

**NATIONAL CREDIT UNION
ADMINISTRATION****12 CFR Part 701****Organization and Operations of
Federal Credit Unions**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The NCUA Board is amending its chartering and field of membership manual to make two changes to ease regulatory burden on community charters and to update the requirements for a credit union to add an underserved area to its charter. First, an existing community charter need not document in writing how it plans on serving the entire community. Second, the Board is updating the definition of an investment area because of the release of new census data and updated Community Development Financial Institution Fund standards. These amendments will help reduce the costs for community charters and make it easier for credit unions to serve underserved areas.

DATES: *Effective Date:* This rule is effective December 20, 2001. *Comment Date:* Comments must be received on or before February 19, 2002.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Or, you may fax comments to (703) 518-6319, or e-mail comments to regcomments@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, at the above address or telephone: (703) 518-6320 or Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:**Background**

NCUA's chartering and field of membership policy is set out in Interpretive Ruling and Policy Statement 99-1, Chartering and Field of Membership Policy (IRPS 99-1), as amended by IRPS 00-01 and IRPS 01-01. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1. It is also published as NCUA's Chartering and Field of Membership Manual (Chartering Manual), which is the document most interested parties use and to which

references in the following discussion are made.

Community Charters

Last year, the NCUA Board required an existing community charter to address, in either its marketing or business plan or other appropriate separate documentation, how it plans on serving the entire community, including how the credit union will market to the community and what products and services the credit union will offer to assist underserved members in the community. Some in the credit union community refer to this as the community action plan requirement or as CAP, though the final rule does not use that term. The NCUA Board stated in the preamble to the final rule that "existing credit unions will have until December 31, 2001 to have a plan in place addressing how the credit union will serve the entire community." 65 FR 64512, 64518 (October 27, 2000). The Board implemented this rule even while recognizing that there was no tangible evidence that credit unions were not planning on serving their entire community. In fact, the NCUA Board stated that, based "on the comments of community credit unions and the submissions some of them provided, many community credit unions already have adopted plans and offer products and services designed to serve the entire community." 65 FR 64512, 64517 (October 27, 2000).

The NCUA Board notes that, while it certainly has the legal authority to impose this regulatory requirement, it has continued to review the necessity of imposing it on a specific type of federal credit union charter. The NCUA Board, after discussing this issue further with agency staff and the credit union community, has decided to repeal this regulatory requirement. This Board has determined that requiring only certain credit unions to adopt specific written policies addressing service to the entire community, where there is no evidence credit unions are not attempting to serve their entire communities, is not a reasonable regulatory practice, particularly when this regulatory requirement raises little, if any, safety and soundness concerns.

This Board believes that a regulation that does not address a substantiated concern or a potential problem is unnecessary. In this case, absent evidence that community charters are not marketing their services to their entire communities, removing the regulatory requirement is prudent.

Underserved Areas

The addition of underserved areas, as defined in Chapter 3 of the Chartering Manual, to the field of membership of operating credit unions is a continuing priority of the NCUA Board. Three criteria must be met before an underserved area can be added to any federal credit union's field of membership. First, the area must be a local community. Second, the area must also be classified as an investment area as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. 4703(16). Third, the credit union adding the underserved area must establish and maintain an office or facility in the local community.

Last year, the NCUA Board made it less burdensome for federal credit unions to add underserved areas. 65 FR 64512 (October 27, 2000). The NCUA Board modified its policy by stating that a credit union would not have to demonstrate common interests or interaction for a local community if the underserved area to be served is (1) in a recognized political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) in multiple contiguous political jurisdictions, i.e., a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. The NCUA Board also stated that it presumed that an underserved area for purposes of the investment area criteria would have significant unmet needs for loans or equity investment if the area met the poverty, median family income, unemployment, distressed housing, or population loss criteria set forth in the Community Development Banking and Financial Institutions Act of 1994. Because of these changes and greater interest by the credit union community, the number of underserved areas added to federal credit union's field of membership increased from 50 in 2000 to 231 as of November 30, 2001.

The NCUA Board is continuing to update this section of the Chartering Manual to encourage further development of credit unions in underserved areas and thereby improve financial services to those most in need. The primary reason for this update is the release of the 2000 census.

The Chartering Manual provides examples of what an investment area is for the purpose of adding an underserved area. The Federal Credit Union Act defines an underserved area

as a local community, neighborhood, or rural district that is an "investment area" as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The 1994 law permits the Community Development Financial Institutions Fund of the United States Department of the Treasury (CDFI Fund) to further define investment areas. With the release of the 2000 census as well as further expansion of an investment area by CDFI, the Board is updating the definition of an investment area in Chapter 3 of the Chartering Manual. These changes will make the Chartering Manual consistent with the data in the 2000 census as well as the modifications promulgated by the CDFI Fund. These amendments will ultimately make it easier for credit unions to add underserved areas and thus serve more members of modest means.

Interim Final Rule

Since issuance of the community service plan requirement, the credit union community has continued to debate its necessity and benefits. The Board notes that previous comment was overwhelmingly against this type of provision and wishes to consider further comment. The NCUA Board is issuing this amendment to its chartering regulation as an interim final rule because it removes a burdensome regulation and merely updates the agencies definition of an investment area for the purpose of adding underserved areas. The Board believes that both these actions are necessary and in the public interest because of the recent and sudden increase in credit union asset growth and the current uncertainty in the national economy. Furthermore, the Board believes the amendments further the public interest in removing a potentially costly and unnecessary regulatory burden and promotes the efficient use of agency resources and staff. Accordingly, for good cause, the Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule shall be effective immediately and without 30 days advance notice of publication. Although the rule is being issued as an interim final rule and is effective immediately, the NCUA Board encourages interested parties to submit comment on whether the community service plan requirement should be deleted from the Chartering Manual and the definition of investment area for the purpose of adding underserved areas

should be finalized in the Chartering Manual.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under \$1 million in assets). The amendments will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that this interim final rule does not increase, and will in fact reduce, paperwork requirements under the Paperwork Reduction Act and regulations of the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The rule has been submitted to the Office of Management and Budget for its determination of whether this is a major rule.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule only applies to federal credit unions. It will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and

minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,
Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 12 U.S.C. 4311-4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 99-1, Chartering and Field of Membership Policy (IRPS 99-1), as amended by IRPS 00-1, IRPS 01-1 and IRPS 01-3. Copies may be obtained by contacting NCUA at the address found in § 792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133-0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 99-1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

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

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

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

"Well-defined" means the proposed area has specific geographic boundaries.

Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.

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

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

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

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

If NCUA does not find sufficient evidence of community interaction or common

interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. The credit union must also provide evidence of the political jurisdiction(s) and population. Evidence of the political jurisdiction(s) should include maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas.

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

Examples of acceptable documentation may include:

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

An applicant need not submit a narrative summary or documentation to support a proposed community charter, amendment or conversion as a well-defined local community, neighborhood, or rural district if the NCUA has previously determined that the same exact geographic area meets that requirement in connection with consideration of a prior application. Applicants may contact the appropriate regional office to find out if the area they are interested in has already been determined to meet the community requirements. If the area is the same as a previously approved area, an applicant need only include a statement to that effect in the application. Applicants may be required to submit their own summary and documentation regarding the community requirements if NCUA has reason to believe that prior submissions are not sufficient or are no longer accurate.

A community credit union is frequently more susceptible to competition from other

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

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

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

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

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

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

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

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

percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;

- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
- An area where the unemployment rate is at least 1.5 times the national average;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;
- An area located outside of a Metropolitan Area with a county population loss between the most recent decennial census and the previous decennial census of at least 10 percent;
- An area located outside of a Metropolitan Area with a county net migration loss (out-migration minus in-migration) over the five-year period preceding the most recent decennial census of at least 5 percent;
- An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury.

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

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

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

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

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

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its rule limiting compensation to officials. The amendment changes the definition of the term "compensation" to exclude the reimbursement or payment of business-related travel costs for an official to be accompanied by a guest.

EFFECTIVE DATE: This rule is effective January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

NCUA published a proposal to amend its regulation covering travel reimbursements for guests accompanying Federal Credit Union (FCU) officials on business. 66 FR 40641, August 3, 2001. During the sixty-day comment period, NCUA received thirty-seven comment letters. After carefully considering the comments, NCUA is publishing this final rule, which is identical to the proposal.

The Federal Credit Union Act (the FCU Act) and NCUA regulations provide that only one board officer of an FCU may be compensated as such and that no other official may receive compensation for serving as a board or

committee member. 12 U.S.C. 1761(c), 1761a; 12 CFR 701.33. NCUA has defined compensation to exclude reasonable and proper expense reimbursement for costs incurred by FCU officials in carrying out the responsibilities of the positions to which they were appointed or elected.

Section 701.33 currently permits reimbursement of a board official and one immediate family member for travel expenses incurred in performing board duties if the payment is necessary and appropriate as determined by the FCU board and is made in accordance with written board policies and procedures. 12 CFR 701.33(b)(2)(i).

To give FCUs additional flexibility regarding the reimbursement of reasonable and proper expenses, NCUA has determined to amend § 701.33(b)(2)(i) to use the term "guest" rather than "immediate family member." All other provisions of the regulation remain unchanged. Travel and reimbursement policies must still provide for payment of only those costs that are reasonable in relation to the FCUs resources and financial condition. NCUA cautions FCUs that this proposal has no effect on Internal Revenue Service (IRS) regulations regarding the reporting and taxing of any payments or reimbursements. FCUs should consult their tax advisors or attorneys concerning IRS requirements related to their travel reimbursement policies.

Comments

NCUA received thirty-seven comment letters. Seventeen letters were from natural person credit unions and two were from corporate credit unions. Two were from credit union trade associations. Eight were from state credit union leagues and eight were from credit union officials or other individuals.

Twenty-seven of the commenters strongly support the proposal and applaud the agency efforts to minimize government intrusion and maximize flexibility.

Four commenters opposed it, pointing to possible increases in costs to members and concerns of its effect on family unity. The NCUA Board expects that any increase in costs to members will be minor and will support the business of the credit union. Furthermore, any FCU that adopts a new policy must still limit its travel expenditures to amounts that are reasonable in relation to its resources and financial condition. Of course, the amended rule does not require FCUs to change their current travel expense reimbursement or payment policies. The NCUA Board determined to amend the