

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 705

RIN 3133-AC98

The Low-Income Definition

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA is proposing to use median family income (MFI) to determine if a credit union qualifies for a low-income designation and assistance from the Community Development Revolving Loan Fund (CDRLF). The proposed rule will eliminate the confusion associated with adjusting median household income (MHI) in metropolitan areas with higher costs of living. Additionally, it will better align NCUA criteria for a low-income designation with the criteria for the addition of an underserved area to a federal credit union (FCU) field of membership and certification as a Community Development Financial Institution (CDFI).

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/news/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule Parts 701 and 705” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Moissette Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Credit Union Act (Act) authorizes the NCUA Board to define “low-income members” so that credit unions with a membership predominantly consisting of low-income members can benefit from certain statutory relief and receive assistance from the CDRLF. 12 U.S.C. 1752(5), 1757a(b)(2)(A), 1752a(c)(2)(B), 1772c-1. NCUA defines “low-income members” in parts 701 and 705 of its regulations generally as meaning members whose annual household income falls at or below 80 percent of the national MHI, but provides a differential for certain geographic areas with higher costs of living. 12 CFR 701.34(a)(2), 705.3(a)(1).

In 2006, NCUA’s Member Service Assessment Pilot Program (MSAP) recommended the Board consider reassessing the formula for determining if an FCU qualifies for a low-income designation. According to MSAP, using MFI would be more reflective of the regional economic diversity of the United States and of the circumstances in which FCU members live. The NCUA Outreach Task Force evaluated the MSAP recommendation, identified concerns with the current low-income formula, and agreed with MSAP that the standard for designating low-income credit unions should change from MHI to MFI.

Specifically, NCUA proposes to revise the definition of “low-income members” in §§701.34(a)(2) and 705.3(a)(1) to base the determination on an “income standard” that relies on MFI or the alternative of median earnings. For metropolitan areas, the

proposal defines low-income members as those living in an area, within the metropolitan area, where the standard is at or below 80% of either the standard for the entire metropolitan area or the national standard, whichever is greater. For members living outside a metropolitan area, the proposal defines low-income members as those living in an area where the standard is at or below 80% of either the statewide non-metropolitan area standard or the national non-metropolitan area standard, whichever is greater.

The Census Bureau designates Metropolitan Areas in accordance with the standards developed by the U.S. Office of Management and Budget. Metropolitan Areas contain a core urban area of 50,000 or more in population and one or more counties, including the counties containing the core urban area and adjacent counties with a high degree of social and economic integration with the urban core. U.S. Census Bureau, <http://www.census.gov/population/www/estimates/metroarea.html> (April 7, 2008).

The proposed rule will eliminate the confusion associated with adjusting the national MHI for metropolitan areas with higher costs of living. Additionally, it will better align the criteria for a low-income designation with the criteria adding an underserved area to an FCU field of membership (FOM) and certification as a CDFI under Treasury Department regulations. See Interpretive Rulings and Policy Statement (IRPS) 03-1, 68 FR 18334 (April 15, 2003) (as amended by IRPS 06-1, 71 FR 36667 (June 28, 2006)); 12 CFR 1805.201(b)(3)(ii)(D)(2)(i)-(ii).

The proposed amendment includes a five-year grandfather provision to allow existing low-income credit unions (LICUs) to qualify under the new MFI standard or adequate transition time if they no longer qualify for the low-income designation. The proposed rule is not changing or removing other current standards, which credit unions can use to qualify for a low-income designation, based on serving members who are enrolled as students in a college, university, high school, or vocational school. 12 CFR 701.34(a)(2)(ii).

Median Household Income Standard

MHI divides the income distribution into two equal groups, half having household incomes above the median, half having incomes below the median. The Census Bureau defines “household” as all the people who occupy a housing unit, such as a house, an apartment or other group of rooms established as separate living quarters. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household. Households do not include group quarters such as dormitories.

In determining MHI for members of credit unions applying for a low-income designation, NCUA currently applies allowances to the national MHI for geographical areas with higher costs of living. The geographical differentials are based on data from the Employment and Training Administration of the Department of Labor. The differentials

are outdated and do not account for all national high-cost areas defined in the current lower living standard income level differentials. See 71 FR 31215 (June 1, 2006).

Consequently, some credit unions may not be eligible for low-income designation due to the outdated geographical area differentials in the current regulation.

In addition to the outdated differentials, two concerns related to using MHI as a standard to determine low-income eligibility exist. First, using MHI is inconsistent with the standard NCUA uses to assess whether an area is underserved and has caused confusion between the definitions of “low income” and “underserved.” Second, NCUA’s use of the MHI standard is not consistent with the qualification standard used by other federal agencies with policies to foster low-income initiatives, specifically the Treasury Department’s CDFI Fund.

Median Family Income Standard

The Board believes MFI should be the standard used to determine whether a credit union qualifies for a low-income designation. MFI is the amount that divides the income distribution into two equal groups, half having family incomes above the median, half having incomes below the median. The median is based on family members 16 years old and over with income. The Census Bureau defines a “family” as a group of two or more people related by birth, marriage, or adoption and residing together. MFI is available from the U.S. Census Bureau for both non-metropolitan and metropolitan areas. This is an advantage because it eliminates the need to adjust the income standard for areas with higher costs of living.

Inconsistency with Underserved Area Definition

NCUA's low-income definition using the MHI standard preceded amendments to FOM provisions in the FCU Act regarding underserved areas. NCUA began using MHI to determine if a credit union qualified for a low-income designation in 1993. 56 FR 21645 (April 23, 1993). In 1998, the FCU Act was amended to permit multiple common-bond FCUs to add underserved areas if, among other requirements, the area met the definition of an "investment area," as defined in §103(16) of the Community Development Banking and Financial Institutions Act of 1994. Credit Union Membership Access Act (CUMAA), P.L. 105-219, §101, 112 Stat. 913, 915 (1998) (codified at 12 U.S.C. 1759(c)(2)(A)(i)); P.L. 103-325, §103(16), 108 Stat. 2163 (1994).

Treasury Department regulations, implementing the Community Development Banking and Financial Institution Act of 1994, include an MFI at or below 80 percent of the MFI for corresponding metropolitan area as a factor supporting the determination that an area is an investment area. 12 C.F.R. 1805.201(b). As required by CUMAA, NCUA implemented the authority for service to underserved areas by looking to the definition of investment area and included the 80 percent of MFI standard among the criteria that can be used to qualify an underserved area as an investment area. NCUA Chartering and Field of Membership Manual, Chapter 3, II.A., Interpretive Rulings and Policy Statement (IRPS) 03-1, 68 FR 18334 (April 15, 2003) (as amended by IRPS 06-1, 71 FR 36667 (June 28, 2006)). While the 80 percent of MFI standard is among the criteria that can be used to qualify an underserved area as an investment area, an FCU that

adds an underserved area does not automatically qualify for the low-income designation.

The low-income formula, however, did not change with the FOM amendments, causing inconsistency within NCUA regulations and creating confusion between the benchmarks used for determining low-income designation and if an area is underserved. The use of MFI as a standard to determine low-income status will bring uniformity and consistency to the regulations, and should eliminate industry confusion regarding the low-income designation and application for an underserved area.

Inconsistency with the Community Development Financial Institutions Fund

Generally, the current MFI standard differs from the standard other federal agencies use to promote outreach programs, most importantly the Treasury Department's CDFI Fund. The CDFI Fund, through monetary awards and other benefits, helps promote access to capital and local economic growth in urban and rural low-income communities across the nation. Qualifying credit unions obtain assistance from the CDFI Fund to offer financial services to and further economic development of low-income members.

The CDFI Fund uses MFI to implement the Community Development Banking and Financial Institutions Act of 1994, as previously discussed. This has created confusion and, in many instances, placed additional and unnecessary burdens on credit unions attempting to qualify for a low-income designation and assistance from the CDFI Fund.

The CDFI Fund defines “low income” as an income, adjusted for family size, of not more than 80 percent of the metropolitan area MFI or, if appropriate, non-metropolitan area MFI. 12 C.F.R. §1805.104(ee). Because credit unions may apply for financial assistance from the CDFI Fund, the Board believes it would be beneficial to align the low-income formula with the CDFI Fund criteria. This would reduce the regulatory burden on federally-insured credit unions attempting to qualify for benefits of a low-income designation and from the CDFI Fund.

Proposed Rule

The proposed rule amends the definition of “low-income members” to use the MFI as an income standard instead of MHI. NCUA recognizes not all credit union members meet the Census Bureau’s definition of “family.” Therefore, the proposed rule permits credit unions to use the median earnings for individuals reported by the Census Bureau as an alternate income standard for MFI. It also defines the geographic areas NCUA will consider when determining whether a credit union qualifies for a low-income designation.

Additionally, the proposed rule clarifies the process for removing a low-income designation. If a credit union no longer qualifies for the designation, a regional director will give the credit union written notice. Loss of the designation may result for various reasons, including changes in FOM or as a result of mergers, assumptions of member shares from liquidating credit unions, or other similar occurrences. A credit union will have five years after the date of the written notice to come into compliance with

regulations applicable to credit unions that do not have a low-income designation. A credit union may appeal the loss of its low-income designation to the Board; an appeal must be filed within 60 days of the date of the written notice of loss of the designation. A credit union will submit its appeal through the appropriate regional office.

The five-year period provides LICUs that lose their low-income designation adequate time to comply with regulatory requirements regarding secondary capital (§701.34 and part 702), member business loans (§723.17), nonmember deposits (§701.32), and CDRLF financial assistance (12 CFR part 705). The reasons for a five-year period include the fact that NCUA regulations require a minimum maturity of five years for secondary capital, 12 CFR 701.31(b)(4)), and CDRLF loans have a maximum maturity of five years, 12 CFR 705.7(c). If a LICU loses its designation under the MFI standard and must repay secondary capital, a CDRLF loan, nonmember deposits, or reduce its member business loans, the five-year period should provide adequate time to make the necessary adjustments.

Finally, the proposed rule makes a conforming amendment to §705.3, namely, that the meaning of low-income members will be the same in that section as in §701.34 and will clarify that credit unions qualifying for the low-income designation under §701.34 may apply for assistance from the CDRLF. Part 705 and §701.34 would continue to apply to state-chartered credit unions in accordance with §741.204.

Five-Year Grandfather Provision for Current LICUs

The Board does not anticipate changing from MHI to MFI will have a significant impact on the number of credit unions qualifying for a low-income designation. To offset any potential adverse impact from the change to the MFI standard, the proposed rule includes a grandfather provision to permit current LICUs not meeting the new standard to retain the designation for a five-year period after a final rule becomes effective. During this five-year period LICUs may take advantage of the benefits associated with a low-income designation, including continuing to be eligible for CDRLF program. The reasons for a five-year period for a grandfather provision are the same as those noted above for a five-year period following a loss of the designation for other reasons. By the end of five years after the effective date of a final rule, all LICUs must qualify for the designation using the MFI standard. Any LICU failing to qualify under the MFI standard would automatically lose the low-income designation at the end of this five-year period. Loss of the low-income designation for failure to meet the MFI standard within five years of the effective date of a final rule would not be appealable to the Board.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. 5 U.S.C. 603(a). For purposes of this analysis, NCUA considers credit unions having under \$10 million in assets small entities. Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003). As of December 31, 2007, out of

approximately 8,410 federally insured credit unions, 3599 had less than \$10 million in assets.

This proposed rule directly affects all low-income credit unions, of which there are approximately 1,087. NCUA estimates approximately 692 low-income credit unions are small entities. Therefore, NCUA has determined this proposed rule will have an impact on a substantial number of small entities.

NCUA has determined, however, the economic impact on entities affected by the proposed rule will not be significant. The proposed rule will better align criteria for a low-income designation with the criteria for the addition of an underserved area to a federal credit union field of membership under IRPS 03-1 (as amended by 06-1) and certification as a CDFI. The proposed rule will establish one income standard for determining a low income designation, underserved areas, and investment areas. It will also eliminate the confusion within the credit union industry due to the use of different income standards. NCUA believes the proposed rule will reduce the regulatory burden for LICUs and any economic impact will be minimal. Additionally, NCUA has proposed a five-year period for LICUs affected to make necessary adjustments. Accordingly, the Board certifies this rule will not have a significant economic impact on a substantial number of small entities. NCUA invites comment from the public on whether the proposal will have a significant economic impact on small entities.

Paperwork Reduction Act

The proposed rule does not contain a “collection of information” within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)) and would not increase paperwork requirements under the Paperwork Reduction Act of 1995 or regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their 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. The proposed rule would not have substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

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

List of Subjects

12 CFR Part 701

Credit unions, Low income, Nonmember deposits, Secondary capital, Shares

12 CFR Part 705

Community development, Credit unions, Loans, Low income, Technical assistance.

By the National Credit Union Administration Board, on April 17, 2008.

Mary F. Rupp

Secretary of the Board

For the reasons stated above, NCUA proposes to amend 12 CFR parts 701 and 705 as follows:

PART 701 — ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109-351, 120 Stat. 1966.

2. Amend § 701.34 by revising paragraph (a) to read as follows:

§701.34 [Amended]

(a) Designation of low-income status. (1) A regional director will designate a federal credit union as a low-income credit union if a majority of its membership qualifies as low-income members. As provided in §701.32, low-income credit unions may receive shares from nonmembers.

(2) A regional director will remove the designation if the federal credit union no longer meets the criteria of this section and will give the credit union written notice. The credit union will have five years after the date of the written notice to come into compliance with regulatory requirements applicable to credit unions that do not have a low-income designation. A federal credit union may appeal the loss of its designation as a low-income credit union to the Board within 60 days of the date of the notice from the regional director. An appeal must be submitted to the regional director.

(3) Definitions. The following definitions apply to this section:

Geographic area means an area within the United States, including any State, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, or any territory of the United States or a geographic unit that is a county or equivalent area, a unit of a local government, incorporated place,

census tract, block numbering area, Zip Code Tabulation Area, block group, or Native American, American Indian, or Alaskan Native area, as such units are defined or reported by the U.S. Census Bureau.

Income standard means the median income for families or median earnings for individuals, as reported by the U.S. Census Bureau.

Low-income members means those members: enrolled as students in a college, university, high school, or vocational school; living in a geographic area within a Metropolitan Area, where the median income is at or below 80% of the greater of the Metropolitan Area income standard or the national Metropolitan Area income standard; or living in a geographic area outside a Metropolitan Area, where the median income is at or below 80% of the greater of the statewide, non-Metropolitan Area income standard or the national non-Metropolitan Area income standard.

(4) Any credit union designated as a low-income credit union on the [EFFECTIVE DATE OF THE FINAL RULE] will have five years from that date to meet the criteria for low-income designation under paragraph (a)(1) of this section.

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PART 705 — COMMUNITY DEVELOPMENT REVOLVING LOAN FUND FOR CREDIT UNIONS

3. The authority for part 705 continues to read as follows:

Authority: 12 U.S.C. 1772c-1; 42 U.S.C. 9822 and 9822 note.

4. Amend § 705.3 by revising paragraph (a) to read as follows:

§ 705.3 Definitions.

(a) The term “low-income members” means those members defined in §701.34 of this chapter.

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