

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

RIN 3133-AF23

### Chartering and Field of Membership—Shared Facility Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (Board) proposes to amend its chartering and field of membership (“FOM”) rules to modernize requirements related to service facilities for multiple common bond (“MCB”) federal credit unions (“FCUs”). The Board is proposing to include any shared branch, shared ATM, or shared electronic facility in the definition of “service facility” for an FCU that participates in a shared branching network. The FCU need not be an owner of the shared branch network for the shared branch or shared ATM to be a service facility. These changes would apply to the definition of service facility both for additions of select groups to MCB FCUs and for expansions into underserved areas.

**DATES:** Comments must be received on or before February 10, 2021.

**ADDRESSES:** You may submit written comments, identified by RIN 3133-AF23, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
  - *Fax:* (703) 518-6319. Include “[Your Name]—Comments on Proposed Rule: Field of Membership—Shared Facility Requirements” in the transmittal.
  - *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Public inspection:* You may view all public comments on the Federal

eRulemaking Portal at <http://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or emailing [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Wirick, Senior Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518-6545.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Legal Authority
- III. Summary of the Proposed Rule
- IV. Regulatory Procedures

#### I. Background

NCUA’s Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of its regulations (“Chartering Manual”),<sup>1</sup> implements the FOM requirements and limitations established by the Federal Credit Union Act (“the Act”)<sup>2</sup> for FCUs. The Act permits an FCU to have one of three charter types: a single common bond comprised of a group whose members all share the same occupational or associational common bond; a multiple common bond in which each group has a distinct occupational or associational common bond among its own members; and a community common bond. With the Board’s approval, a MCB FCU may add additional groups and underserved areas to its FOM.<sup>3</sup> This proposal would amend the Chartering Manual so that the facilities of any shared branch network in which an FCU participates, regardless of ownership interest, would qualify as a service facility.

One of the Act’s several requirements for adding a group to a MCB FCU is that the credit union must be “within reasonable proximity to the location of the group whenever practicable and consistent with reasonable standards for the safe and sound operation of the

credit union.”<sup>4</sup> The Chartering Manual interprets the term “reasonable proximity” as requiring the group to be “within reasonable geographic proximity” of the credit union. The Chartering Manual then explains this means that the group “must be within the service area of one of the credit union’s service facilities.”<sup>5</sup> For purposes of group additions, the current definition of a service facility is:

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.<sup>6</sup>

Among the Act’s requirements for adding an underserved area to a MCB FCU is that “the credit union establishes and maintains an office or facility” in the underserved area.<sup>7</sup> The Chartering Manual implements this provision of the Act by requiring a credit union adding an underserved area to its FOM to “establish within two years, and maintain, an office or service facility in the community.”<sup>8</sup> For purposes of underserved area additions, the current Chartering Manual definition of a service facility is:

a place where shares are accepted for members’ accounts, loan applications are accepted and loans are disbursed. By definition, a service facility includes a credit union-owned branch, a shared branch, a mobile branch, or an office operated on a regularly scheduled weekly basis or a credit union owned electronic facility that meets, at a minimum, the above requirements. This definition does not include an ATM or the credit union’s internet website.<sup>9</sup>

A third definition of service facility, which combines the two definitions,

<sup>4</sup> *Id.* (f)(1)(B).

<sup>5</sup> Chartering Manual, § 2.IV.A.1.

<sup>6</sup> *Id.* § 2.IV.A.1.

<sup>7</sup> 12 U.S.C. 1759(c)(2)(B).

<sup>8</sup> Chartering Manual, § 2.III.F.

<sup>9</sup> *Id.* § 3.III.F.

<sup>1</sup> 12 CFR part 701, Appendix B.

<sup>2</sup> 12 U.S.C. 1750 *et. seq.*

<sup>3</sup> *Id.* 1759(f)(2), (c)(2).

appears in the “Glossary” appendix to the Chartering Manual.

Although the Chartering Manual requires a service facility for both group and underserved area additions, it currently incorporates a different definition of the term “service facility” for each context. For example, under the current rule, an ATM is a service facility for purposes of select group additions but not for purposes of underserved area additions. In addition, the definition of service facility for select group additions requires that a facility provide at least one service from a list of services, but the definition of service facility for underserved area additions requires that a facility provide all of the listed services.<sup>10</sup>

The provisions of the Act authorizing the existence of MCB FCUs were adopted in 1998, in the Credit Union Membership Access Act (“CUMAA”). From the first Chartering Manual the NCUA promulgated after CUMAA’s enactment, the NCUA took the position that group additions could only occur around service facilities in which the credit union had an ownership interest.<sup>11</sup> Although the required proportion of ownership was initially unspecified, in 2000 the Board promulgated a rule requiring a MCB to have at least a five percent interest in a facility to add groups based on the location of the shared facility.<sup>12</sup>

In 2003, the Board revised the Chartering Manual to delete the five percent ownership interest requirement, describing the change as follows:

In response to some commenters, the NCUA Board is clarifying in the final rule that the requisite ownership interest can be in a shared service center, a shared service network, or similar organization. Therefore, as long as the credit union has an ownership interest in the service center, network, or similar organization, the credit union can expand around any of them. The credit union does not need to have an ownership interest in the specific service facility. This means, for example, that, if the credit union has an ownership interest in a CUSO, it can expand around any service center connected to the CUSO. This also would allow a participating credit union with an ownership interest in the service facility to expand around other service facilities connected to the shared service network or similar organization.<sup>13</sup>

<sup>10</sup> Compare Chartering Manual § 2.IV.A.1. (a service facility is “a place where shares are accepted for members’ accounts, loan applications are accepted or loans are disbursed”) with Chartering Manual § 3.III.F (a service facility is “a place where shares are accepted for members’ accounts, loan applications are accepted and loans are disbursed”) (emphasis added).

<sup>11</sup> 65 FR 64512, 64513 (Oct. 27, 2000).

<sup>12</sup> *Id.*

<sup>13</sup> 68 FR 18334, 18335 (April 15, 2003).

Even while eliminating the five percent requirement tied to each specific location, the Board continued to assert, “[A]n ownership interest is crucial in analyzing the reasonable proximity requirement for ATMs and shared service facilities.”<sup>14</sup>

The Board has now determined that an ownership requirement related to shared facilities and ATMs is needlessly restrictive, and the Board is proposing to remove this requirement. The structure of shared branching has changed dramatically since the NCUA adopted and amended the ownership requirement. Shared branches originated as physical locations specifically designed for shared use, jointly owned by a small group of participating credit unions operating in adjacent areas. Participating credit unions now use their existing branches and ATMs as shared locations, generally without separate facilities designated as shared branches. Entities offering shared branching services have also consolidated over time. In this changed environment, obtaining an ownership interest in a shared branch network may be difficult or a practical impossibility for credit unions not already owners of a shared branching network.

The ownership requirement restricts the use of shared locations for FOM expansions, without enhancing the utility of the shared location for FCU members. Member access to services from a shared branch is the same whether or not the FCU has an ownership interest in the shared branching network. Nor does being a part owner of a shared branching network confer any more permanence to a shared location than being an authorized participant in the shared branching network. In light of these factors, the Board has determined that the Chartering Manual’s current requirement that the credit union have “an ownership interest in the service facility either directly or through a CUSO” needlessly limits MCB FCU services to additional groups and their members and ignores the way business is done in the current marketplace. The FCU Act places few conditions on what constitutes “reasonable proximity.” If a MCB FCU participates in a shared branching network, and has access to a location based on contractual agreements with the network, the Board believes the FCU is in reasonable proximity to a group that is within the service area of the shared location. The change to this definition will expand FOM eligibility to groups that are within the service area of the shared branches

and ATMs to which a MCB FCU has access through a shared branching network.

For similar reasons, the Board is also proposing to permit MCB FCUs to add underserved areas based on the location of a shared branch or ATM of a network in which the FCU participates. The Act permits an underserved area addition if the credit union establishes and maintains “an office or facility” in the underserved area “at which credit union services are available.”<sup>15</sup> ATMs and shared branch locations provide credit union services. As noted above, credit union members have the same access to services at shared locations, regardless of whether the FCU has an ownership interest in the shared branching network or is an authorized participant in the network. With continuing technological advances, members will be able to obtain the services they need through using ATMs or other electronic facilities combined with telephone or email communications with credit union staff. In light of the changes to the ways consumers access financial services since CUMAA’s enactment, the Board believes its former policies were needlessly restrictive.

In summary, the financial services world has undergone significant changes since the Board adopted the various requirements related to shared locations and shared branching networks some decades ago. For these reasons, the Board believes it is now appropriate to revise its policy about the types of shared facilities that can be considered in the context of the Act’s requirement for “reasonable proximity” for both additions of groups and additions of underserved areas. The proposed changes will also provide regulatory relief by conforming the several definitions of “service facility” in the Chartering Manual.

## II. Legal Authority

The Board is issuing this proposed rule pursuant to its authority under the FCU Act. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the Federal supervisory authority for all federally insured credit unions (“FICUs”).<sup>16</sup> The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.<sup>17</sup>

<sup>15</sup> 12 U.S.C. 1759(c)(2)(B).

<sup>16</sup> *Id.* 1752–1775.

<sup>17</sup> *Id.* 1766(a).

<sup>14</sup> *Id.*

The Act requires the Board to develop regulations to establish the criteria for additions of groups<sup>18</sup> and requires the Board to approve a MCB FCU's addition of underserved areas.<sup>19</sup> The Act does not use the term "service facility." Rather, the Board adopted the term "service facility" to define the limits of reasonable proximity.<sup>20</sup>

The position that an FCU's participation in a shared branch network constitutes a sufficient interest to make the shared branch a service facility for purposes of MCB expansion is a reversal from a position the agency initiated over two decades ago. The Chartering Manual has consistently required ownership either in the shared service facility itself or the network operating the shared facility in order to permit a MCB FCU to add a group based on the location of the shared facility for any facilities that are not local to the FCU. Similarly, the Chartering Manual has consistently required that a MCB FCU seeking to add an underserved area must, at a minimum, establish and maintain a shared branch (with ownership in the branch), or a credit union-owned electronic facility in the area. As discussed above, the Act does not dictate the agency's prior positions requiring ownership in a shared branching network or excluding ATMs from the definition of service facility for purposes of underserved area expansion, and there are now sound policy reasons for the reversal.

Agencies must "use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance."<sup>21</sup> Accordingly, agencies cannot reverse rules adopted by notice-and-comment rulemaking by other, less transparent methods.<sup>22</sup> The term "service facility" appears in the Chartering Manual, which the Board has promulgated and amended using notice and comment rulemaking. The Board is now engaging in a notice and comment rulemaking to change its position, proposing to remove ownership requirements when considering shared branch networks and allowing ATMs to

qualify as service facilities in underserved areas.

### III. Summary of the Proposed Rule

As highlighted above, the Chartering Manual defines "service facility" differently for group additions than for underserved area additions. The proposed rule would conform these definitions.

#### A. Changes to the Definition of Service Facility for Purposes of Group Additions

For group additions, FCU-owned electronic facilities that accept deposits, take loan applications, or disburse loans are service facilities.<sup>23</sup> Credit union-owned branches, mobile branches, offices operated on a regularly scheduled weekly basis, and video teller machines also meet the criteria for service facilities. Finally, shared branching network facilities also meet the criteria for service facilities for group additions, provided the credit union has an ownership interest in the shared branching network. The proposal would leave the definition of service facility intact, but would remove the ownership requirement for shared branch networks.

#### B. Change to the Definition of Service Facility for Purpose of Underserved Area Additions

For underserved areas, the current definition of "service facility" is more limited and allows fewer kinds of facilities to qualify. More specifically, for underserved areas, a service facility includes credit union-owned electronic facilities (other than ATMs) that take deposits, accept loan applications, and disburse loans.<sup>24</sup> Credit union branches, certain shared branches, mobile branches, and offices operated on a regularly scheduled weekly basis also meet the current criteria for a service facility in an underserved area expansion. Under the current definition, shared locations to which an FCU has access by virtue of participating in a shared branching network without an ownership interest do not meet the criteria for a service facility in an underserved area. ATMs are excluded, even if wholly owned by the FCU. The proposal would change the definition to allow shared facilities to qualify as service facilities, without any requirement for shared ownership. The proposal would also permit ATMs to qualify as service facilities, whether wholly owned by an FCU or part of a

shared branch network in which the FCU participates.

The proposal would make the definition of service facility for purposes of adding underserved areas identical to the definition of service facility for purposes of adding groups. The proposal also makes the definition of service facility in the glossary section of the Chartering Manual consistent with the other definitions. The Board emphasizes that neither the current rule nor this proposal permit a credit union's transactional website to count as a service facility for purposes of adding a group or an underserved area.

The NCUA invites comments on all aspects of the proposal.<sup>25</sup>

### IV. Additional Request for Comment

Over time, the Board's definitions of terms like "service facility" have evolved, consistent with the underlying constraints of the FCU Act, to reflect the increasing role of technology in the provision of financial services. For example, the Board determined that a credit union-owned ATM was a service facility for purposes of group additions to MCB FCUs in 2003,<sup>26</sup> although it had initially not viewed an ATM as a service facility.<sup>27</sup> Similarly, in a 2012 Opinion Letter, the NCUA's Office of General Counsel concluded that a video teller machine which permits real-time interaction between a person and an FCU member is a service facility both for additions of groups and for additions of underserved areas.<sup>28</sup> The proposed amendments to the chartering manual outlined above represent a further evolution, reflecting technological advances as well as changes in consumer behaviors.

The Board is also now requesting comment on another possible evolution in the definition of service facility, specifically, whether a credit union's transactional website and mobile banking applications should be included in the definition of service facility. The Board previously proposed to amend the definition of "service facility" for group additions to MCB

<sup>25</sup> Because this change will not add any increased burden, the Board is not providing the usual 60-day comment period before finalizing this rule. See NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2 and IRPS 15-1. 80 FR 57512 (Sept. 24, 2015), available at <https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf>.

<sup>26</sup> 68 FR 18334, 18352 (April 15, 2003).

<sup>27</sup> 63 FR 71998, 712002 (Dec. 30, 1998).

<sup>28</sup> OGC Op. No. 11-0965 (Aug. 2012), available at <https://www.ncua.gov/regulation-supervision/legal-opinions/2012/video-teller-machine>. Should this proposed rule become final, this opinion will be superseded, as there would no longer be an advantage to having a video teller machine, as opposed to an ATM.

<sup>18</sup> 12 U.S.C. 1759(d)(3).

<sup>19</sup> *Id.* 1759(c).

<sup>20</sup> 63 FR 71998, 72002 (Dec. 30, 1998); 68 FR 18334, 18335 (April 15, 2003).

<sup>21</sup> *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 101 (2015).

<sup>22</sup> *Nat'l Family Planning and Reproductive Health Ass'n, Inc. v. Sullivan*, 979 F.2d 227, 236 (D.C. Cir. 1992). ("[The agency] may not constructively rewrite the regulation, which was expressly based upon a specific interpretation of the statute, through internal memoranda or guidance directives that incorporate a totally different interpretation and effect a totally different result"); *Clean Ocean Action v. York*, 57 F.3d 328 (3d Cir. 1995).

<sup>23</sup> Chartering Manual, § IV.A.1.

<sup>24</sup> *Id.* § 3.III.F.

FCUs to include online financial services, including computer-based and mobile phone channels meeting certain criteria for access.<sup>29</sup> In support of its proposal, the Board cited extensive data showing the increasing use of online and mobile banking.<sup>30</sup> After analyzing the comments it received on the proposal, the Board deferred action on it to a later date.<sup>31</sup>

The Board is now renewing its consideration of this issue. In the four years since the Board deferred action on its initial proposal, the proportion of financial services delivered through transactional websites has continued to increase. For example, in 2017, 40% of consumers reported primarily using online banking to manage their accounts.<sup>32</sup> The pandemic has accelerated the trend toward providing financial services digitally. According to the J.D. Power 2020 Retail Banking Satisfaction Survey, 35% of consumers report increased online banking using a computer since the pandemic began, with 17% reporting much more use. The pandemic also caused 30% of consumers to increase their use of mobile banking apps, with 11% stating they used mobile banking much more.<sup>33</sup> Additionally, as of April 2020, 39% of adults planned to make an online banking transaction such as account opening or debt consolidation in the next 30 days.<sup>34</sup> The transition to online financial services is expected to outlast the pandemic.<sup>35</sup> In light of the inexorably increasing use of digital financial services, the Board believes it is now appropriate to reconsider including transactional websites and mobile banking applications in the definition of service facilities.

## V. Regulatory Procedures

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection

with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include FICUs with assets less than \$100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The proposed rule changes the criteria for service facilities and facilitates the provision of credit union services to additional groups and underserved areas by MCB FCUs. As of September 30, 2020, there are 1,373 MCB FCUs, of which 974 have assets less than \$100 million. Of these 974 MCB FCUs with assets less than \$100 million, 286 are already participating in a shared branching network. This means that the remaining 688 MCB FCUs under \$100 million may have additional incentive to participate in shared branching, as they will be able to use shared locations as a basis for expanding their FOM to additional groups or underserved areas.

Any benefit to small FCUs from the ability to add additional members is likely minimal. The negative effect on small FCUs whose members gain eligibility for membership in another credit union under these changes is also likely minimal. Although this rule is anticipated to economically benefit FCUs that choose to expand their FOMs, NCUA certifies that it will not have a significant economic impact on small credit unions.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.<sup>36</sup> For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection unless it displays a valid Office of Management and Budget (“OMB”) control number. The current information collection requirements for the Chartering Manual are approved under OMB control number 3133–0015. This rule proposes to amend Chapter 2, Chapter 3 and Appendix 1 of Appendix

B to Part 701 by changing the definition of service facilities for MCB FCUs seeking to add select groups or underserved areas. The proposed rule creates new strategic opportunities for MCB FCUs while not changing the information FCUs are required to supply to take advantage of these opportunities. Nevertheless, the total information collection burden will increase because the change means more FCUs will qualify to add select groups or underserved areas, which will lead to additional applications.

There are currently 1,373 multiple common bond FCUs, of which 594 participate in shared branching. The proposed change is estimated to increase the number of applications/amendments by an additional 90 respondents.

*OMB Control Number:* 3133–0015.

*Title of information collection:* Chartering and Field of Membership Manual, 12 CFR 701.1, App. B to Part 701.

*Estimated number respondents:* 8,245.

*Estimated number of responses per respondent:* 1.

*Estimated total annual responses:*

8,245.

*Estimated total annual burden per response:* 1.97.

*Estimated total annual burden:* 16,223.

The NCUA invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Interested persons are invited to submit written comments to (1) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting the Agency under “Currently under Review” and to (2) Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email

<sup>29</sup> 80 FR 76748, 76752 (Dec. 10, 2015).

<sup>30</sup> *Id.*

<sup>31</sup> 81 FR 88412, 88420 (Dec. 7, 2016).

<sup>32</sup> An additional 26 percent of consumers report mobile devices are their most frequently used banking method. *ABA Banking Journal blog* (Sept. 21, 2017), <https://bankingjournal.aba.com/2017/09/aba-survey-two-thirds-of-americans-use-digital-banking-channels-most-often/>.

<sup>33</sup> As summarized by Jim Marous, *Financial Brand blog*, (April 27, 2020), <https://thefinancialbrand.com/95735/digital-online-banking-coronavirus/>.

<sup>34</sup> Roy Urrico, “Digital Transformation in the COVID–19 Age,” *Credit Union Times* (April 30, 2020), <https://www.cutimes.com/2020/04/30/digital-transformation-in-the-covid-19-age/>.

<sup>35</sup> Stephanie Walden and Daphne Forman, “5 Fintech Trends Likely to Stick Around After the Pandemic,” *Forbes Advisor* (Sept. 28, 2020), <https://www.forbes.com/advisor/banking/fintech-trends-after-the-pandemic/>.

<sup>36</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

at [PRAComments@ncua.gov](mailto:PRAComments@ncua.gov). Given the limited in-house staff because of the COVID-19 pandemic, email comments are preferred.

C. 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, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The 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.<sup>37</sup>

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 17, 2020.

Melane Conyers-Ausbrooks, Secretary of the Board.

For the reasons stated above, the Board proposes to amend 12 CFR part 701, Appendix B 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, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 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 42 U.S.C. 4311-4312.

■ 2. In Appendix B to Part 701, revise Chapter 2 Section IV.A.1 to read as follows:

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

\* \* \* \* \*

IV—Multiple Occupational/Associational Common Bonds

IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot include a TIP or expand using single common bond criteria.

Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract to, and possessing a strong dependency relationship with, the other company) makes that person part of the occupational common bond of a select employee group within a multiple common bond. In this context, a "strong dependency relationship" is a relationship in which the entities rely on each other as measured by a pattern of regularly doing business with each other, for example, as documented by the number, the term length, and the dollar volume of prior and pending contracts between them.

A multiple common bond credit union's charter may also combine individual occupational groups that each consist of employees of a retailer or other business tenant of an industrial park, a shopping mall, office park or office building (each "a park"). To be able to have this type of clause in its charter, the multiple common bond credit union first must receive a request from an authorized representative of the group or the park to establish credit union service. The park must be within the multiple common bond credit union's service area, and each occupational group must have fewer than 3,000 employees, who are eligible for membership only for so long as each is employed by a park tenant. Under this clause, a multiple common bond credit union can enroll group employees only while the group's retail or business employer is a park tenant, but such credit unions are free to serve employees of new groups under the above conditions as each respective employer becomes a park tenant.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility for multiple common bond credit unions is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union 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 location, including a shared ATM or electronic facility, if the credit union participates in a shared branching network. This definition does not include the credit union's internet website.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's "paid from" or "supervised from" location is within the service area.

■ 3. In Appendix B to Part 701, revise Chapter 3 Section III.F to read as follows:

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

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III.F—Service Facility

Once an "underserved area" has been added to a federal credit union's field of membership, the credit union must establish within two years, and maintain, an office or service facility in the community. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. By definition, a service facility includes a credit union-owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or an electronic facility that meets, at a minimum, the above requirements. A service facility also includes a shared branch or a shared branch network location, including a shared ATM or other electronic facility, if a credit union participates in a shared branching network.

This definition does not include the credit union's internet website.

■ 4. In Appendix B to Part 701 revise the entry for "service facility" in the Glossary section to read as follows:

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

\* \* \* \* \*

Appendix 1—Glossary

\* \* \* \* \*

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

<sup>37</sup> Public Law 105-277, 112 Stat. 2681 (1998).

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 location, including a shared ATM or other electronic facility, if a credit union participates in a shared branching network. This definition does not include the credit union's internet website.

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## DEPARTMENT OF LABOR

### Employees' Compensation Appeals Board

#### 20 CFR Part 501

#### RIN 1290-AA37

#### Rules of Practice and Procedure

**AGENCY:** Employees' Compensation Appeals Board, Department of Labor.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Department of Labor (DOL or Department) is issuing this Notice of Proposed Rulemaking (NPRM) to seek public comments on a proposal to require electronic filing (e-filing) and electronic service (e-service) for attorneys and lay representatives representing parties in proceedings before the Employees' Compensation Appeals Board (ECAB or the Board). These proposed regulations would establish e-filing and e-service rules of practice and procedure for the Board that would apply where a governing statute, regulation, or executive order does not establish contrary rules of practice or procedure. The rule would mandate e-filing, makes e-service automatic of documents for parties represented by attorneys and duly authorized lay representatives, and provides an option for pro se/self-represented parties to utilize these capabilities. It would also allow the Board, in its discretion, to hold oral arguments by videoconference.

**DATES:** The Department invites interested persons to submit comments on the proposed rules of practice and procedure. To ensure consideration, comments must be in writing and must be received by February 10, 2021.

**ADDRESSES:** You may send comments, identified by Regulatory Identification Number (RIN) 1290-AA37, only by the following method: Electronic Comments. Submit comments through the Federal eRulemaking Portal <http://www.regulations.gov>. To locate the proposed rule, use docket number DOL-

2020-0017 or key words such as "Administrative practice and procedure" or "Workers' compensation." Follow the instructions for submitting comments. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will generally be posted without change to <https://www.regulations.gov>, including any personal information provided. If you need assistance to review the comments or the proposed rule, the Department will consider providing the comments and the proposed rule in other formats upon request. For assistance to review the comments or obtain the proposed rule in an alternate format, contact Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693-6319. Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

**FOR FURTHER INFORMATION CONTACT:** Thomas Shepherd, Clerk of the Appellate Boards, at 202-693-6319 or [ECAB-Inquiries@dol.gov](mailto:ECAB-Inquiries@dol.gov).

**SUPPLEMENTARY INFORMATION:** This preamble is divided into four sections: Section I explains the process of issuing a proposed rule concurrently with a companion direct final rule; Section II provides general background information on the development of the proposed rulemaking; Section III is a section-by-section summary and discussion of the proposed regulatory text; and Section IV covers the administrative requirements for this proposed rulemaking.

#### I. Proposed Rule Published Concurrently With Companion Direct Final Rule

The Department is simultaneously publishing with this proposed rule an identical "direct final" rule elsewhere in this issue of the **Federal Register**. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. The proposed rule then

provides the procedural framework to finalize the rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule is suitable for direct final rulemaking. The proposed revisions to the Board's procedural regulations would require representatives to use the Board's electronic system for filing and serving documents unless exempted by the Board for good cause. Some represented parties are already filing documents through the Board's existing electronic system on a voluntary basis. Moreover, this system is similar to those used by courts and other administrative agency electronic systems and will thus be familiar to the representatives. The proposed rule would also give self-represented (pro se) appellants the option to file and serve documents through the electronic system or via conventional methods. It would also allow the Board to hear oral argument by videoconference under the same discretionary criteria outlined in its 2008 proposal. These changes to the Board's procedures and practices are not expected to be controversial and are consistent with its statements in its 2008 proposal. 73 FR 35103 ("[T]he Board has anticipated that technological advances may, in the future, allow the filing, notice, service and presentation of documents and argument by electronic means.").

The comment period for this proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this proposed rule will also be considered as comments regarding the direct final rule and vice versa. For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory