

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN #3133-AD48

**Organization and Operations of Federal Credit Unions;
Underserved Areas (IRPS 08-2)**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule

SUMMARY: NCUA is adopting a final rule implementing four modifications to its Chartering and Field of Membership Manual to update and clarify the process of approving credit union service to “underserved areas.” First, the rule clarifies the procedure for establishing that an “underserved area” qualifies as a local community. Second, it makes explicit the process for applying the economic distress criteria that determine whether an area combining multiple geographic units is sufficiently “distressed” to qualify as “underserved.” Third, it updates the documentation and clarifies the scope requirements for demonstrating that a proposed area has

“significant unmet needs” for loans and financial services. Finally, the rule utilizes data provided by NCUA on the location of depository institution facilities to determine whether an area is “underserved by other depository institutions” according to the presence of their facilities within the area.

DATES: This rule is effective [insert date 30 days after Federal Register publication.]

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Deputy General Counsel; John K. Ianno, Associate General Counsel; or Steven W. Widerman, Trial Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

In this preamble, the version of Chapter 3, section III, of the Chartering and Field of Membership Manual, entitled “Service to Underserved Communities,” that is presently in effect is referred to as “the existing rule,” cited as “IRPS 06-1,” and located at 71 FR 36667 (June 28, 2006). The version of Chapter 3, section III, as modified in the proposed rule is referred to as “the proposed rule,” cited as “Prop. Rule,” and located at 73 FR 34366 (June 17, 2008). The version of Chapter 3, section III, adopted in this rule is referred to as “the final rule,” cited as “App. B, Ch. 3, §III.,” and located in Appendix B infra.

The rest of the Chartering and Field of Membership Manual presently in effect (i.e., other than Chapter 3, section III) is referred to in the preamble as “the Chartering Manual,” cited as “IRPS 03-1,” and published in Appendix B to the proposed rule, 73 FR at 34371 et seq.

I. BACKGROUND

A. Authority to Serve Underserved Areas.

1. Credit Union Membership Access Act. In 1998, Congress enacted the Credit Union Membership Access Act (“CUMAA”), Pub. L. 105-219, 112 Stat. 914 (1998), authorizing the NCUA Board to allow multiple common bond credit unions to serve members residing in “underserved areas,” provided the credit union establishes and maintains a facility there. 12 U.S.C. 1759(c)(2). For an area to be “underserved,” CUMAA requires the NCUA Board to determine that the area is: (1) a “local community” that (2) qualifies as an “investment area” as defined in the Community Development Banking and Financial Institutions Act of 1994 (“CDFI Act”), id. §4702(16), and (3) is “underserved . . . by other depository institutions.”¹ Id. §1759(c)(2)(A). By incorporating the CDFI Act’s definition of an “investment area,” CUMAA’s “underserved area” authority also incorporated the regulations implementing that definition.

¹ By definition, a “depository institution” is insured and includes credit unions. 12 U.S.C. 461(b)(1)(A)(iv).

The CDFI Act defines an “investment area” as a geographic area that, unless it is presently designated an Empowerment Zone or Enterprise Community,² “meets the objective criteria of economic distress developed by the [Community Development Financial Institutions] Fund” (“CDFI Fund” or “Fund”) and also “has significant unmet needs for loans or equity investments.” Id. §4702(16). By regulation, the CDFI Fund adopted a definition of “investment area” that established “criteria of economic distress” and implemented the “significant unmet needs” criterion. 12 C.F.R. 1805.201(b)(3)(ii) (2008). The regulation dictates that “[a]n Investment Area shall meet specific geographic and other criteria” prescribed in the CDFI Fund’s “investment area” definition. Id. §§1805.201(b)(3)(i), 1805.104(dd). Further, the regulation gives the Fund sole discretion to determine whether these criteria are fulfilled. Id. §1805.201(a)(5).

2. CDFI “Investment Area” Definition. Under the CDFI Fund’s distress criteria, a proposed “investment area’s” location within or outside a designated Metropolitan Area (a “Metro” or “Non-Metro” area, respectively) determines the “geographic unit(s)” into which the area must be translated in order to apply the economic distress criteria. Id. §1805.104(ff). For a Metro area, the permissible geographic units are limited to: a census tract; a block group; and an American Indian or Alaskan Native area. Id. §1805.201(b)(3)(ii)(B). For a Non-Metro area, the

² A proposed area that is currently designated an Empowerment Zone or Enterprise Community automatically qualifies as an “investment area”; no further “investment area” criteria must be met. 12 U.S.C. 4702(16)(B). Unexpired Empowerment Zones and Enterprise Communities are identified at: www.hud.gov/offices/cpd/economicdevelopment/programs/rc/tour/index.cfm. A “CDFI Worksheet” produced as explained *infra* by the “My CDFI Fund” website is not a reliable source for current Empowerment Zone or Enterprise Community designations.

permissible geographic units are limited to: “a county (or equivalent area); minor civil division that is a unit of local government; incorporated place; census tract; block numbering area; block group; and an American Indian or Alaskan Native area.” Id.

The CDFI regulation designates as “distressed” a proposed area that meets the applicable economic distress criteria as reported by the most recent decennial U.S. Census. Id. §1805.201(b)(3)(ii)(D). How the distress criteria apply in each case depends on which geographic units are permitted (based on the area’s designation as Metro or Non-Metro) and whether the area consists of a single geographic unit or multiple contiguous units. A Metro proposed area consisting of a single census tract, for example, must meet the distress criterion for either unemployment, poverty, or median family income. Id. §1805.201(b)(3)(ii)(D)(1) and (3). A Non-Metro proposed area consisting of a single county, for example, must meet the distress criterion for either unemployment, poverty, median family income or, if the area is a county, population loss or migration loss. Id. §1805.201(b)(3)(ii)(D)(1), (3), (4) and (5).

A proposed area consisting of multiple contiguous geographic units (e.g. adjoining census tracts in a Metro area or adjoining counties in a Non-Metro area) may combine “distressed” and non-“distressed” units. However, that area must satisfy a population threshold requiring the “distressed” units—those that “together meet one

of the [applicable distress] criteria”—to represent at least 85 percent of the area’s total population (“85% population threshold”). *Id.* §1805.201(b)(3)(ii)(C)(2).

Finally, to qualify as an “investment area,” the proposed area also must “have significant unmet needs for loans or equity investments.” 12 U.S.C. 4702(16)(A)(ii). The CDFI regulation deems this criterion to be fulfilled when “a narrative analysis . . . adequately demonstrates a pattern of [such] unmet needs” within the proposed area. 12 C.F.R. 1805.201(b)(3)(ii)(E).

3. Chartering Manual. Following the enactment of CUMAA in 1998, NCUA revised its Chartering Manual to implement its new authority to allow service to “underserved areas.” *Id.* §701.1 (1999). As then revised, Chapter 3, section III of the Chartering Manual incorporated the statutory definition of “underserved area,” including the then-existing CDFI “distress” criteria and the CUMAA criterion requiring the area to be “underserved by other depository institutions.” 63 FR 71998 (December 30, 1998). In the event of periodic revisions to the then-existing distress criteria, the Chartering Manual incorporated by reference revised or additional criteria that the CDFI Fund might adopt in the future. 67 FR 20013, 20017 (April 24, 2002).

B. Comments on Proposed Rule

The NCUA Board published its proposed rule (Interpretive Ruling and Policy Statement 08-2) updating and clarifying the process for approving service to “underserved areas,” with a 60-day comment period that closed on August 18, 2008.

73 FR 34366. NCUA received comments from 23 commenters in response to the proposed rule—nine were federally-chartered credit unions, two were state-chartered credit unions, eight were state credit union leagues, two were credit union industry trade associations, and two were banking industry trade associations. The comments from credit union industry participants were opposed to the proposed rule, while comments from banking industry trade associations supported it. The comments on the proposed rule are addressed below.

II. DISCUSSION OF COMMENTS ON PROPOSED RULE

A. Local Community.

1. “Local Community” Prerequisite. To be eligible for approval as an “underserved area,” the rule requires a proposed area to qualify as a “local community, neighborhood or rural district” (“local community”). IRPS 06-1, 71 FR at 36670-36671. The proposed rule clarified, but did not alter, this requirement. It simply incorporated by reference the sections of the Chartering Manual (Ch. 2, sections V.A.1. and V.A.2.) where the existing “local community” criteria are located, replacing the rule’s summary of those criteria. Prop. Rule, 73 FR at 34385, 34388.

Clarification of the “local community” prerequisite generated nine comments. The commenters insisted that interaction among residents of a proposed area is irrelevant to whether an area is “underserved” and, in fact, undermines the “underserved” concept; that being “underserved” in and of itself is evidence of sufficient interaction to bind the residents together as a “local community”; and that

meeting the CDFI definition of an “investment area” establishes that an area is a “local community.” One commenter claimed that there is “neither a requirement in the statutes, nor in NCUA regulations” that an area must be a “local community.” The gist of these comments is that an area otherwise qualifying as “underserved” should not be subject to the “local community” definition that applies to a community charter.

What these comments overlook is that CUMAA expressly imposes the “local community” requirement as an independent criterion for approval as “underserved.” CUMAA authorizes a multiple common bond credit union to include in its field of membership (“FOM”) “any person within a local, community, neighborhood or rural district if— (A) the Board determines that the local, community, neighborhood or rural district” otherwise meets CUMAA’s definition of an “underserved area.” 12 U.S.C. 1759(c)(2)(A) (emphasis added). The final rule affirms this long-standing statutory requirement, modifying it only to incorporate by reference the “local community” criteria set forth in the Chartering Manual’s chapter on community chartering. App. B, Ch. 3, §III.B.1.

2. Supplemental Letter. Under the Chartering Manual’s chapter on community chartering, among the ways an area may qualify as a “local community” is if it either consists of multiple political jurisdictions with a total population of 500,000 or less, or is located within a Metropolitan Statistical Area (“MSA”) that has a population of 1 million or less (in either case a “multi-jurisdiction/MSA community”). IRPS 03-1, 73

FR at 34385. In such cases, the chapter on community chartering requires a credit union to submit a supplemental letter “describing how the area meets the standards for community interaction and/or common interests” within in the proposed area.³ Id. In contrast, the Chartering Manual’s chapter on “underserved areas” does not require an equivalent letter to establish that a proposed area is a multi-jurisdiction/MSA community. IRPS 06-1, 71 FR at 36670-36671.

The supplemental letter’s purpose is to reinforce the “local community” criterion with qualitative evidence of interaction and common interests within the community. The proposed rule invited public comment on whether the letter is needed at all to fortify a multi-jurisdiction/MSA community in either the community chartering or “underserved area” contexts. Prop. Rule, 73 FR at 3467. The invitation to comment on the supplemental letter requirement attracted eleven comments—those who oppose the requirement in either context, and those who oppose extending it to proposed “underserved areas.” Among those who oppose the letter altogether, several commenters felt that it was unnecessarily burdensome, insisting that NCUA should assume responsibility for assembling qualitative evidence of interaction and common interests to support the multi-jurisdiction/MSA community. Another commenter pronounced the supplemental letter requirement redundant because it

³ There are two instances in when a credit union must provide a full analysis to establish that a proposed area is a well-defined “local community.” The first is when an area is unable to qualify as a community under either the “single political jurisdiction” criterion or the multi-jurisdiction/MSA criteria in section V.A.2. The second is when the area does qualify as a community under the multi-jurisdiction/MSA criteria, but the supplemental letter fails to present sufficient evidence of community interaction and/or common interests. IRPS 03-1, 73 FR at 34385.

demands proof of what already is seemingly presumed, making the presumption conditional and thus not truly a presumption.

Among those who commented that “underserved areas” should remain exempt from the supplemental letter requirement, nearly all objected that it would be unnecessarily burdensome to comply. For that reason, one commenter suggested making the requirement optional for “underserved areas.” Another insisted that ensuring consistency with community charters does not justify burdening “underserved areas” that qualify as multi-jurisdiction/MSA communities. Yet another predicted that equalizing the burden between community charters and “underserved areas” would encourage credit unions to choose conversion to a community charter over adding an “underserved area.” Concerned primarily with uniformity, one commenter recommended an all-or-none approach: either require the supplemental letter for multi-jurisdiction/MSA communities in both the community charter and “underserved area” contexts or require it in neither. These objections raised the issue of whether the burden of submitting a supplemental letter is justified to support the approval of a multi-jurisdiction/MSA community as “underserved.”

CUMAA imposes the “local community” criterion on community charters and “underserved areas” alike, but in fact there is a distinction between them that makes a difference. As a commenter correctly pointed out, with a community charter, the “local community” is the essential criterion of the common bond among all of the credit union’s members. It signifies a level of interaction and/or common interests

sufficient to sustain the viability of the credit union itself. In contrast, the “local community” comprising an “underserved area” is an accessory to an already viable credit union whose FOM is based entirely on a pre-existing multiple group common bond.

This distinction highlights a meaningful difference in scope and significance between the “local community” that comprises a community credit union’s whole FOM, and the “local community” that represents only a segment of a multiple group credit union’s FOM—its “underserved area.” The differing role of a “local community” in each context has convinced the Board that the demand for qualitative proof to meet the “local community” criterion is greater for a community charter than for an “underserved area.” For that reason, the final rule preserves the existing rule’s exemption of a proposed “underserved area” from the requirement to submit a supplemental letter explaining interaction and common interests within a multi-jurisdiction/MSA community. App. B, Ch. 3, §III.B.1.

B. Economic Distress Criteria.

1. Geographic Units. The rule implies, but does not expressly indicate, that the CDFI Fund’s geographic unit(s) and 85% population threshold apply when implementing the economic distress criteria. As the proposed rule explains, there is a fundamental incompatibility between an “underserved area” and a CDFI “investment area.” Prop. Rule, 73 FR at 34367. A proposed “underserved area” comes to the CDFI Fund’s economic distress criteria already pre-packaged in its

own “geographic unit”—a single, well defined “local community” consisting of a single jurisdiction or integrating multiple contiguous jurisdictions—whereas an “investment area” is not similarly pre-defined. 65 FR 37065, 37072, 37082 (June 13, 2000). This suggests that it would be redundant to dissolve a single, already well-defined “local community” into the applicable CDFI-designated geographic unit(s), thus implicating a population threshold, to determine whether the community is sufficiently “distressed.”

For these reasons, the Board is concerned that the existing rule is not explicit enough to ensure that the prescribed geographic unit(s) and population threshold are implemented when applying the distress criteria to a proposed area. IRPS 06-1, 71 FR at 36670-36671. Further, in the decade since CUMAA, convenient on-line access to relevant data has considerably simplified the task of translating an “underserved area” into the geographic units the CDFI Fund prescribes for applying the economic distress criteria that define an “investment area.”

The proposed rule addressed this concern by updating and clarifying the Chartering Manual in two significant respects to explicitly reflect the CDFI Fund’s “investment area” definition. For purposes of the economic distress criteria, the proposed rule expressly required that a proposed area must conform to the geographic unit(s) prescribed by CDFI, and that an area combining “distressed” and non-“distressed” geographic units must comply with the 85% population threshold.

NCUA received thirteen comments opposing the requirement to conform a proposed area into CDFI-prescribed geographic units. Most stated for one reason or another that a “local community’s” own geographic and political boundaries should trump the CDFI-designated geographic units. Other commenters noted that the geographic unit(s) and population threshold requirements do not apply to “underserved areas” in the first place. One commenter stated that “the language in [CUMAA] directs [NCUA] to use the community as the geographic basis for determining whether an underserved area exists.” Another commenter felt that census tracts are an impractical measure because residents typically cannot identify what census tract each resides in, and credit unions typically do not market their products and services according to tract boundaries. Yet another commenter confirmed that credit unions uniformly develop their business plans according to geographic and political boundaries, not census tract boundaries. One commenter predicted that conforming proposed areas to census tracts will result in fewer and smaller “underserved area” approvals.⁴ Nearly all of the commenters’ criticism addressed the use of census tracts. Recognizing that “underserved areas” typically comprise an entire city or county located within an MSA, the consensus of commenters advocated that such a whole city or county should be treated as a single geographic unit for purposes assessing whether a proposed area is “distressed.”

⁴ It is not necessarily true that conforming the boundaries of a proposed area to census tracts will result in fewer and smaller approvals. For example, a credit union recently added an "underserved area" comprising a large part of Los Angeles County, CA, which when conformed to census tracts, qualified as distressed under population threshold.

NCUA received four comments opposing the imposition of the 85% population threshold on a proposed area combining “distressed” and non-“distressed” units. One dismissed the population threshold as a “technical correction,” while another objected that it departs from the notion that a proposed “underserved area” already is a single entity. To enhance the “distressed” population, a credit union trade association proposed counting not only the residents of the “distressed” units, but also the people who work, worship or go to school there, even though the CDFI Fund limits a unit’s population to its “residents.” 12 C.F.R. 1805.201(b)(ii)(C)(2). Another commenter believed the population threshold does not go far enough, and would require each and every geographic unit within a proposed area to be “distressed,” even though the 85% population threshold allows some entirely non-“distressed” units among a group of contiguous units. Id.

Notwithstanding the comments, the final rule is explicit in requiring a proposed area to conform to the geographic unit(s) prescribed by CDFI according to whether an area is located within or outside a Metro area. Id. §1805.104(ff). For this purpose, the rule follows the CDFI Fund’s practice of deeming a proposed area located in a designated MSA⁵ to be within a Metro area, and vice versa. App. B, Ch. 3, §III.B.2.a. The rule then prescribes the corresponding applicable CDFI geographic units—“Metro units” when a proposed area is located within an MSA, and “Non-

⁵ To ensure consistency with the CDFI Fund’s distress criteria, which are measured according to the most recent decennial Census, the final rule relies solely on the MSA designations that correspond to the same decennial census, rather than on the Office of Management and Budget’s updated annual designations. For MSA designations that correspond to the 2000 decennial Census, see “Metropolitan Areas and Components, 1999, with FIPS Codes” (6/30/99 revised 1/28/02) at: <http://www.census.gov/population/estimates/metro-city/99mfips.txt>

Metro units” when the area is located outside an MSA. 12 C.F.R.
1805.201(b)(3)(ii)(B).

A proposed area that is partly within and partly outside an MSA (i.e., straddles an MSA’s boundary) is deemed to be entirely within a Metro area because the corresponding geographic units include ones that are permissible for areas located either within or outside an MSA (e.g., a census tract). Further, regardless of its location, a proposed area must be comprised entirely of whole geographic units of single kind; it cannot have fractional units (e.g., half of a census tract or half of a county). To avoid fractional units, the proposed area should be conformed to the next smallest applicable geographic unit (e.g., block groups).

In the case of a proposed area consisting of multiple contiguous geographic units (e.g., a group of adjoining census tracts inside an MSA or a group of adjoining counties outside an MSA), the final rule expressly imposes the 85% population threshold. Id. Thus, when a proposed area combines “distressed” and non-“distressed” geographic units, the “distressed” units must represent at least 85 percent of the area’s total population. Id. §1805.201(b)(3)(ii)(C)(2) (2008).

The final rule follows the CDFI Fund’s practice of allowing each “distressed” unit within a group to qualify as such under any one of the criteria; they do not all have to qualify under the same criterion. App. B, Ch. 3, §III.B.2.a.

2. CDFI Fund Website. The rule is designed to work in coordination with the CDFI Fund’s “My CDFI Fund” website—an invaluable resource for determining whether a proposed area is “distressed.” The website is equipped to analyze the most commonly used geographic units: a census tract, a county or an independent city (which is treated as equivalent to a county).⁶ The “My CDFI Fund” website’s “Information and Mapping System” feature allows the user to select and enter geographic units that it then analyzes, individually and as a single proposed area, using the most recent decennial Census data.⁷ The results are displayed on a comprehensive “Investment Area/Hot Zone Worksheet” (“CDFI Worksheet”).

The CDFI Worksheet shows whether an individual geographic unit is located within an MSA; its total population; its poverty rate; the percent of benchmark MFI;⁸ the unemployment rate; and most importantly, whether in the end the unit qualifies as

⁶ The “My CDFI Fund” website’s “Information and Mapping System” (“CIMS”) is available at: <https://www.cdfifund.gov/myCDFI/Organization/Mapping/Mapping.asp>. The “Welcome to CIMS” page explains the options for identifying “CDFI Investment Areas” and a “Mapping System Overview and Tutorial.” The “My CDFI Fund” website is accessible to registered users through an organizational account holder. For instructions on how to become a registered user, see <http://www.ncarea.gov/CreditUnionDevelopment//Underserved/underserved.html>. Under the “Expanding into Investment Areas” section is a link entitled “Instructions to Use the CDFI Website.”

⁷ Typically, there is an 18-month lag between the taking of a decennial U.S. Census and the publication of the results. Thus, for example, the results of the 2000 census became available when published in 2002 and will remain the most recent census until the results of the 2010 census are published.

⁸ The “My CDFI Fund” website apparently does not compare a geographic unit’s MFI against the national MFI for Metro Areas and Non-Metro Areas, as the case may be, which is a prescribed alternative. 12 C.F.R. 1805.201(b)(ii)(D)(2). The CDFI Fund is working to fix this flaw, but in the meantime a credit union can compare a unit’s MFI against the national MFI as determined by the U.S. Census to determine if that changes the area’s initial non-“distressed” result. Current national MFI data is available from the U.S. Census at: <http://censtats.census.gov/pub/Profiles.shtml> (Enter “U.S. Summary” and then “metro”).

“distressed.”⁹ For a proposed area that combines contiguous “distressed” and non-“distressed” units, the CDFI Worksheet applies the 85% population threshold to determine if the area’s population is sufficiently represented in the “distressed” units (which the decennial Census itself does not do), determines that the combined units are contiguous, and shows the tract-by-tract population. Compared to manually downloading census data, the “My CDFI Fund” website’s analysis of census tracts and counties is a more expeditious way to establish that a proposed area is sufficiently “distressed,” thus conserving credit union resources.

C. Significant Unmet Needs for Loans or Financial Services.

In addition to determining that a proposed area is “distressed,” the CDFI Act’s definition of an “investment area” requires the area to have “significant unmet needs for loans or equity investments.” 12 U.S.C. 4702(16)(A)(ii). To meet this criterion, the CDFI Fund requires “a narrative analysis . . . adequately demonstrat[ing] a pattern of unmet needs” for financial products and services within the proposed area. 12 C.F.R. 1805.201(b)(3)(ii)(E). Further, the Fund retains sole discretion to determine whether this criterion is met. Id. §1805.201(a)(5).

The existing rule addresses this requirement through the business plan that must be developed by a credit union seeking to add an “underserved area.” The business plan must “identify the credit and depository needs of the community and detail how

⁹ The “My CDFI Fund” website implies that it determines whether a proposed area “qualifies as an investment area.” It does not. The website determines only whether a proposed area’s geographic units are “distressed.” An applicant still must independently demonstrate the proposed area’s “significant unmet needs for loans,” etc., in order to qualify as an “investment area.”

the credit union plans to serve those needs.” IRPS 06-1, 71 FR at 36671. To ensure a sound record, the proposed rule followed the CDFI Fund’s practice of requiring a credit union to submit a one-page “narrative statement” demonstrating a pattern of “significant unmet needs” in the proposed area for one or more of the following financial products and services that credit unions are authorized to offer: checking accounts, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and similar services (“authorized credit union services”).¹⁰ Prop. Rule, 73 FR at 34389.

To support the narrative statement, the proposed rule required relevant, objective statistical data and allowed objective testimonial evidence. The proposed rule then required the business plan to “explain how the credit union plans to fulfill the unmet needs for loans and credit union services identified in its Narrative Statement.” Id. Commenters were invited to indicate whether the narrative statement should be integrated into the business plan a credit union is already required to submit, and to identify statistical data that would help to establish unmet needs for loans and authorized credit union services.

NCUA received fourteen comments addressing the proposal to require a narrative statement on “significant unmet needs.” Nearly all of the commenters felt the narrative statement was redundant of the CDFI distress criteria, contending that by

¹⁰ The financial services credit unions are authorized to offer are drawn from the CDFI Fund’s definition of “financial services” that institutions generally offer. 12 C.F.R. 1805.104(v). To these financial services, the Fund also added certain “financial products” that, except for loans, credit unions do not offer to their members. Id. §1805.104(u) (2008).

definition a “distressed” area must have “significant” unmet needs” for loans and financial services. They believed the requirement would be a costly, burdensome duplication of effort. The information to establish “significant unmet needs,” the commenters further maintained, is too difficult to find, too subjective to quantify, too difficult to organize by census tracts, and too difficult to document other than by what one characterized as “documents on steroids.”

To alleviate these difficulties, the commenters urged NCUA to specify the information that would establish “significant unmet needs,” to specify how and where to find it, to put it on the NCUA website, and to suggest what kind of testimonial evidence would support it. Alternatively, some commenters advocated that the narrative statement either should be made optional or NCUA itself should assume responsibility for documenting an area’s “significant unmet needs.” Two commenters challenged the substance of the requirement. One observed that the availability of financial services within an area doesn’t establish that they are accessible to all residents. The other believed that only a comprehensive “broad based study” of all financial services would suffice to establish “significant unmet needs” within a proposed area. Finally, the commenters were split on the question whether the narrative statement should stand alone or be included in the business plan for the proposed area.

As noted in the proposed rule, 73 FR at 34389, the CDFI Fund itself accepts a one-page narrative statement describing the significant unmet capital or financial

services within a proposed area. “CDFI Certification Application” (June 2007) at 11. The analysis must be supported by relevant, objective reasons or statistical data. There are no definitive standards of evaluation; the statements are evaluated on a case-by-case basis.

Neither the “distress” criterion nor the “significant unmet needs” criterion can be interpreted as redundant of the other because both criteria are set forth independently within the CDFI Act’s “investment area” definition. 12 U.S.C. 4702(16)(A). The existing requirement that the business plan “identify the credit and depository needs of the community and detail how the credit union plans to serve those needs” (IRPS 06-1, 71 FR at 36671) is the functional equivalent of “demonstrating a pattern of ‘significant unmet needs’ for one or more [authorized credit union services],” as the proposed rule would require. Prop. Rule, 73 FR at 34389. For this reason, the existing “credit and depository needs” standard is a legitimate measure of “significant unmet needs,” provided it addresses authorized credit union services.

Upon consideration of the comments and further inquiry into the CDFI Fund’s practices regarding fulfillment of the “significant unmet needs” criterion, the final rule modifies the proposed narrative statement requirement in the following respects. First, a credit union may meet the “significant unmet needs” criterion by fulfilling the existing requirement to “identify the credit and depository needs of the community and detail how the credit union plans to serve those needs.” App. B, Ch. 3,

§III.B.2.b. Second, a stand-alone narrative statement is not required. Instead, a section of the business plan, one page in length, and entitled “Significant Unmet Needs for Credit Union Services,” must address the existing “credit and depository needs” criterion. Id. Finally, no supporting statistical data is required. Instead, the existence of each of the “credit and depository needs” the credit union identifies and plans to serve must be supported by objective reasons and/or accompanying documentation derived from an identified, authoritative source of the credit union’s choice. Third party documentation is generally the most compelling. Anecdotal evidence will not suffice. Id.

D. Underserved by Other Depository Institutions.

Independent of the CDFI Fund’s “significant unmet needs” test, CUMAA requires a proposed area to be “underserved . . . by other [insured] depository institutions.” CUMAA did not specify a methodology for making this determination other than to provide that it must rely on unspecified “data of the [NCUA] Board and the Federal banking agencies.” 12 U.S.C. 1759(c)(2)(A)(ii). To the extent such relevant and meaningful data existed in raw form, it was not distilled and made readily accessible until recently.

To determine whether a proposed area is underserved by other depository institutions, the proposed rule compares the concentration of depository institution facilities within the non-“distressed” portions of the proposed area against the concentration of such facilities in the area as a whole. Prop. Rule, 73 FR at 34389.

Regardless of the geographic units used to determine whether the proposed area is “distressed,” this comparison uses the area’s census tracts as the unit of measure.

A comparison of two ratios determines a proposed area’s concentration of facilities. The first is the ratio of depository institution facilities within a proposed area’s non-“distressed” tracts (regardless whether they are contiguous) to the combined population of those tracts. This establishes a benchmark level of adequate service. The second is the ratio of depository institution facilities among the all the tracts of the proposed to the combined population of those tracts.

As shown below, if the facilities-to-population ratio (the benchmark) within the non-“distressed” tracts (column A below) exceeds the same facilities-to population ratio within the combined tracts of the proposed area as a whole (column B below), the rule deems the area to be “underserved by other depository institutions,” and vice versa (column C below).

Concentration of Depository Institution Facilities

	A	B	C
	<i>Non-“distressed” census tracts only</i>	<i>All census tracts in proposed area</i>	<i>All census tracts in proposed area</i>
Population (numerator)	15,000	100,000	100,000
Facilities (denominator)	100	571	800
Ratio of facilities to population (concentration)	1:150 (1 facility for every 150 persons)	1:175 (1 facility for every 175 persons)	1:125 (1 facility for every 125 persons)
<i>Example of:</i>	<i>Benchmark ratio</i>	<i>“Underserved”</i>	<i>Not “Underserved”</i>

The seventeen comments on this criterion were critical of using the concentration of facilities to assess whether a proposed area is “underserved by other depository institutions.” Four commenters criticized this methodology as a cumbersome, complex, time consuming and labor intensive exercise. Others objected to the use of any methodology not specifically prescribed by CUMAA (even though CUMAA didn’t prescribe any methodology). One commenter was concerned that an area without even a single credit union facility still could be deemed not “underserved” due to the concentration of non-credit union facilities. In such cases, this commenter urged, the area should be deemed “underserved” by definition. In contrast, a commenter argued that the presence of even a single depository intuition facility (even a credit union’s) should render the area not “underserved” by such institutions.

Several commenters emphasized that the physical presence of depository institutions is not a reliable indicator of the availability, cost and quality of products and services that would benefit an area’s underserved residents. They proposed various alternative methodologies involving: the ratio of “banked” consumers or households to the population of the “distressed” tracts compared to the whole area’s combined tracts; the distance of travel required to reach a facility; the area’s income and unemployment levels; a subjective “fact sensitive inquiry”; a market analysis of current depository institution services; an analysis of competitive market factors; and residents’ use of branches and ATMs. Regarding ATMs, two commenters noted the irony in the possibility of counting them among depository institution facilities while

refusing to recognize them as a credit union “service facility” for an “underserved area.”

Finally, two commenters believed that the “underserved by other depository institutions” criterion is misconceived in the first place. In their view, an “underserved area” can never be too “overserved” by other depository institutions because their increasing presence expands consumer choice among products and services, thereby stimulating competition and ultimately reducing price of those products and services for the area’s residents.

For the following reasons, the final rule adopts the concentration of facilities methodology as proposed to assess whether a proposed area is “underserved by other depository institutions.” App. B, Ch. 3, §III.B.3. First, the “significant unmet needs” criterion addresses the need for products and services within a proposed area. In order not to duplicate that, the concentration of facilities, by design, addresses the presence of facilities that dispense those products and services. Second, although there is merit to the alternative methodologies suggested by the commenters, CUMAA requires the determination that an area is “underserved by other depository institutions” to be “based on data of the [NCUA] and the Federal banking agencies.” 12 U.S.C. 1759(c)(2)(A)(ii). Therefore, in making this determination, NCUA is compelled to rely on the limited, relevant data it and the banking agencies have collected, to the exclusion of third party data.

Finally, taking into consideration the comments on the burden of obtaining and organizing the data needed to calculate the facilities versus population ratios, the final rule relaxes any such burden. For the denominator of each ratio, the proposed rule required credit unions to obtain current tract-by-tract population data. For the numerator of each ratio, however, it required credit unions to also obtain the tract-by-tract totals of the depository institution facilities using several on-line resources.

Under the final rule, credit unions still are responsible for obtaining tract-by-tract population data (from either the “My CDFI Fund” website or the decennial Census). However, upon request to a regional office, NCUA will be responsible for providing credit unions with tract-by-tract totals of the number of insured depository institutions. Using proprietary software, NCUA regional offices will be equipped to determine and provide the total number of depository institution facilities in each of the census tracts of a proposed area. The total for each tract will combine not only credit union facilities (based on a credit union’s annual “Report of Officials”) but non-credit union facilities, and will exclude the ATMs of both. As a result, credit unions can easily obtain the data needed to calculate the facilities-to-population ratio of the “distressed” tracts and compare it to the facilities-to-population ratio of the tracts of the area as a whole.

E. Approval to Serve an Already Approved “Underserved Area”.

The statement in the existing rule that “More than one multiple common bond federal credit union can serve the same underserved area” is accurate but not complete.

IRPS 06-1, 71 FR at 36670. The rule is vague about whether an area must be requalified as “underserved” each time an additional credit union seeks approval to serve it. The proposed rule makes it clear that a credit union that was approved to serve an “underserved area” is “grandfathered,” but the “underserved area” itself is not. App. B, Ch. 3, §III.D.

The distinction is that once a credit union receives approval to serve an area that qualified as “underserved” at the time it was approved, the credit union will be able to continue serving that area if and when it no longer qualifies as “underserved.” In contrast, if another credit union subsequently seeks approval to serve the same “underserved area,” the subsequent applicant must demonstrate that the area still qualifies as “underserved,” *i.e.*, is still “distressed,” has “significant unmet needs,” and is “underserved by other depository institutions” at the time it applies.

Ten commenters addressed the “grandfathering” issue. All of them praised the “grandfathering” of credit unions that had been approved to serve an “underserved area,” but advocated “grandfathering” the already approved “underserved areas” themselves as well so that other credit unions would be free to serve them. One commenter criticized the reapproval requirement as an unnecessary duplication of effort while another charged that it was a “back-door return” to NCUA’s old overlap protection policy. One commenter proposed a compromise: if the final rule will not permit “grandfathering” of “underserved areas” themselves once it becomes effective, then the rule should expressly “grandfather” all “underserved areas”

approved under the existing rule prior to the final rule's effective date under the rule. Recognizing the possibility that an "underserved area" may not remain underserved forever, one commenter proposed limiting the "grandfathering" of "underserved areas" themselves to a period of 5 years from the date each was first approved. Another acknowledged that the greater the number of credit unions serving an already approved "underserved area," the sooner the area's "significant unmet needs" for credit unions services will be met.

What all the commenters but one fail to consider is that, with the passage of time, an "underserved area" may not continue to meet the definition of an "investment area." Once a new decennial Census is published, the area may no longer be "distressed" according to CDFI criteria. Over time, the credit union(s) approved to serve the area may succeed in meeting some or all of the area's "significant unmet needs" for credit union services. As more depository institutions locate facilities within the area, the concentration ratio may shift to reflect that the area finally is adequately served by other depository institutions.

At the time of approval as "underserved," a proposed area must meet the CDFI definition of an "investment area." For that reason, the final rule cannot assume that a once approved "underserved area" remains frozen in time regardless of changing circumstances that may disqualify it as an "investment area." Accordingly, the final rule continues to "grandfather" credit unions that are approved to serve "underserved areas," but does not "grandfather" the "underserved areas" themselves. App. B, Ch.

3, §III.D. However, the final rule does not require an applicant seeking to serve an already approved area to demonstrate that the area still is “distressed” if no new decennial Census has been published since the area was last determined to be “distressed.”

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 \$10 million in assets). These final amendments to the existing regulation 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

This final rule imposes a requirement that any multiple common bond federal credit union that wishes to add an “underserved area” must apply for the NCUA Board’s written approval to do so. Based upon past experience, NCUA anticipates approximately 100 applications per year. This rule mandates certain specific information that must be included in the application. NCUA solicited public comment on all aspects of the collection of information this rule entails. Having considered the comments and the type of information required to be obtained and included in the application, NCUA estimates a burden of 40 hours per application.

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 final rule will not have substantial direct effects 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 that this final does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) 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 APA. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA. As required by

SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so this rule may be reviewed.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and record keeping requirements

By the National Credit Union Administration Board on November 20, 2008.

Mary Rupp
Secretary of the Board

For the reasons stated above, 12 CFR Part 701 is amended 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 08-2, Chartering and Field of Membership Manual (IRPS 08-2) published as Appendix B to this part. The Chartering and Field of Membership Manual also is available on-line at www.ncua.gov.

(Approved by the Office of Management and Budget under control numbers 3133-0015 and 3133-0116)

Note: The *Federal Register* requires the full *Chartering and Field of Membership Manual* to be published as an Appendix to Part 701 rather than to be incorporated by reference in the regulatory text. Accordingly, when the Federal Register publishes this final rule, the rule text below will be reflected in Chapter 3, Subchapter III, of the *Manual* published as Appendix B to Part 701.

3. Appendix B to 12 CFR Part 701 is revised as follows:

Appendix B to Part 701 -- Chartering and Field of Membership Manual

* * * * *

Chapter 3, Subchapter III, Service to Underserved Communities, is revised to read as follows:

III.A. -- General

A multiple common bond federal credit union may include in its field of membership, without regard to location, an “underserved area” as defined by the Federal Credit Union Act. 12 U.S.C. 1759(c)(2). The addition of an “underserved area” will not change the charter type of the multiple common bond federal credit union. More than one multiple common-bond federal credit union can serve the same “underserved area,” provided each credit union is approved as provided below.

By adding an “underserved area,” a multiple common bond federal credit union does not become eligible to receive the benefits afforded to low-income designated credit unions, such as expanded use of nonmember deposits and access to the Community Development Revolving Loan Program for Credit Unions

III.B. – “Underserved Area” Defined

The Federal Credit Union Act defines an “underserved area” as (1) a “local community, neighborhood, or rural district” that (2) meets the definition of an “investment area” under section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (“CDFI”), 12 U.S.C. 4702(16), and (3) is “underserved by other depository institutions” based on data of the NCUA Board and the federal banking agencies.

III.B.1. – Local Community

To be eligible for approval as “underserved,” a proposed area must be a well-defined local community, neighborhood, or rural district as defined in Chapter 2, sections V.A.1. and V.A.2. of this Manual. However, if the proposed area qualifies as a community either because it consists of multiple political jurisdictions with a total population of 500,000 or less, or is within a Metropolitan Statistical Area (“MSA”) that has a population of 1 million or less, the applicant is not required to submit a supplemental letter describing how the area meets the standards for community interaction and/or common interests.

III.B.2. – Investment Area

To be approved as an “underserved area,” the proposed area must meet the CDFI definition of an “investment area.” Id. §4702(16). A proposed area that, at the time the credit union applies, is designated in its entirety as an Empowerment Zone or Enterprise Community (id. §1391) automatically qualifies as an “investment area”; no further criteria of an “investment area” must be met. Id. §4702(16)(B). A proposed area that is not designated as such must qualify as an “investment area” under “the objective criteria of economic distress” developed by the CDFI Fund (“distress criteria”) based on current decennial U.S. Census data, and also must have “significant unmet needs” for loans and financial services that credit unions are authorized to offer to their members. Id. §4702(16)(A).

III.B.2.a. -- Economic Distress Criteria

Geographic Unit(s) By Proposed Area’s Location. The location of a proposed “underserved area” either within or outside of an MSA corresponding to the most

recent completed decennial census published by the U.S. Bureau of the Census (“decennial Census”) determines the geographic unit(s) that apply to determine whether the area meets the distress criteria.

Within MSA. For a proposed area located, in whole or in part, within an MSA, the permissible geographic units (“Metro units”) for implementing the economic distress criteria are: (i) a census tract; (ii) a block group; and (iii) an American Indian or Alaskan Native area. 12 C.F.R. 1805.201(b)(3)(ii)(B) (2008). For ease of implementation, it is advisable to use a census tract as the proposed area’s Metro unit.

Outside MSA. For a proposed area that is located entirely outside an MSA, the permissible units (“Non-Metro units”) for implementing the economic distress criteria are: (i) a county or equivalent area; (ii) a minor civil division that is a unit of local government; (iii) an incorporated place; (iv) a census tract; (v) a block numbering area; (vi) a block group; and (vii) an American Indian or Alaskan Native area. Id. For ease of implementation, it is advisable to use either a census tract or county, as the case may be, as the proposed area’s Non-Metro unit.

Proposed Area Consisting of a Single Metro Unit. A proposed area consisting of a single whole Metro unit (e.g., a single census tract located within an MSA) must meet one of the following distress criteria, as reported by the most recent decennial Census:

- Unemployment. The proposed area's unemployment rate is at least 1.5 times the national average; or
- Poverty. At least 20 percent (20%) of the proposed area's population lives in poverty; or
- Median Family Income. The proposed area's Median Family Income ("MFI") is at or below 80 percent (80%) of either the MFI of the corresponding MSA, or of the national MFI for Metro Areas, whichever is greater; or
- Other Criterion. Any other economic distress criterion the CDFI Fund may adopt in the future.

Id. §1805.201(b)(3)(ii)(D)(1), (2)(i) and (3) (2008).

Proposed Area Consisting of a Single Non-Metro Unit. A proposed area consisting of a single whole Non-Metro unit (e.g., a single county located outside an MSA) must meet one of the following distress criteria, as reported by the most recent decennial Census:

- Unemployment. The proposed area's unemployment rate is at least 1.5 times the national average; or
- Poverty. At least 20 percent (20%) of the proposed area's population lives in poverty; or
- Median Family Income. The proposed area's MFI is at or below 80 percent (80%) of either the corresponding state's Non-Metro MFI or the national MFI for Non-Metro Areas, whichever is greater; or

- Other Criterion. Any other economic distress criterion the CDFI Fund may adopt in the future.

Id. §1805.201(b)(3)(ii)(D)(1), (2)(ii) and (3) (2008). Alternatively, a proposed area consisting of a single Non-Metro county (located outside an MSA) may instead meet either of the following two criteria, as reported by the decennial Census:

- County Population Loss. County’s population loss of at least 10 percent (10%) between the most recent and the preceding decennial census; or
- County Migration Loss. County’s net migration loss of at least 5 percent (5%) in the 5-year period preceding the most recent decennial census.

Id. §1805.201(b)(3)(ii)(D)(4)-(5) (2008).

Proposed Area Consisting of Multiple Contiguous Units. When a proposed area consists of either multiple contiguous Metro units (e.g., a group of adjoining census tracts) or multiple contiguous Non-Metro units (e.g., a group of adjoining counties), a population threshold applies when implementing the economic distress criteria. At least 85 percent (85%) of the area’s total population must reside within the units that are “distressed,” i.e., that meet one of the applicable economic distress criteria above, as reported by the decennial Census (Unemployment, Poverty and MFI for census tracts plus, for counties only, Population Loss and Migration Loss); the balance of the area’s population may reside in the non-“distressed” tract(s). The population threshold is met, and the whole proposed area qualifies as “distressed,” when the “distressed” units represent at least 85 percent of the area’s total population.

III.B.2.b – Proposed Area’s “Significant Unmet Needs.”

A proposed area that is “distressed” also must display “significant unmet needs” for loans or for one or more of the financial services credit unions are authorized to offer. To meet this criterion, the credit union must include within its Business Plan a section, one page in length, entitled “Significant Unmet Needs for Credit Union Services” (“SUN section”) that establishes the existence of such unmet needs by identifying the credit and depository needs of the community and detailing how the credit union plans to serve those needs. The credit union may choose which among the following “credit and depository needs” to address in the SUN section: loans, share draft accounts, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and similar services. The existence of each “credit and depository need” the credit union identifies and plans to serve must be supported by objective reasons and/or accompanying documentation derived from an identified, authoritative source of the credit union’s choice. Third party documentation generally is the most compelling.

III.B.3 – Underserved by Other Depository Institutions.

A proposed area that meets the CDFI definition of an “investment area” (i.e., is “distressed” and has “significant unmet needs”) must also be underserved by other insured depository institutions, including credit unions. 12 U.S.C. 1759(c)(2)(A)(ii). This statutory criterion is met when the concentration of depository institution facilities among the population of the proposed area’s non-“distressed” tracts--which

sets a benchmark level of adequate service--is greater than the concentration of facilities among the population of all of the proposed area's census tracts combined. If there are no non-"distressed" tracts within a proposed area, a non-"distressed" census tract or larger geographic unit (e.g., city or county) of the credit union's choice that adjoins the proposed area may be used to set the benchmark concentration ratio.

Without regard to a proposed area's location within or outside an MSA, this criterion compares two ratios: the ratio of facilities to the population of the non-"distressed" tracts (the benchmark) versus the same facilities-to-population ratio among all the tracts of the proposed area as a whole. If the benchmark ratio is greater than the ratio for the whole area, then the area is "underserved by other depository institutions," and vice versa.

III.C. -- NCUA Approval

If NCUA approves the request to add an "underserved area," the credit union will be issued an amendment to Section 5 of its charter.

III.D. -- Approval to Serve an Already Approved "Underserved Area"

Once a credit union is initially approved to serve an "underserved area," other credit unions that subsequently apply may be approved to serve the same area. To be approved, the area must qualify as "underserved" at the time the new applicant applies. An applicant must demonstrate the area continues to be "distressed", as

provided above, only if a new decennial Census has been published since the date the area was last approved. In any case, the applicant must demonstrate that the area still has “significant unmet needs” for loans or credit union services (to qualify as an “investment area”), and remains “underserved by other depository institutions” (to qualify as “underserved”).

III.E. -- Business Plan.

A federal credit union that desires to include an underserved community in its field of membership must first develop, and submit for approval, a business plan specifying how it will serve the community. In addition, the business plan must include a SUN section as provided in section III.B.2.b. above. 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 community are being met, and must require such reports before NCUA allows a multiple common bond federal credit union to add an additional “underserved area.”

III.F. -- Service Facility.

Once an “underserved area” has been added to a federal credit union’s field of membership, the credit union must establish within two years, and maintain, an office or service facility in the community. A service facility is defined as a place where shares are accepted for members’ accounts, loan applications are accepted and loans are disbursed. By definition, a service facility includes a credit union-

owned branch, a shared branch, a mobile branch, or an office operated on a regularly scheduled weekly basis or a credit union owned electronic facility that meets, at a minimum, the above requirements. This definition does not include an ATM or the credit union's Internet website.

IV -- APPEAL PROCEDURES FOR DENIAL OF UNDERSERVED AREA

IV.A. -- NCUA Disapproval

When NCUA disapproves any application to add an "underserved area" in whole or in part, under this chapter, the applicant will be informed in writing of the:

- specific reasons for the action;
- options to consider, if appropriate, for gaining approval; and
- appeal procedures.

IV.B. -- Appeal of Regional Director Decision

If the regional director denies an "underserved area" request, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.