on which a community charter can be based -- persons who live in, worship in, go to school in, or work in the community. More than one community credit union may serve the same community area.

The Board believes it is important, for reasons discussed below, to provide clarification to credit unions on what is necessary for the approval of a request to convert to a community charter. The Board wishes to ensure that credit unions requesting to convert have fully considered the challenges in serving an entire community. Community credit unions are frequently more susceptible to competition from other local financial institutions and do not have a sponsoring company or association. The lack of a payroll deduction makes it more difficult to develop a savings promotion program and in the collection of loans. A diverse membership base creates new challenges in developing an appropriate business plan and marketing strategy, especially if this diverse population is located in a rural community. This guidance also applies to newly established community credit unions as well as credit unions wishing to expand their community boundaries.

IRPS 94-1, as amended by IRPS 96-1, specifies certain requirements that must be satisfied before a community charter can be granted. Integral to the current approval process for a community charter is the requirement that a business plan and marketing strategy for serving the community must be submitted. The business plan requirements, primarily an analysis of the market area, a service market strategy, an organizational/management plan, and financial plan, remain the same. However, further guidance has been requested on what constitutes an acceptable business plan/marketing strategy for approval as a community charter. In particular, questions have arisen regarding the NCUA Board's expectations relative to a community charter. In response to these questions, the NCUA Board believes it is necessary to clarify certain aspects regarding how a credit union intends to serve a community as evidenced by its business plan/marketing strategy.

First, the Board is clarifying that all community charters must be prepared to serve all segments of the community. The credit union must be willing and able within a reasonable period to not only serve, but also to market, to a diverse membership base, which should generally reflect the make-up of the community. This may require community credit unions to develop special marketing programs or services and products for different segments of the community. This type of information needs to be addressed in either the business plan or the marketing plan. Most importantly, this amendment highlights the fundamental difference between a community charter and other types of charters. That is, a community charter must make reasonable and prudent efforts to market its services to all segments of the community. An overall marketing strategy that primarily target one segment, or select segments, of the community to the exclusion of others will not be acceptable. Membership and loan penetration rates, among other factors, will be reviewed to assess how well the credit union is serving the entire community.

Second, the Board is also clarifying that a new community charter or a credit union converting to a community charter will be held accountable for its business

plan/marketing strategy outlining how it will serve the entire community submitted to NCUA as part of the approval process. Of course, there may be safety and soundness concerns, as well as other reasons, why a credit union did not follow or could not meet its business plan or marketing strategy objectives. Such reasons would be factored into any review by NCUA before a decision is made to take any supervisory and or administrative action. For example, if a credit union established and then implemented a special marketing plan for a group in specific need of credit union service within the community, and, notwithstanding its best efforts to attract membership from and provide service to that group the penetration rate is lower than projected, then failure to meet the business plan would not be cause for supervisory action. The NCUA Board recognizes that local marketplace factors may influence the time tables and even the ability to meet the business plan, though reasonable due diligence to meet the plan is expected.

Third, the Board is clarifying that the requirements set forth in Chapter I of the Chartering Manual to obtain a community charter, except for any requirements to demonstrate community support, also apply to an existing credit union converting to a community charter. The Board is requesting comment on the deletion of the requirement in IRPS 94-1 to provide written evidence of community support such as letter of support, petitions, or surveys.

A converting credit union must provide information on the groups being served, including penetration rates of all segments of its field of membership, marketing efforts to service the current field of membership and any special programs the credit union may have sponsored to assist groups in need of credit union services, such as adding a low-income community to its field of membership or mentoring a low-income community.

Finally, the Board is proposing to eliminate the ability of a credit union converting to a community charter to continue to serve groups outside the new community boundaries. Continued service to occupational and associational groups outside the community is not consistent with the nature of a community charter. This proposal is consistent with NCUA's policy regarding new community charters. Credit unions could continue to serve members of record of groups outside the community boundaries.

C. Thirty Day Comment Period

These proposed amendments are being issued with a thirty (30) day comment period since the amendments are simply clarifying the Board's policy on community charters and explicitly stating the Board's implicit enforcement authority. Because these are technical amendments the Board believes a 30 day comment period is appropriate.

Requests for comment is being expedited due to ongoing work requirements of NCUA's Field of Membership Task Force and the number of pending community charter conversions.

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 proposed 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

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). 60 FR 44978 (August 29, 1995).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This proposed amendments makes no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

Congressional Review

NCUA has determined that this is not a major rule under 5 U.S.C. Chapter 8.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and record keeping requirements

By the National Credit Union Administration Board on October 22, 1997

Becky Baker
Secretary of the Board

Accordingly, NCUA proposes to amend 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 31 U.S.C. 3717. Section 701.31 is also authorized by 12 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 94-1, Chartering and Field of Membership Policy (IRPS 94-1), as amended by IRPS 96-1 and IRPS 97-1. Copies may be obtained by contacting NCUA at the address found in Section 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 94-1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

3. In IRPS 94-1, Chapter 1, Section IV.A.4.b is revised to read as follows:

IV.A.4.b. --Special Requirements for Community Credit Unions

Community credit unions are frequently more susceptible to competition from other local financial institutions and generally do not have substantial support from any single sponsoring company or association. Additionally, community credit unions must be prepared to serve all segments of the community. As a result, a community charter will often encounter financial and operational factors that differ from an occupational and associational charter serving select or defined groups. This results primarily from the fact that a community credit union will have a more diverse and possibly geographically dispersed membership base, which should generally reflect the make-up of the community. This diverse membership potential 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 charter to develop a detailed and practical business plan for at least the first three years of operation that focuses on the accomplishment of the unique financial and operational factors of a community charter. The business plan shall contain, but not necessarily be limited to, the following:

- Analysis of market area - - geographic, demographic, employment, income, housing, and economic data;
- Service/marketing strategy for all segments of the community - - financial and other services to be provided, new member/share/loan promotion policies and procedures and income generation strategy;
- Organizational/management plan - - qualification and planned training of officials/employees, operating facilities to include office space/equipment and supplies, accounting system, safeguarding of assets, insurance coverage, etc.; and
- Financial plan - - sources and application of funds statements and pro forma balance sheet and income/expense statements and assumptions.

Community credit unions will be required to follow the marketing and/or business plan submitted with their application. In the event any community credit union fails to follow its marketing and/or business plan, supervisory and/or administrative actions may be taken against the credit union. If the business plan is not sufficiently detailed or does not satisfactorily address how the credit union will serve all segments of the community, the charter request may be conditionally approved by

NCUA subject to the credit union's agreement of the imposed conditions.

A community credit union will be expected to regularly review its business plan as well as membership and loan penetration rates throughout the community to determine if the entire community is being adequately served. NCUA may require periodic service status reports on its service to the community and will review the credit union's service to the entire community during examinations.

4. In IRPS 94-1, Chapter 2, Section IV.B is revised to read as follows:

IV.B -- Conversion to Community Charter

An existing occupational, associational, or multiple group federal credit union may apply to convert to a community charter. In order to support a case for a conversion to community charter, the applicant federal credit union must, in addition to the requirements for a community charter set forth in Chapter I (except for the requirement to demonstrate community support), develop a detailed business plan which may include, but not be limited to the following data:

- current financial statements, including the income statement and a summary of loan delinquency;
- a map or maps showing both the existing and proposed boundaries for the field of membership, as well as existing and planned service facilities;
- a written description of the area of community service for the proposed community credit union;
- the most current population figures for the existing and proposed boundaries;
- the source of the population information (census data are considered the most authoritative); the greater the population of the proposed area, the greater justification necessary to support the existence of the "community" and interaction among its residents;
- evidence that the proposed area is a "community" as defined in "Community Common Bond" in Chapter 1;
- information concerning the availability of financial services to the residents of the new area;
- a list of credit unions with a home or branch office in the proposed area (If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed conversion.);
- information regarding the attitude of the current credit union sponsors and existing credit union members toward the proposed conversion (a letter from the board of directors of the credit union is sufficient evidence);
- information on the groups presently being served, to include, but not necessarily limited to, income data on its membership, the penetration rate of the current field of membership, core group, and any low to moderate group, and any special programs the credit union sponsored to serve a low to moderate group; and
- the anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

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