

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**RIN 3133-AD76**

**Sample Income Data to Meet the Low-Income Definition**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA is amending its regulation to permit federal credit unions (FCUs) that do not qualify for a low-income designation using the geo-coding software the agency has developed for that purpose to submit an analysis of a statistically valid sample of member income data as evidence they qualify for the designation. The final rule, by permitting FCUs to use a statistically valid sample of member incomes drawn from loan files or a survey, eases the burden on FCUs seeking to qualify for a low-income designation. The final rule is very similar to the proposed, with additional wording about not combining a survey and loan file review.

**DATES:** This rule is effective [Insert date 30 days after publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** The following agency staff may be contacted at the address or the telephone numbers provided here: John Worth, Chief Economist, Office of the Chief Economist, telephone (703) 518-6308; Olga Bruslavski, Economist, Office of the Chief Economist, (703) 518-6495; Robert Leonard, Director of Consumer Access, Office of Consumer Protection, (703) 518-1143; Regina Metz, Staff Attorney, Office of General Counsel, (703) 518-6540; National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

**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 Community Development Revolving Loan Fund. 12 U.S.C. 1752(5), 1757a(b)(2)(A), 1757a(c)(2)(B), 1772c-1. Currently, NCUA uses geo-coding software during the examination processes to designate low-income credit unions, as follows:

NCUA will make the determination of whether a majority of an FCU’s members are low-income based on data it obtains during the examination process. This will involve linking member address information to publicly

available information from the U.S. Census Bureau to estimate member earnings. Using automated, geo-coding software, NCUA will use member street addresses collected during FCU examinations to determine the geographic area and metropolitan area for each member account. NCUA will then use income information for the geographic area from the Census Bureau and assign estimated earnings to each member.

73 FR at 71910-11.

Credit unions also currently have the option to submit actual member data for purposes of qualifying for the low-income designation. NCUA's regulation at section 701.34(a)(3) provides that:

Federal credit unions that do not receive notification that they qualify for a low-income credit union designation but believe they qualify may submit information to the regional director to demonstrate they qualify for a low-income credit union designation. For example, federal credit unions may provide actual member income from loan applications or surveys to demonstrate a majority of their membership is low-income members. Actual member income data must be compared to a like category of statistical data, for example, actual individual member income may only be compared to total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater.

12 CFR 701.34(a)(3).

### Proposed Rule

In December 2010, the NCUA Board proposed to amend NCUA's low-income rule to permit FCUs that would like the option to submit their own data for purposes of qualifying for the low-income designation to use a statistically valid, random sample of member incomes drawn from loan files or a member survey as the basis for the analysis. 75 FR 80364 (Dec. 22, 2010). The NCUA Board recognized FCUs may find it difficult to meet the requirement of collecting actual income data to establish the low-income status of at least 50% plus one of their members. An FCU conducting a survey of members asking its members to disclose their incomes can also be problematic. It can be difficult for the FCU to achieve a sufficient survey response rate and also members can be reluctant to disclose their income in a survey. Credit unions can also have difficulties obtaining sufficient member-income information from their loan applications because many credit unions have not made loans to over 50% of their members.

The proposed rule added language permitting FCUs to rely on a data sample as long as it meets certain criteria, and requiring the FCUs to submit a narrative describing sampling technique and evidence supporting its validity. The proposed rule required the random sample be representative of the FCU membership, sufficient in both number and scope on which to base conclusions, and have a minimal confidence level of 95%

and a confidence interval of 5%.<sup>1</sup> The NCUA Board recognized the 95% confidence level and 5% confidence interval is a widely accepted and used threshold for statistical significance in research and policy analysis.

Comments:

NCUA received eight comments on the proposed rule, published in the Federal Register on December 22, 2010. One commenter was a credit union, five were credit union leagues and trade associations, one was a bank trade association, and one was an individual. Most commenters strongly supported the goal of the proposed rule and agreed with the basic structure and framework NCUA proposed. The comments generally dealt with the specifics of the sampling approach and the NCUA review.

Three commenters expressed the need for additional language either in the text of the proposal or as a policy, letter or appendix to rule, which would address specifics of what is required of a credit union to qualify under the new approach. In response, NCUA stresses the rule will permit flexibility and will enable NCUA to work with potential candidates. NCUA may in the future consider issuing a letter to credit unions or other additional guidance on some of the specific elements of the rule if warranted.

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<sup>1</sup> Confidence levels and confidence intervals are statistical concepts that relate to the precision of the estimates produced by the sampling approach. Confidence level is the probability that the results of a sampling approach are within the confidence interval of the true answer. Confidence interval specifies the allowable margin of error around the true answer. There are a number of online resources that will compute required sample size given population, confidence levels, and confidence intervals including <http://www.raosoft.com/samplesize.html>.

Three commenters expressed concerns over the confidence level/interval specified in the proposal (95%/5%). Commenters differed in their approach: two credit union trade associations recommended lowering the confidence level or interval (e.g., to 95%/10%) in order to decrease the required sample size and burden. The bank trade association advocated increasing them (e.g. 99%/5% or 95%/1%) to avoid incorrect low-income credit union designations. In response, NCUA's position is that a 95%/5% benchmark provides a good balance. NCUA will consider a more flexible approach in the future if warranted.

The bank trade association recommended expanding the sampling population from members with loans to all members to increase the representativeness of the results. NCUA's position is that the rule already adequately addresses this concern. While allowing FCUs to sample only their members with loans, the proposed rule preamble extensively discusses the need to establish representativeness of the results, which can be achieved by a relatively simple comparison of incomes of all members to incomes of borrowers using the NCUA geo-coding software.

Three commenters recommended changing the "look back" period for loans, currently proposed at 5 years. As with the issue of the confidence measures above, commenters differed in their approach. Two credit union groups recommended increasing the look back to 10 years, while the bank trade association recommended shortening the period to no more than 2 years. The NCUA Board finds that the 5-year look back period

provides a good balance. The Board emphasizes that the NCUA will consider a more flexible approach in the future if warranted.

The bank trade association advocated incorporating into the rule a method by which non-sensitive parts of FCU submissions can be made available to public. In response, NCUA's position is that the public is already permitted to request release of information under the Freedom of Information Act (FOIA) and will be able to obtain information as permitted through that process.

Two credit union groups recommend incorporating a timeframe for NCUA review. NCUA will review the applications for the low-income applications in a timely manner, but the final rule does not incorporate a timeframe into the regulation.

A credit union league suggested that NCUA allow FCUs to use geo-coding software alternative to the NCUA's tool to reduce the amount of required supporting documentation and to encourage leagues or their service corps to develop alternative tools.

NCUA believes that the use of any geo-coding software will produce similar results and the use of alternative software will increase the need for documentation and review relative to using the NCUA software.

One individual opposed the rule and recommended using actual incomes of the entire membership to make the determinations. NCUA previously addressed difficulties with the commenter's approach in the preamble to the proposed rule.

#### Final Rule:

The NCUA Board has adopted a final rule very similar to the proposed rule, but includes new wording about not combining a survey and loan file review. As stated in the proposed rule, NCUA will evaluate the sample income data and the supporting narrative to verify it is a statistically valid, random sample. NCUA emphasizes that a sample has to be drawn entirely from loan files or entirely from the survey; no combination will be allowed, as there is no statistically valid methodology for combining a member survey and a loan file sampling approach.

NCUA will expect the narrative and supporting materials to address the following:

- **Representativeness of Members.** If a credit union is relying on income data drawn from its loan files, a credit union's submission needs evidence that members with loans are representative of the broader membership. If members with loans are not representative of the broader membership, the sampling methodology may not be appropriate. If a credit union is relying on income data from a survey, a credit union must provide evidence regarding the representativeness of its responses and adequacy of response rate.
- **Income Definition and Timing:** If relying on income data from a survey, the survey needs to be clear regarding its definition of income to ensure accurate responses from members and permit the credit union to use appropriate sources

for comparison. If relying on income data from loan files, NCUA will expect the analysis to:

- Clearly differentiate household versus individual income and income versus earnings in the loan files and use appropriate sources for comparison.
- Address the age of the income data found in loan files by excluding loan files over five years old.
- Address issues related to income verification, for example, addressing general credit union practices related to income verification and percentage of loans in the selected sample with unverified income. For surveys, address credit union verification, if any, of self-reported income information from members.
- Based on membership size and conservative statistical sampling practices and requirements, establish minimum sample size of members with income data from loan files or valid survey responses.
- Describe the method used for sampling loan files or conducting a survey, including any external validation or oversight.
- For income data from loan files, submit the well-documented data set used in the analysis and, for surveys, a copy of the survey, data summary, and narrative, as necessary to describe the conduct of the survey.

NCUA staff will review an FCU's submission, may contact the FCU to resolve any questions about its submission or to request additional information, and will inform the

FCU whether it qualifies as expeditiously as possible. The final rule does not establish a time frame for a NCUA staff's review and determination because the Board believes a submission under the final rule is likely to present issues unique to the submitting FCU. The Board believes FCUs and the NCUA will benefit from having the flexibility to evaluate a credit union's submission and potentially resolve questions without regulatory time constraints. FCUs that are considering making a submission will find it helpful to contact NCUA staff to discuss their approach in providing sample income data before undertaking a review of loan files or conducting a survey.

Lastly, the final rule has possible implications for federally insured, state-chartered credit unions (FISCUs) under NCUA's regulations at section 741.204(b). Under this section, a FISCU must obtain a low-income designation to accept certain nonmember accounts, if these can be accepted under state law. Additionally, pursuant to section 705.3, in order to participate in the Community Revolving Loan Program, a low-income determination must be made pursuant to section 701.34. The appropriate state regulator makes the low-income designation, with the concurrence of NCUA, on the same basis as provided in section 701.34(a) for FCUs. 12 CFR 741.204(b).

## **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, 2010, out of approximately 4,589 FCUs, 1,868 had less than \$10 million in assets.

This rule directly affects all low-income FCUs, of which currently there are approximately 945. NCUA estimates approximately 533 low-income FCUs are small entities, but that only about two in a year will avail themselves of the option of providing actual data or sample data to meet the low-income criteria and receive the designation. Therefore, NCUA has determined this rule will not have an impact on a substantial number of small entities.

#### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act, 5 U.S.C. 551. The Office of Information and Regulatory Affairs (OIRA) is reviewing this final rule and we have recommended to OIRA that it is not a major rule for purposes of SBREFA.

#### Paperwork Reduction Act

The low-income rule contains a “collection of information” within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3502(3), to the extent the rule permits FCUs that do not qualify under NCUA’s geo-coding software the option of

applying on the basis of actual membership income data and, as set out in this amendment to the rule, the additional option of submitting a random and statistically valid sample of membership income data to meet the rule's requirement that a majority of its members are low-income as defined in the rule.

The final rule will permit FCUs, which do not qualify for a low-income designation using the geo-coding software the NCUA has developed for that purpose, to submit an analysis of a statistically valid sample of their member income data as evidence the FCUs qualify. NCUA does not believe many FCUs are likely to apply for the designation on the basis of their member income data, perhaps two applications per year.

If relying on income data drawn from loan files, NCUA estimates an FCU that maintains its loan files electronically can use statistical computer programs that are freely available and its own staff. In that case, staff time is estimated at about 40 hours. If an FCU uses the services of a contractor or other outside party, such as a computer programmer, it is estimated those services would cost approximately \$100 per hour, for a cost of approximately \$4,000. If an FCU conducts a survey, various free computer programs are available on the internet. The costs of conducting a survey may vary significantly depending on the size of the membership. If an FCU uses the services of a contractor or other outside party to assist it in developing and conducting a survey, the costs are estimated at approximately \$4,000 to \$5,000.

In summary, NCUA estimates the total information collection burden represented by this proposal involving: 2 respondents, 80 annual burden hours, and an annual cost burden of approximately \$10,000. NCUA has submitted these numbers to OMB and is awaiting review.

#### 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 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 final 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 final 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 final 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

By the National Credit Union Administration Board, on June 16, 2011.

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Mary F. Rupp

Secretary of the Board

For the reasons stated above, NCUA proposes to amend 12 CFR part 701 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 adding the following at the end of paragraph (a)(3):

**§701.34 Designation of low-income status; Acceptance of secondary capital accounts by low-income designated credit unions.**

(a) \* \* \*

(3) \* \* \* A federal credit union may rely on a sample of membership income data drawn from loan files or a member survey provided the federal credit union can demonstrate the sample is a statistically valid, random sample by submitting with its data a narrative describing its sampling technique and evidence supporting the validity of the analysis, including the actual data set used in the analysis. The random sample must be representative of the membership, must be sufficient in both number and scope on which to base conclusions, and must have a minimum confidence level of 95% and a confidence interval of 5%. A federal credit union must draw the sample either entirely from loan files or entirely from the survey, and must not combine a loan file review with a survey. NCUA will provide a response to the federal credit union within 60 days of its submission.