Rules and Regulations

Federal Register

Vol. 75, No. 122

Friday, June 25, 2010

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD65

Chartering and Field of Membership for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its chartering and field of membership manual to update its community chartering policies. These amendments include using objective and quantifiable criteria to determine the existence of a local community and defining the term "rural district." The amendments clarify NCUA's marketing plan requirements for credit unions converting to or expanding their community charters and define the term "in danger of insolvency" for emergency merger purposes.

DATES: The rule is effective July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Deputy General Counsel; John K. Ianno, Associate General Counsel; Frank Kressman, Staff Attorney, Office of General Counsel, or Robert Leonard, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540 or (703) 518–6396.

SUPPLEMENTARY INFORMATION:

A. Background and Summary of Final Action

In 1998, Congress passed the Credit Union Membership Access Act ("CUMAA") and reiterated its longstanding support for credit unions, noting that they "have the specif[ic] mission of meeting the credit and savings needs of consumers, especially persons of modest means." Public Law 105–219, § 2, 112 Stat. 913 (August 7, 1998). The Federal Credit Union Act ("FCU Act") grants the NCUA Board broad general rulemaking authority over Federal credit unions. 12 U.S.C. 1766(a). In passing CUMAA, Congress amended the FCU Act and specifically delegated to the Board the authority to define by regulation the meaning of a "well-defined local community" (WDLC) and rural district for Federal credit union charters. 12 U.S.C. 1759(g).

The Board continues to recognize two important characteristics of a WDLC. First, there is geographic certainty to the community's boundaries, which must be well-defined. Second, there is sufficient social and economic activity among enough community members to assure that a viable community exists. Since CUMAA, NCUA has expressed this latter requirement as "interaction and/or shared common interests." NCUA Chartering and Field of Membership Manual (Chartering Manual), Interpretive Ruling and Policy Statement (IRPS) 08–2, Chapter 2, V.A.1.

The Board has gained broad experience in determining what constitutes a WDLC by analyzing numerous applications for community charter conversions and expansions. In this process, the Board has exercised its regulatory judgment in determining whether, in a particular case, a WDLC exists. This involves applying its expertise to the question of whether a proposed area has a sufficient level of interaction and/or shared common interests to be considered a WDLC.

With the benefit of having received public comments to a proposal to amend NCUA's community chartering rules issued in May 2007, NCUA issued a substitute proposal in December 2009. 72 FR 30988 (June 5, 2007), 74 FR 68722 (December 29, 2009). Some provisions of the May 2007 proposal were incorporated into the 2009 proposal without change, while others were modified or eliminated.

NCUA received comments on the 2009 proposal from 44 commenters including 23 credit unions, 20 credit union trade associations, and 1 bank trade association. The commenters generally commended NCUA for addressing the difficult issues that are the subject of the proposal. The banking trade association opposed the proposal in general. All commenters offered some suggested revisions to the proposal.

As discussed more fully below, the following aspects of the 2009 proposal will be finalized without change: (1) The treatment of single political jurisdictions (SPJs); (2) the elimination of the narrative approach; (3) the grandfathering of previously approved WDLCs; (4) the treatment of underserved areas; (5) the ability to serve analysis and marketing plan requirements; and (6) the definition of "in danger of insolvency."

As a result of further deliberations and consideration of the public comments, NCUA is making final amendments to: (1) the criteria required for establishing a multiple political jurisdiction WDLC, and (2) the definition of "rural district." These adjustments fine tune NCUA's chartering policies to balance enabling an FCU to fulfill its mission to provide reasonably priced financial services to qualifying members with NCUA's need to comply with the statutory provisions in the FCU Act. Both adjustments will make the chartering policies more practical.

B. Overview of December 2009 Proposal and Section-By-Section Analysis

1. Well Defined Local Communities

In the proposal, NCUA noted it believed it continues to be prudent policy to consider SPJs and statistical areas, as those terms are described more fully below, as WDLCs because they meet reasonable objective and quantifiable standards. SPJs were treated the same in the 2009 proposal as in the 2007 proposal. Statistical areas, however, were treated somewhat differently in the 2009 proposal from how they were treated in the 2007 proposal. In the 2009 proposal, NCUA added an additional criterion an applicant must meet to establish that a statistical area with multiple jurisdictions is a WDLC. Specifically, that additional criterion limits a multiple jurisdiction WDLC's population to 2.5 million or less people, as discussed further below.

a. WDLCs

i. Single Political Jurisdictions

The FCU Act provides that a "community credit union" consists of "persons or organizations within a well-defined local community,

neighborhood, or rural district." 12 U.S.C. 1759(b)(3). The FCU Act expressly requires the Board to apply its regulatory expertise and define what constitutes a WDLC. 12 U.S.C. 1759(g). It has done so in the Chartering Manual, Chapter 2, Section V, Community Charter Requirements. In 2003, the Board, after issuing notice and seeking comments, issued IRPS 03–1 that stated any county, city, or smaller political jurisdiction, regardless of population size, is by definition a WDLC. 68 FR18334, 18337 (Apr. 15, 2003). An entire state is not acceptable as a WDLC. Under this definition, no documentation demonstrating that the political jurisdiction is a WDLC is required.

After many years of experience, the Board has reviewed this definition of WDLC and still finds it compelling. The Board finds that a single governmental unit below the State level is well-defined and local, consistent with the governmental system in the United States consisting of a local, State, and Federal government structure. An SPJ also has strong indicia of a community, including common interests and interaction among residents. Local governments by their nature generally must provide residents with common services and facilities, such as educational, police, fire, emergency, water, waste, and medical services. Further, an SPJ frequently has other indicia of a WDLC such as a major trade area, employment patterns, local organizations and/or a local newspaper. Such examples of commonalities are indicia that SPJs are WDLCs where residents have common interests and/or interact.

About a third of the commenters supported NCUA continuing to treat an SPJ as a presumed WDLC. The bank trade association opposed that treatment. NCUA agrees that an SPJ, less than an entire state, by its very nature has sufficient indicia of interaction to continue to be treated as a WDLC in the final rule.

ii. Statistical Areas

The Board proposed to establish a statistical definition of WDLC in cases involving multiple political jurisdictions. In that context, a geographically certain area would be considered a WDLC when the following four requirements are met: (1) The area is a recognized core based statistical area (CBSA), or in the case of a CBSA with Metropolitan Divisions, the area is a single Metropolitan Division; (2) the area contains a dominant city, county or equivalent with a majority of all jobs in the CBSA or in the metropolitan division; (3) the dominant city, county or equivalent contains at least ⅓ of the CBSA's or Metropolitan Division's total population; and (4) the area has a population of 2.5 million or less people.

The Board's experience has been that WDLCs can come in various population and geographic sizes. While the statutory language 'local community' does imply some limit, Congress has directed NCUA to establish a regulatory definition consistent with the mission of credit unions. While SPJs below the state level meet the definition of a WDLC, nothing precludes a larger area comprised of multiple political jurisdictions from also meeting the regulatory definition. There is no statutory requirement or economic rationale that compels the Board to charter only the smallest WDLC in a particular area.

The Board's experience has been that applicants have the most difficulty in preparing applications involving larger areas with multiple political jurisdictions. This is because, as the population and the geographic area increase and multiple jurisdictions are involved, it can be more difficult to demonstrate interaction and/or shared common interests. This often causes some confusion to the applicant about what evidence is required and what criteria are considered to be most significant under such circumstances.

The current chartering manual provides examples of the types of information an applicant can provide that would normally evidence interaction and/or shared common interests. These include but are not limited to: (1) Defined political jurisdictions; (2) major trade areas; (3) shared common facilities; (4) organizations within the community area; and (5) newspapers or other periodicals about the area.

These examples are helpful but the Board's experience is that very often in situations involving multiple jurisdictions, where it has determined that a WDLC exists, interaction or common interests are evidenced by a major trade area that is an economic hub, usually a dominant city, county or equivalent, containing a significant portion of the area's employment and population. This central core often acts as a nucleus drawing a sufficiently large critical mass of area residents into the core area for employment and other social activities such as entertainment, shopping, and educational pursuits. By providing jobs to residents from outside the dominant core area, it also provides income that then generates further interaction both in the hub and in outlying areas as those individuals spend their earnings for a wide variety of purposes in outlying counties where they live. This commonality through interaction and/or shared common interests in connection with an economic hub is conducive to a credit union's success and supports a finding that such an area is a local community.

The Board views evidence that an area is anchored by a dominant trade area or economic hub as a strong indication that there is sufficient interaction and/or common interests to support a finding of a WDLC capable of sustaining a credit union. This type of geographic model greatly increases the likelihood that the residents of the community manifest a "commonality of routine interaction, shared and related work experiences, interests, or activities * * *" that are essential to support a strong healthy credit union capable of providing financial services to members throughout the area. Public Law 105–219, § 2(3), 112 Stat. 913 (August 7, 1998).

The Office of Management and Budget (OMB) publishes the geographic areas its analysis indicates exhibit these important criteria. The Board is familiar with and has utilized these statistics. In over six years, the agency has approved in excess of 50 community charters involving metropolitan statistical areas (MSAs), usually involving a community based around a dominant core trade area.

The Board noted that when statistics can demonstrate the existence of such relevant characteristics it is appropriate to presume that sufficient interaction and/or common interests exist to support a viable community based credit union. In such situations, the area will meet the regulatory definition of a WDLC.

Certain areas, however, do not have one dominant economic hub, but rather may contain two or more dominant hubs. These situations diminish the persuasiveness of the evidence and make it inappropriate to automatically conclude that they qualify as WDLCs.

On December 27, 2000, OMB published Standards for Defining MSAs and micropolitan statistical areas (MicroSAs). 65 FR 82228 (December 27, 2000). The following definitions established by OMB are relevant here:

CBSA—"A statistical geographic entity consisting of the county or counties associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and Micropolitan Statistical Areas are the two categories

of Core Based Statistical Areas." 65 FR 82238 (Dec. 27, 2000).

Metropolitan Division—"A county or group of counties within a Core Based Statistical Area that contains a core with a population of at least 2.5 million." 65 FR 82238 (Dec. 27, 2000). OMB recognizes that Metropolitan Divisions often function as distinct, social, economic, and cultural areas within a larger MSA. *See* OMB Bulletin NO. 07–01, December 18, 2006.

Metropolitan Statistical Area—"A Core Based Statistical Area associated with at least one urbanized area that has a population of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting." 65 FR 82238 (Dec. 27, 2000).

Micropolitan Statistical Area—"A Core Based Statistical Area associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting." 65 FR 82238 (Dec. 27, 2000).

Demonstrated commuting patterns supporting a high degree of social and economic integration are a very significant factor in community chartering, particularly in situations involving large areas with multiple political jurisdictions. In a community based model, significant interaction through commuting patterns into one central area or urban core strengthens the membership of a credit union and allows a community based credit union to efficiently serve the needs of the membership throughout the area. Such data demonstrates a high degree of interaction through the major life activity of working and activities associated with employment. Large numbers of residents share common interests in the various economic and social activities contained within the core economic area.

Historically, commuting has been an uncomplicated method of demonstrating functional integration. NCUA agrees with OMB's conclusion that "Commuting to work is an easily understood measure that reflects the social and economic integration of geographic areas." 65 FR 82233 (Dec. 27, 2000). The Board also finds compelling OMB's conclusion that commuting patterns within statistical areas demonstrate a high degree of social and economic integration with the central county. OMB's threshold for qualifying a county as an outlying county eligible for inclusion in either a MSA or MicroSA is a threshold of 25% inter-county commuting. OMB also considers a multiplier effect (a standard method used in economic analysis to determine the impact of new jobs on a local economy) that each commuter would have on the economy of the county in which he or she lives and notes that a multiple of two or three generally is accepted by economic development analysts for most areas. 65 FR 82233 (Dec. 27, 2000). "Applying such a measure in the case of a county with the minimum 25 percent commuting requirement means that the incomes of at least half of the workers residing in the outlying county are connected either directly (through commuting to jobs located in the central county) or indirectly (by providing services to local residents whose jobs are in the central county) to the economy of the central county or counties of the CBSA within which the county at issue qualifies for inclusion." 65 FR 82233 (Dec. 27, 2000). OMB has pointed out that a Federal agency using OMB's statistical definitions is responsible for ensuring that the definitions are appropriate for its particular use. NCUA is confident, based on its experience, that it is using OMB's statistical definitions in an appropriate manner.

The Board continues to favor the establishment of a standard statistical definition of a WDLC. The Board believes that the application of strictly statistical rules for determining whether a CBSA is a WDLC has the advantage of minimizing ambiguity and making the application process less time consuming. In addition to finding evidence established in this manner compelling, the Board believed that the reasonableness of the conclusion is further strengthened when additional factors establishing the dominance of the core area are present.

As OMB has noted, Metropolitan Divisions often function as distinct social, economic, and cultural areas. In the Board's view, this evidence detracts from the cohesiveness of a CBSA with Metropolitan Divisions. Accordingly, under the proposal, a CBSA with Metropolitan Divisions does not meet the definition of a WDLC. Individual Metropolitan Divisions within the CBSA could qualify as a WDLC. Similarly, the Board believes that when multiple political jurisdictions are present, an overly large population can detract from the cohesiveness of a geographic area. For that reason, the Board proposed capping a multijurisdictional area at 2.5 million or less people in order to qualify as a WDLC. The Board chose that population threshold because OMB generally designates a Metropolitan Division within a CBSA that has a core of at least 2.5 million people. The Board takes that established threshold as a logical breaking point in terms of community cohesiveness with respect to a multijurisdictional area.

Also, the Board acknowledged that not all areas of the country are the same and there may be a CBSA that does not contain a sufficiently dominant core area or contains several significant core areas. Such situations also dilute the cohesiveness of a CBSA. For these reasons, the Board proposed to require that a CBSA contain a dominant core city, county, or equivalent that contains the majority of all jobs and ⅓ of the total population contained in the CBSA in order to meet the definition of a WDLC. These additional requirements were intended to assure that the core area dominates any other area within the CBSA with respect to jobs and population. Information about the current definitions of CBSAs is available at OMB's Internet site (*http://www.whitehouse.gov/omb*). Community charter applications for part of a CBSA are acceptable provided they include the dominant core city, county, or equivalent and the CBSA's population in its entirety is 2.5 million or less people.

Accordingly, the Board proposed in 2009 to establish a statistical definition of WDLC in cases involving multiple political jurisdictions. Specifically, the proposal stated that a geographically well defined area will be considered a WDLC in that context when the following four requirements are met:

- The area must be a recognized CBSA, or in the case of a CBSA with Metropolitan Divisions the area must be a single Metropolitan Division; and
- The area must contain a dominant city, county or equivalent with a majority of all jobs in the CBSA or Metropolitan Division; and
- The dominant city, county or equivalent must contain at least ⅓ of the CBSA's or Metropolitan Division's total population; and
- The area must have a population of 2.5 million or less people.

As previously mentioned, NCUA believes this more objective approach will benefit all involved by making the application and review process faster, simpler, and less labor intensive, and will provide a more certain outcome. Also, using objective criteria as the basis for granting a community charter will help ensure that NCUA makes

consistent and uniform decisions from regional office to regional office.

About a third of the commenters stated that an FCU should not have to meet all four statistical criteria to establish a WDLC in areas containing multiple political jurisdictions and believed these criteria are too restrictive and exclude too many true communities from qualifying as WDLCs. About half of these commenters suggested that satisfying two of the four criteria should be sufficient to establish a WDLC while others suggested substitute criteria. A handful of commenters suggested that other areas such as MSAs and congressional districts could also serve as presumed WDLCs. A third of the commenters opposed the 2.5 million person population cap on multiple political jurisdiction WDLCs. They thought it was too restrictive.

Upon further consideration, NCUA agrees that requiring compliance with all four of the proposed criteria is overly restrictive and beyond statutory requirements. More specifically, NCUA believes it is unnecessary to include the employment and population requirements.

NCUA is confident in and agrees with OMB's extensive scientific methodology employed in defining a CBSA and in concluding that the existence of a CBSA demonstrates a high degree of social and economic integration in a particular geographic area. Accordingly, NCUA believes that including the majority of population and one third of employment statistical criteria to establish a WDLC in areas containing multiple political jurisdictions is overly restrictive. NCUA has concluded after much deliberation that the majority of population and one third of employment criteria are unnecessary, exceed statutory requirements, and that a CBSA by definition, even without those additional criteria, is sufficient to demonstrate the requisite social and economic integration needed to establish a WDLC capable of supporting a viable credit union. NCUA still believes, however, that any portion of a CBSA chosen as the geographic area of the community must still contain the core of the CBSA and that a total population cap of 2.5 million is appropriate in a multiple political jurisdiction context to demonstrate cohesion in the community. Those are also consistent with OMB guidance. Accordingly, the final rule eliminates the majority of population and one third of employment criteria from the statistical definition of a WDLC.

2. Narrative Approach

As previously mentioned, NCUA stated in the proposal that it does not believe it is beneficial to continue the practice of permitting a community charter applicant to provide a narrative statement with documentation to support the credit union's assertion that an area containing multiple political jurisdictions meets the standards for community interaction and/or common interests to qualify as a WDLC. As noted, the narrative approach is cumbersome, difficult for credit unions to fully understand, and time consuming. Accordingly, NCUA proposed eliminating, from the community chartering process, the narrative approach and all related aspects of that procedure.

While not every area will qualify as a WDLC under the statistical approach, NCUA stated it believes the consistency of this objective approach will enhance its chartering policy, assure the strength and viability of community charters, and greatly ease the burden for any community charter applicant.

Well over half of the commenters opposed eliminating in its entirety the narrative method of establishing a WDLC. Some of those commenters supported using a narrative as supplemental evidence to the statistical criteria. Others would like FCUs to have the choice of establishing a WDLC using either the narrative or the statistical criteria. NCUA continues to believe the narrative approach should be eliminated for the reasons outlined above and is no longer available in the final rule.

3. Grandfathered WDLCs

NCUA stated in the proposal that an area previously approved by NCUA as a WDLC, prior to the effective date of any final amendments, will continue to be considered a WDLC for subsequent applicants who wish to serve that exact geographic area. After that effective date, an applicant applying for a geographic area that is not exactly the same as the previously approved WDLC must comply with the Chartering Manual's WDLC criteria then in place.

Over a third of the commenters noted their support for NCUA's decision to grandfather all previously approved WDLCs. The banking trade group opposed that position. Previously approved WDLCs were established as such under legally appropriate standards and, therefore, NCUA believes those areas should continue to be considered WDLCs as part of the final rule.

4. Rural District

In the 2009 proposal, the Board proposed to define the term "rural district" to help extend credit union services to individuals living in rural America without adequate access to reasonably priced financial services. Specifically, the NCUA Board defined a rural district as a contiguous area that has more than 50% of its population in census blocks that are designated as rural and the total population of the area does not exceed 100,000 persons, stating that these requirements will ensure that a rural district has both a small total population and a majority of its population in areas classified as rural by the United States Census Bureau.

In the 2007 proposal, the Board proposed a different definition of rural district. Specifically, the Board defined rural district as an area that is not in an MSA or MicroSA, has a population density that does not exceed 100 people per square mile, and where the total population does not exceed 100,000. That definition would have excluded the majority of the United States population that lives in and around large urban areas yet, based on census data, still include the vast majority of counties in the United States having fewer than 100,000 persons. Population density varies widely but many counties also have a density of less than 100 persons per square mile. Those requirements would have assured that an area under consideration as a rural district would have a small total population and a relatively light population density.

Over half of the commenters opposed the 2009 proposed definition of rural district primarily because they believe the 100,000 person population cap is too small. Some commenters stated the 100,000 person limit is too small to sustain a viable FCU considering the lack of economies of scale and the fact that community chartered credit unions generally have a lower penetration rate than other kinds of credit union charters. A few commenters noted that many truly rural areas contain a small hub city which when included in the area would exceed the 100,000 person population limit. Some commenters stated that if NCUA chooses to impose a population limit, then it should be higher.

NCUA has also received comment that it is more difficult for an FCU to reach and attract members from individuals living in large rural areas with widely disbursed populations. Those members are often more expensive to serve than members in a smaller geographic area with a higher

population concentration. In addition, the penetration rate of community charters is significantly less than single or multiple common bond charters and, therefore, a higher population limit is necessary to ensure economic viability. Accordingly, NCUA believes it is warranted to increase the population limit to 200,000 people. This will help ensure the rural district criteria are realistic and that an FCU can be viable in serving a rural district given the economic realities of an FCU's cost to serve rural members. Also, NCUA wishes to clarify that in defining a rural district, NCUA recognizes four types of affinity on which a rural district can be based—persons who live in, worship in, attend school in, or work in the rural district. Businesses and other legal entities within the rural district may also qualify for membership.

NCUA believes the creation of rural districts will play a significant role in allowing FCUs to provide affordable financial services to individuals in rural communities that otherwise would not have such services. To that end and to provide as much flexibility as reasonably possible, NCUA is expanding the definition of rural district so that an FCU can establish a rural district by satisfying *either* the definition of rural district proposed in the 2009 proposal, with the modified population limit, *or* a definition similar to that proposed in the 2007 proposal, also with the modified population limit. Specifically, NCUA defines rural district in the final rule as:

- A district that has well-defined, contiguous geographic boundaries;
- More than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the United States Census Bureau; and
- The total population of the district does not exceed 200,000 people; *or*
- A district that has well-defined, contiguous geographic boundaries;
- The district does not have a population density in excess of 100 people per square mile; and
- The total population of the district does not exceed 200,000 people.

5. Underserved Communities

In December 2008, NCUA adopted a final rule modifying its Chartering Manual to update and clarify four aspects of the process and criteria for approving credit union service to underserved areas. 73 FR 73392 (Dec. 2, 2008). First, the rule clarified that an underserved area must independently qualify as a WDLC. Second, it made explicit that the Community Development Financial Institution Fund's "geographic units" of measure and 85 percent population threshold, when applicable, must be used to determine whether a proposed area meets the "criteria of economic distress" incorporated by reference in the FCU Act. Third, it updated the documentation requirements for demonstrating that a proposed area has "significant unmet needs" among a range of specified financial products and services. Finally, the rule adopted a "concentration of facilities" methodology to implement the statutory requirement that a proposed area must be "underserved by other depository institutions." 73 FR 73392, 73396 (Dec. 2, 2008).

Using data supplied by NCUA, the "concentration of facilities" methodology compares the ratio of depository institution facilities to the population within a proposed area's "non-distressed" portions against the same facilities-to-population ratio in the proposed area as a whole. When that ratio in the area as a whole shows more persons per facility than does the same ratio in the "non-distressed" portions, the rule deems the area to be "underserved by other depository institutions." There is a perception that this methodology measures only the presence of financial institutions not the variety of services and, therefore, it may be an obstacle to establishing that an area which clearly meets the "economic distress criteria" also is "underserved by other depository institutions" as required for the area to qualify as underserved. For example, there could be a distressed area that contains more financial institutions than a non-distressed area, but the products and services offered by the financial institutions in the distressed area might focus on businesses and high-income individuals. In this instance, the distressed area would not qualify as underserved despite truly lacking affordable financial services for low to moderate income individuals.

In the 2009 proposal, the NCUA Board solicited public comment on alternative methodologies, based on publicly accessible data about both credit unions and other depository institutions, for implementing the Act's "underserved by other depository institutions" criterion.

A quarter of the commenters opposed NCUA's current methodology for determining if an area is underserved. About the same number of commenters stated that an underserved area should not have to satisfy the same criteria as a WDLC. Unfortunately, commenters did not articulate with any semblance of consensus a realistic alternate methodology. Accordingly, NCUA will continue with the current methodology until a better option is devised.

6. Ability To Serve and Marketing Plans

Establishing that an area is a WDLC is only the first of two criteria an FCU must satisfy to obtain a community charter or community charter expansion. The second criterion, after establishing the existence of a WDLC, is for an FCU to demonstrate it is able to serve the WDLC. This applies to all WDLCs including SPJs, statistical areas, and grandfathered communities. Typically, an FCU can demonstrate its ability to serve an established WDLC in its marketing plan.

Under the current Chartering Manual, a credit union converting to or expanding its community charter must provide, "a marketing plan that addresses how the community will be served." In the 2009 proposal, the Board clarified NCUA's marketing plan requirement to provide credit unions with additional guidance on NCUA's expectations. NCUA proposed that a meaningful marketing plan must demonstrate, in detail:

- How the credit union will implement its business plan to serve the entire community;
- The unique needs of the various demographic groups in the proposed community;
- How the credit union will market to each group, particularly underserved groups;
- Which community-based organizations the credit union will target in its outreach efforts;
- The credit union's marketing budget projections dedicating greater resources to reaching new members; and
- The credit union's timetable for implementation, not just a calendar of events.

Additionally, the Board proposed that the appropriate regional office will follow-up with an FCU every year for three years after the FCU has been granted a new or expanded community charter, and at any other intervals NCUA believes appropriate, to determine if the FCU is satisfying the terms of its marketing and business plans. An FCU failing to satisfy those terms would be subject to supervisory action.

Almost two thirds of the commenters objected to NCUA reviewing an FCU's compliance with the terms of its marketing plan after the FCU has been granted a new or expanded community charter. Most of those commenters stated that as economic and other conditions change over time an FCU must make adjustments to its plan. They

indicated a plan must be fluid and not rigid and that FCUs should be afforded this flexibility. Over a quarter of commenters indicated that NCUA should provide more information as to how NCUA will determine if an FCU is satisfying the terms of its marketing plan and what supervisory action could be taken if NCUA determines an FCU is not doing so. NCUA fully recognizes the need for flexibility in this context. An FCU must adapt to changing economic circumstances and it is reasonable for its marketing plan to evolve accordingly. It was not NCUA's intent in the 2009 proposal to suggest otherwise. Accordingly, this aspect of the 2009 proposal remains unchanged in the final rule, but NCUA's stresses plan rigidity is not its goal. NCUA simply wants to make certain an FCU that is granted a community charter makes a continuing good faith effort to serve that community as it indicated it would in its marketing plan. NCUA did not specify exactly what kinds of supervisory action might be taken for failure of an FCU to comply with its marketing plan because those decisions are best left to a case-by-case determination depending on the nature of the circumstances. In any event, NCUA intends to provide an FCU with flexibility to comply with or reasonably alter its marketing plan as dictated by circumstances.

7. Emergency Mergers

Under the emergency merger provision of section 205(h) of the Act, the NCUA Board may allow a credit union that is either insolvent or in danger of insolvency to merge with another credit union if the NCUA Board finds that an emergency requiring expeditious action exists, no other reasonable alternatives are available, and the action is in the public interest. 12 U.S.C. 1785(h). The Board may approve an emergency merger without regard to common bond or other legal constraints, such as obtaining the approval of the members of the merging credit union to the merger.

NCUA must first determine that a credit union is either insolvent or in danger of insolvency before it makes the additional findings that an emergency exists, other alternatives are not reasonably available, and that the public interest would be served by the merger. The statute, however, does not define when a credit union is "in danger of insolvency." In the 2009 proposal, NCUA adopted an objective standard to aid it in making the "in danger of insolvency" determination and provide certainty and consistency in how NCUA interprets the standard. Specifically, NCUA proposed that a credit union is in danger of insolvency if it falls into one or more of the following three categories:

1. The credit union's net worth is declining at a rate that will render it insolvent within 24 months. In NCUA's experience with troubled credit unions, the trend line to zero net worth often worsens once a credit union actually approaches zero net worth. It is more difficult for NCUA to keep the costs to the National Credit Union Share Insurance Fund (NCUSIF) low when a credit union is near, or below, zero net worth.[1]

2. The credit union's net worth is declining at a rate that will take it under two percent (2%) net worth within 12 months. A credit union with a net worth ratio of less than two percent (2%) falls into the PCA category of "critically undercapitalized." 12 U.S.C. 1790d(c)(1)(E); 12 CFR 702.102(a)(5). Congress, in adding the PCA mandates to the Act, created a presumption that a critically undercapitalized credit union should be liquidated or conserved if its financial condition does not improve within a short period. 12 U.S.C. 1790d(i); 12 CFR 702.204(c).

3. The credit union's net worth, as self-reported on its Call Report, is significantly undercapitalized, and NCUA determines that there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months. A credit union with a net worth ratio between two percent (2%) or more but less than four percent (4%) falls into the PCA category of "significantly undercapitalized." 12 U.S.C. 1790d(c)(1)(D); 12 CFR 702.102(a)(4). A credit union with a net worth ratio of six percent (6%) falls into the PCA category of "adequately capitalized." 12 U.S.C. 1709d(c)(1)(B); 12 CFR 702.102(a)(2).

Section 702.203(c) of NCUA's PCA regulation states:

> Discretionary conservatorship or liquidation if no prospect of becoming "adequately capitalized." Notwithstanding any other actions required or permitted to be taken under this section, when a credit union becomes "significantly undercapitalized" * * *, the NCUA Board may place the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i), provided that the credit union has no reasonable prospect of becoming "adequately capitalized."

12 CFR 702.203(c). An example of no reasonable prospect of becoming adequately capitalized would be a credit union's inability, after working with NCUA, to demonstrate how it would restore net worth to this level. This could include the credit union's failure, after working with NCUA, and considering both possible increases in retained earnings and decreases in assets, to develop an acceptable Net Worth Restoration Plan (NWRP). It could also include the credit union's failure, after working with NCUA, to materially comply with an approved NWRP. In either case, NCUA must document that the credit union is unable to become adequately capitalized within a 36-month timeframe.

A major credit union trade association and the banking trade association supported NCUA's definition of "in danger of insolvency" as proposed. Another major credit union trade association opposed it stating that it gave NCUA latitude to conduct an emergency merger if an FCU is significantly undercapitalized regardless of other supervisory issues that might suggest a merger is not necessary. NCUA continues to believe the proposed definition is reasonable and balanced and serves the public interest. The definition lends certainty to how NCUA will determine that an FCU is in danger of insolvency. Some commenters want NCUA to make the determination earlier in the process when the distressed FCU is still an attractive merger partner and others want NCUA to wait longer. All commenters are reminded that, in either event, NCUA is bound by statutory limits on non-emergency mergers of credit unions with dissimilar charters. The proposed definition is finalized without change.

8. Delegations of Processing Authority

Although NCUA did not ask for comments in this regard, a few commenters suggested NCUA's regional offices should be delegated authority to process to completion any community related FOM application without input from the Board or concurrence of other NCUA offices. NCUA agrees this would expedite processing community charter applications and will review its procedures.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to

[1] Under NCUA's system of prompt corrective action (PCA), as a credit union's net worth declines below minimum requirements, the credit union faces progressively more stringent safeguards. The goal is to resolve net worth deficiencies promptly, before they become more serious, and in any event before they cause losses to the NCUSIF. The PCA statute sets forth NCUA's duty to take prompt corrective action to resolve the problems of troubled credit unions to avoid or minimize loss to the NCUSIF. S. Rpt. No. 193, 105th Cong., 2d Sess. 12 (1998); 12 U.S.C. 1790d; 12 CFR part 702.

describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

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, an office within OMB, is currently reviewing this rule, and NCUA anticipates it will determine that, for purposes of SBREFA, this is not a major rule.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number assigned to § 701.1 is 3133–0015, and to the forms included in Appendix D is 3133–0116. NCUA has determined that the amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

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. This final rule will not have a 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 final rule does not constitute a policy that has federalism implications for purposes of the executive order because it only applies to FCUs.

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

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

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 17, 2010

Mary Rupp,

Secretary of the Board.

■ For the reasons discussed above, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS 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, also known as the Chartering and Field of Membership Manual, are set forth in appendix B to this part and are available on-line at *http://www.ncua.gov.*

■ 3. The first paragraph of Section II.D.2. of Chapter 2 of appendix B to part 701 is revised to read as follows:

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

* * * * *

II.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

* * * * *

■ 4. The first paragraph of Section III.D.2. of Chapter 2 of appendix B to part 701 is revised to read as follows:

III.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

* * * * *

■ 5. The first paragraph of Section IV.D.3. of Chapter 2 of appendix B to part 701 is revised to read as follows:

IV.D.3—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

* * * * *

■ 6. Section V.A. of Chapter 2 of appendix B to part 701 is revised to read as follows:

Chapter 2

V.A.1—General

There are two types of community charters. One is based on a single, geographically well-defined local community or neighborhood; the other is a rural district. More than one credit union may serve the same community.

NCUA recognizes four types of affinity on which both a community charter and a rural district can be based—persons who live in, worship in, attend school in, or work in the community or rural district. Businesses and other legal entities within the community boundaries or rural district may also qualify for membership.

NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined; and
- The area is a well-defined local community or a rural district.

V.A.2—Definition of Well-Defined Local Community and Rural District

In addition to the documentation requirements 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.

An applicant has the burden of demonstrating to NCUA that the proposed community area meets the statutory requirements of being: (1) well-defined, and (2) a local community or rural district.

"Well-defined" means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (single, multiple, or portions of a county) or their political equivalent, school districts, or a clearly identifiable neighborhood. Although congressional districts and state boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community or rural district.

The well-defined local community requirement is met if:

• Single Political Jurisdiction—The area to be served is in a recognized single political jurisdiction, *i.e.,* a city, county, or their political equivalent, or any contiguous portion thereof.

• Statistical Area—

• The area is a designated Core Based Statistical Area (CBSA) or allowing part thereof, or in the case of a CBSA with Metropolitan Divisions, the area is a Metropolitan Division or part thereof; and

• The CBSA or Metropolitan Division must have a population of 2.5 million or less people.

The rural district requirement is met if:

• Rural District—

• The district has well-defined, contiguous geographic boundaries;

• More than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the United States Census Bureau; and

• The total population of the district does not exceed 200,000 people; *or*

• The district has well-defined, contiguous geographic boundaries;

• The district does not have a population density in excess of 100 people per square mile; and

• The total population of the district does not exceed 200,000 people.

The affinities that apply to rural districts are the same as those that apply to well defined local communities. The OMB definitions of CBSA and Metropolitan Division may be found at 65 FR82238 (Dec. 27, 2000). They are incorporated herein by reference. Access to these definitions is available through the main page of the **Federal Register** Web site at *http://www.gpoaccess.gov/fr/index.html* and on NCUA's Web site at *http://www.ncua.gov.*

The requirements in Chapter 2, Sections V.A.4 through V.G. also apply to a credit union that serves a rural district.

V.A.3—Previously Approved Communities

If prior to July 26, 2010 NCUA has determined that a specific geographic area is a well defined local community, then a new applicant need not reestablish that fact as part of its application to serve the exact area. The new applicant must, however, note NCUA's previous determination as part of its overall application. An applicant applying for an area after that date that is not exactly the same as the previously approved well defined local community must comply with the current criteria in place for determining a well defined local community.

V.A.4—Business Plan Requirements for a Community Credit Union

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 and promotion of savings programs and in the collection of loans. Accordingly, to support an application for a community charter, an applicant Federal credit union must develop a business plan incorporating the following data:

• Pro forma financial statements for a minimum of 24 months after the proposed conversion, including the underlying assumptions and rationale for projected member, share, loan, and asset growth;

• Anticipated financial impact on the credit union, including the need for additional employees and fixed assets, and the associated costs;

• A description of the current and proposed office/branch structure, including a general description of the location(s); parking availability, public transportation availability, drive-through service, lobby capacity, or any other service feature illustrating community access;

• A marketing plan addressing how the community will be served for the 24-month period after the proposed conversion to a community charter, including detailing: how the credit union will implement its business plan; the unique needs of the various demographic groups in the proposed community; how the credit union will market to each group, particularly underserved groups; which community-based organizations the credit union will target in its outreach efforts; the credit union's marketing budget projections dedicating greater resources to reaching new members; and the credit union's timetable for implementation, not just a calendar of events;

• Details, terms and conditions of the credit union's financial products, programs, and services to be provided to the entire community; and

• Maps showing the current and proposed service facilities, ATMs, political boundaries, major roads, and other pertinent information.

An existing Federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership, but outside the new community credit union's boundaries, may not be included in the new community charter. Therefore, the credit union must notify groups that will be removed from the field of membership as a result of the conversion. Members of record can continue to be served.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the credit union will be viable and capable of providing services to its members.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plans submitted with their applications. Additionally, NCUA will follow-up with an FCU every year for three years after the FCU has been granted a new or expanded community charter, and at any other intervals NCUA believes appropriate, to determine if the FCU is satisfying the terms of its marketing and business plans. An FCU failing to satisfy those terms will be subject to supervisory action. As part of this review process, the regional office will report to the NCUA Board instances where an FCU is failing to satisfy the terms of its marketing and business plan and indicate what supervisory actions the region intends to take.

V.A.5—Community Boundaries

The geographic boundaries of a community Federal credit union are the areas defined in its charter. The boundaries can usually be defined using political borders, streets, rivers, railroad tracks, or other static geographical feature.

A community that is a recognized legal entity may be stated in the field of membership—for example, "Gus Township, Texas," "Isabella City, Georgia," or "Fairfax County, Virginia."

A community that is a recognized CBSA must state in the field of membership the political jurisdiction(s) that comprise the CBSA.

V.A.6—Special Community Charters

A community field of membership may include persons who work or attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

V.A.7—Sample Community Fields of Membership

A community charter does not have to include all four affinities (*i.e.,* live, work, worship, or attend school in a community). Some examples of community fields of membership are:

• Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;

• Persons who live or work in Green County, Maine;

• Persons who live, worship, work (or regularly conduct business in), or attend school on the University of Dayton campus, in Dayton, Ohio;

• Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York;

• Persons who live, work, or worship in the Binghamton, New York, CBSA, consisting of Broome and Tioga Counties, New York (a qualifying CBSA in its entirety);

• Persons who live, work, worship, or attend school in the portion of the Oklahoma City, OK MSA that includes Canadian and Oklahoma counties, Oklahoma (two contiguous counties in a portion of a qualifying CBSA that has seven counties in total); or

• Persons who live, work, worship, or attend school in Uinta County or Lincoln County, Wyoming, a rural district.

Some examples of insufficiently defined local communities, neighborhoods, or rural districts are:

• Persons who live or work within and businesses located within a ten-mile radius of Washington, DC (using a radius does not establish a well-defined area);

• Persons who live or work in the industrial section of New York, New York. (not a well-defined neighborhood, community, or rural district); or

• Persons who live or work in the greater Boston area. (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

• Persons who live or work in the State of California. (does not meet the definition of local community, neighborhood, or rural district).

• Persons who live in the first congressional district of Florida. (does not meet the definition of local community, neighborhood, or rural district).

■ 7. The first paragraph of Section V.D.2. of Chapter 2 of appendix B to part 701 is revised to read as follows:

V.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

• An emergency requiring expeditious action exists;

• Other alternatives are not reasonably available; and

• The public interest would best be served by approving the merger.

* * * * *

■ 8. Section III.B.1 of Chapter 3 of appendix B to part 701 is amended by removing the last sentence of that section.

■ 9. In Appendix B to part 701, revise Appendix 1 to read as follows:

BILLING CODE 7535–01–P

APPENDIX 1

GLOSSARY

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA Rules and Regulations, as well as state laws, may be used for further reference.

Adequately capitalized - A credit union is considered adequately capitalized when it has a net worth ratio of at least 6 percent. A multiple common bond credit union must be adequately capitalized in order to add new groups to its charter. The regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.

Affinity - A relationship upon which a community charter is based. Acceptable affinities include living, working, worshiping, or attending school in a community.

Appeal - The right of a credit union or charter applicant to request a formal review of a regional director's adverse decision by the National Credit Union Administration Board.

Associational common bond - A common bond comprised of members and employees of a recognized association. It includes individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

Business plan - Plan submitted by a charter applicant or existing federal credit union addressing the economic advisability of a proposed charter or field of membership addition.

Charter - The document which authorizes a group to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Common bond - The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are two common bonds which can serve as a basis for a group forming a federal credit union or being included in an existing federal credit union's field of membership: occupational - employment by the same company, related companies or in a trade, industry, or profession (TIP); and associational - membership in the same association.

Community credit union - A credit union whose field of membership consists of persons who live, work, worship, or attend school in the same well-defined local community, neighborhood, or rural district.

Credit union - A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services.

Economic advisability - An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

Emergency merger - Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to common bond policy.

Exclusionary clause - A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group which otherwise could be included in its field of membership.

Federal share insurance - Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership - The persons (including organizations and other legal entities) a credit union is permitted to accept for membership.

Household - Persons living in the same residence maintaining a single economic unit.

Housekeeping Amendment - A field of membership amendment to delete groups, change group names, change group locations, remove exclusionary clauses, and to add other persons eligible for credit union membership by virtue of their close relationship to a common bond group or the community for community charters.

Immediate family member - A spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

In danger of insolvency - In making the determination that a particular credit union is in danger of insolvency, NCUA will establish that the credit union falls into one or more of the following categories:

1. The credit union's net worth is declining at a rate that will render it insolvent within 24 months. In projecting future net worth, NCUA may relay on data in addition to Call Report data. The trend must be supported by at least 12 months of historic data.

2. The credit union's net worth is declining at a rate that will take it under two percent (2%) net worth within 12 months. In projecting future net worth, NCUA may rely on data in addition to Call Report data. The trend must be supported by at least 12 months of historic data.

3. The credit union's net worth, as self-reported on its Call Report, is significantly undercapitalized, and NCUA determines that there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months. In making its determination on the prospect of achieving adequate capitalization, NCUA will assume that, if adverse economic conditions are affecting the value of the credit union's assets and liabilities, including property values and loan delinquencies related to unemployment, these adverse conditions will not further deteriorate.

Letter of Understanding and Agreement - Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants for a limited time.

Mentor - An individual who provides guidance and assistance to newly chartered, small, or low-income credit unions. All new federal credit unions are encouraged to establish a mentor relationship with a trained, experienced credit union individual or an existing credit union.

Metropolitan Statistical Area (MSA) - The Office of Management and Budget defines a metropolitan statistical area as an urbanized area that has at least one urbanized area in excess of 50,000 and "comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting."

Merger - Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state regulator whenever a state credit union is involved.

Multiple common bond credit union - A credit union whose field of membership consists of more than one group, each of which has a common bond of occupation or association.

Occupational common bond - Employment by the same entity or related entities or a Trade, Industry, or Profession.

Once a member, always a member - A provision of the Federal Credit Union Act which permits an individual to remain a member of the credit union until he or she chooses to withdraw or is expelled from the membership of the credit union. Under this

provision, leaving a group that is named in the credit union's charter does not terminate an individual's membership in the credit union.

Organizations of such persons - An organization or organizations composed exclusively of persons who are within the field of membership of the credit union.

Overlap - The situation which results when a group is eligible for membership in more than one credit union.

Primary potential members - Members or employees who belong to an associational or occupational group.

Purchase and assumption - Purchase of all or part of the assets of and assumption of all or part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Service area - The area that can reasonably be served by the service facilities accessible to the groups within the field of membership.

Service facility - A place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network if either: (1) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include the credit union's Internet website. A service facility does not include an ATM or interest in a shared branch network for purposes of serving an underserved area.

Single associational common bond credit union - A credit union whose field of membership includes members and employees of a recognized association.

Single common bond credit union - A credit union whose field of membership consists of one group which has a common bond of occupation or association.

Single occupational common bond credit union - A credit union whose field of membership consists of employees of the same entity or related entities or part of a Trade, Industry, or Profession (TIP).

Spin-off - The transfer of a portion of the field of membership, assets, liabilities, shares, and capital of one credit union to a new or existing credit union.

Subscribers - For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Trade, Industry, or Profession (TIP) - A single occupational common bond credit union based on employment in a trade, industry, or profession including employment at any number of corporations or other legal entities that while not under common ownership – have a common bond by virtue of producing similar products, providing similar services, or participating in the same type of business.

Underserved community - 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 area must also be underserved based on other NCUA and federal banking agency data.

Unsafe or unsound practice - Any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund.

[FR Doc. 2010–15130 Filed 6–24–10; 8:45 am]
BILLING CODE 7535–01–C

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS10–2]

Appraisal Subcommittee; Appraiser Regulation; Privacy Act Implementation

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council (Subcommittee).

ACTION: Final rule amendments.

SUMMARY: The Subcommittee is adopting nonsubstantive amendments to its regulations relating to the Privacy Act of 1974. The amendments correct the street address and zip code for the Subcomittee's office, which was moved in October 2008, from 2000 K Street, NW., Suite 310, Washington, DC 20006, to 1401 H Street, NW., Suite 760,Washington, DC 20005.

DATES: *Effective Date:* June 25, 2010.

FOR FURTHER INFORMATION CONTACT: Alice M. Ritter, General Counsel, at (202) 595–7577 or *alice@asc.gov;* Appraisal Subcommittee; 1401 H Street, NW., Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Authority and Section-by-Section Analysis

The Privacy Act of 1974 is based, in part, on the finding by Congress that "in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies." To achieve this objective, the Act generally provides that Federal agencies must advise an individual upon request whether records maintained by the agency in a system of records pertain to the individual and must grant the individual access to such records. The Act further provides that individuals may request amendments to records pertaining to them that are maintained by the agency, and that the agency shall either grant the requested amendments or set forth fully its reasons for refusing to do so.

In 1992, the Subcommittee, pursuant to subsection (f) of the Privacy Act, adopted 12 CFR subpart C containing rules and procedures to implement the Privacy Act. In October 2008, the Subcommittee moved its offices from 2000 K Street, NW., to its current location at 1401 H Street, NW. Subpart C, as adopted, contains numerous references to the Subcommittee's K Street address. The Subcommittee is amending subpart C by removing all references to the former K Street location and replacing them with the Subcommittee's current H Street address.

II. Administrative Requirements

A. Notice and Comment Requirements Under 5 U.S.C. 553

The Subcommittee, under 12 U.S.C. 553, is required, among other things, to publish in the **Federal Register** for public notice and comment a general notice of proposed rule making, unless, in accordance with paragraph (b)(3)(B), the agency finds "for good cause * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Subcommittee finds that notice and procedure are unnecessary in connection with these rule amendments because they are nonsubstantive and essentially are nomenclature changes, as that term is defined in the **Federal Register** *Document Drafting Handbook,* page 2–31 (October 1998).

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Banks, banking, Freedom of information, Mortgages, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Text of the Rule

■ For the reasons set forth in the preamble, title 12, chapter XI of the Code of Federal Regulations is amended as follows:

PART 1102—APPRAISER REGULATION

Subpart C—Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

■ 1. The authority citation for part 1102, subpart C is revised to read as follows:

Authority: Privacy Act of 1974, Pub. L. 93–579, 88 Stat. 1896; 12 U.S.C. 552a, as amended.

§§ 1102.102, 1102.105, and 1102.107 [Amended]

■ 2. In 12 CFR part 1102, remove the words "2000 K Street, NW., Suite 310, Washington, DC 20006" and add, in their place, the words, "1401 H Street, NW., Suite 760,Washington, DC 20005" in the following places:

■ a. Section 1102.102(a) introductory text, and (a)(2);

■ b. Section 1102.105(a); and

■ c. Section 1102.107(a)(2), and (b)(1).

By the Appraisal Subcommittee.