

proposed in the February 2023 SNOPI, and therefore would not be impacted by the proposed standard, if finalized. DOE welcomes additional data and information regarding the efficiency of gas and electric cooking tops as measured by appendix I1, particularly gas cooking tops without HIR burners and/or continuous cast-iron grates. DOE additionally requests comment on the use of model-based market percentages to estimate conventional cooking product market share by efficiency level and invites stakeholders to provide shipments-based market share data.

### III. Public Participation

DOE will accept comments, data, and information regarding this document, but no later than the date provided in the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

*Submitting comments via www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For

information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery/courier, or postal mail.*

Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential,

and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

### Signing Authority

This document of the Department of Energy was signed on February 16, 2023, by Dr. Geraldine Richmond, Under Secretary for Science and Innovation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 21, 2023.

**Treena V. Garrett,**  
*Federal Register Liaison Officer, U.S.  
Department of Energy.*

[FR Doc. 2023-03864 Filed 2-27-23; 8:45 am]

**BILLING CODE 6450-01-P**

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

[NCUA-2022-0179]

RIN 3133-AF46

### Chartering and Field of Membership

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The NCUA Board (Board) is proposing to amend its chartering and field of membership (FOM) rules with respect to the provision of financial services to low- and moderate-income communities and expanding access to safe, fair, and affordable financial services and products generally. The Board is also proposing several changes to the FOM rules to streamline

application requirements and clarify procedures. These proposed amendments result from the agency's experience in addressing FOM issues relating to community charters and service to underserved areas, along with its study of FOM issues in the Board's Advancing Communities through Credit, Education, Stability, and Support (ACCESS) initiative. The Board is also requesting feedback about several aspects of FOM issues for consideration with respect to future policy refinements. Due to the scope and complexity of both the proposed changes and the additional issues presented for feedback, the Board is providing a 90-day comment period. Consistent with the guidance the NCUA provided in Interpretative Ruling and Policy Statement 87-2 (NCUA IRPS 87-2—Developing and Reviewing Government Regulations) the Board is extending the comment period beyond the typical 60 days because it believes it will benefit from an additional opportunity for public input on these issues.

**DATES:** Comments must be received on or before May 30, 2023.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <https://www.regulations.gov/>. Follow the instructions for submitting comments for Docket Number NCUA-2022-0179.

- *NCUA website:* <https://www.ncua.gov/regulation-supervision/rulemakings-proposals-comment>. Follow the instructions for submitting comments.

- *USPS/Hand Delivery/Courier:* 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 <https://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. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518-6540 or emailing [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:**

*Office of Credit Union Resources and Expansion (CURE):* Rita Woods, Division Director (703) 518-1157; Susan Ryan, Division Director (703-664-3957); Leilani Stamper, Program Officer (703)

664-3839; Sheila Snock, Program Officer (703) 664-3106; or Paul Dibble, Program Officer (703) 664-3164 at 1775 Duke Street, Alexandria, VA 22314.

*Office of General Counsel:* Robert Leonard, Compliance Officer; Ian Marenga, Associate General Counsel; Marvin Shaw and Ariel Pereira, Senior Staff Attorneys, Office of General Counsel, at the above address or telephone (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Overview of Proposed Rule*

The proposed rule would make nine changes to the Chartering and Field of Membership Manual (the Manual) to enhance consumer access to financial services, while reducing duplicative or unnecessary paperwork and administrative requirements.<sup>1</sup> The Board's goal in proposing these changes is to eliminate unnecessary burdens while enhancing the agency's focus on the core principles of credit union membership. The proposed changes cover underserved areas, community-based FOMs, and some more broadly applicable FOM provisions.

The proposed rule would make four changes on underserved areas that multiple common bond federal credit unions (FCUs) may seek to add to their FOMs. The changes would streamline existing application requirements and clarify the role of data and criteria that other federal agencies provide relating to underserved areas.

The proposed rule would also simplify application requirements for community-based FCUs by eliminating the need to submit redundant or less useful information and providing a standard form for business and marketing plans. The proposed rule would eliminate the business and marketing plan requirement for certain federally insured, state-chartered credit unions that seek to convert to a federal charter while serving the same community FOM. The proposed rule would also expand the community-based FOM affinities—relationships between a person and the geographic community—to recognize the growth of telecommuting and remote work for companies headquartered in a community and to better capture the ongoing bond between individuals within a field of membership and their immediate family members following the death of a member.<sup>2</sup>

<sup>1</sup> The Board has codified the Manual in 12 CFR 701, Appendix B.

<sup>2</sup> The Manual's glossary currently defines "immediate family member" as "A spouse, child, sibling, parent, grandparent, or grandchild. This

Finally, the Board is proposing a technical clarification and correction on the process for the NCUA to review and approve the character and fitness of a prospective FCU's management and officials.

The following sections include a legal overview and then a detailed discussion of the proposed regulatory changes.

*B. Legal Authority and Overview*

In adopting the Credit Union Membership Access Act of 1998 (CUMAA), which amended the Federal Credit Union Act, Congress reiterated its longstanding support for credit unions, emphasizing their "specific mission of meeting the credit and savings needs of consumers, especially persons of modest means."<sup>3</sup> In Section 2 of CUMAA, Congress set forth the following findings:

(1) The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means.

(2) Credit unions continue to fulfill this public purpose, and current members and membership groups should not face divestiture from the financial services institutions of their choice as a result of recent court action.

(3) To promote thrift and credit extension, a meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well understood sense of cohesion or identity is essential to fulfillment of credit unions' public mission.

(4) Credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors and because they have the specific mission of meeting the credit and savings needs of consumers, especially persons of modest means.

(5) Improved credit union safety and soundness provisions will enhance the public benefit that citizens receive from these cooperative financial service institutions.

The congressional findings are bolstered by specific provisions of CUMAA. For instance, Title II of that law addresses "credit union membership," including the express

includes stepparents, stepchildren, stepsiblings, and adoptive relationships."

<sup>3</sup> Public Law 105-218, 112 Stat. 912 (Aug. 7, 1998).

provision in section 109 for the Board to establish regulations to encourage the chartering of community and multiple common bond FCUs. This section includes provisions encouraging formation of FCUs to provide financial services to underserved communities and people of modest means. Section 109's provisions allowed multiple common bond credit unions to expand service opportunities to underserved communities. Title II of CUMAA mandates that the Board protect the National Credit Union Share Insurance Fund (NCUSIF) by issuing stricter safety-and-soundness provisions, including enhanced accounting standards in section 201. Title III of CUMAA includes capitalization and net worth requirements to "resolve the problems of the insured credit unions at the least possible long-term loss to the [NCUSIF]." Title III also sets forth specific mandates, including issuing regulations for prompt corrective action; capitalization requirements, including the submission of net worth restoration plans; earnings retention requirements, and prior written approval requirements for credit unions that are not adequately capitalized; certification of NCUSIF equity ratios; increased share insurance premiums; and periodic evaluation of access to liquidity. Title IV of CUMAA includes assurances for independent decision-making in connection with certain charter conversions.

As CUMAA indicates, Congress directed the Board to consider multiple responsibilities, including encouraging access to financial services for people of modest means, encouraging competition among providers of financial services, and protecting taxpayers by enhancing the safety and soundness of the credit union system and protecting the NCUSIF.

Under the FCU Act, seven or more individuals may charter an FCU by presenting a proposed charter (referred to in the FCU Act as the "organization certificate") to the Board.<sup>4</sup> These individuals, referred to as "subscribers," must state the number of shares subscribed by each and describe the FCU's proposed FOM.<sup>5</sup> An FOM consists of those persons and entities eligible for membership based on an FCU's type of charter. Before granting an FCU charter, the Board must complete an appropriate investigation and determine the character and fitness of the subscribers, the economic advisability of establishing the FCU, and

the conformity of the proposed charter with the FCU Act.<sup>6</sup>

The FCU Act provides a choice among several charter types: a single group sharing a single occupational or associational common bond;<sup>7</sup> a multiple common bond consisting of groups that each have a distinct occupational or associational common bond among members of the group;<sup>8</sup> and a community consisting of "persons or organizations within a well-defined local community, neighborhood, or rural district."<sup>9</sup>

### C. Regulatory Overview

The Manual, incorporated as Appendix B to Part 701 of the NCUA regulations,<sup>10</sup> implements the chartering and FOM requirements that the FCU Act establishes for FCUs. The Manual provides that the NCUA will grant a charter if the FOM requirements are met, the subscribers are of good character and fit to represent the proposed FCU, and the establishment of the FCU is economically advisable.<sup>11</sup> In addition, "[i]n unusual circumstances . . . [the] NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved."<sup>12</sup>

Congress expressly delegated to the Board substantial authority in the FCU Act to define what constitutes each type of community charter, namely a well-defined local community, neighborhood, or rural district.<sup>13</sup> This authority assists the NCUA in "making any determination" regarding a

community FCU,<sup>14</sup> and permits the Board to establish applicable criteria for any such determination.<sup>15</sup> To qualify as a well-defined local community, neighborhood, or rural district, the Board requires the proposed area to have "specific geographic boundaries," such as those of "a city, township, county (single or multiple portions of a county) or a political equivalent, school districts, or a clearly identifiable neighborhood."<sup>16</sup> The boundaries themselves may consist of political borders, streets, rivers, railroad tracks, or other static geographical features.<sup>17</sup>

The Board has periodically amended the Manual to further the statutory goals set forth by Congress.<sup>18</sup> The Board's goals in revising and modernizing the Manual are as follows: (1) increasing access for underserved communities; (2) providing objective and easily administered criteria to potential applicants; (3) providing regulatory relief while balancing safety-and-soundness concerns; and (4) enhancing efficiency.

More recently, the Board has launched the Advancing Communities through Credit, Education, Stability and Support (ACCESS) initiative to increase the agency's focus on enabling credit unions to serve underserved, unserved, or disadvantaged communities.<sup>19</sup> A key tenet of this coordinated, multi-disciplinary initiative is that expanding access to safe, fair, and affordable credit allows more Americans to build wealth, achieve financial prosperity, and create strong and vibrant communities.

Based on these considerations, the Board has actively explored ways to enhance access to financial services for low- and moderate-income communities. The NCUA 2021 Annual

<sup>6</sup> 12 U.S.C. 1754.

<sup>7</sup> 12 U.S.C. 1759(b)(1).

<sup>8</sup> *Id.* 1759(b)(2)(A).

<sup>9</sup> *Id.* 1759(b)(3).

<sup>10</sup> Appendix B to 12 CFR part 701. The Manual addresses all aspects of chartering FCUs. In that respect, it is similar to the regulations of the Office of the Comptroller of the Currency applicable to the chartering of national banks or federal savings associations. 12 CFR part 5.

<sup>11</sup> Manual, Chapter 1, Section I.

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

<sup>13</sup> The Board notes that under the agency's interpretation of this phrase, the term "local" applies solely to a well-defined local community; it does not apply to a rural district. *See* 81 FR 88412, 88417 (Dec. 7, 2016) (The Board explained that the proposal to expand the rural district option in 2016 was an unreasonable interpretation of the terms "rural" and "local" rely on a pair of misconceptions, described as follows: (1) that "local" as used in section 1759(b) and (g) modifies "rural district," when in fact it does not, and (2) that a "local" area and a "rural" area necessarily share similar characteristics, which they inherently do not. In any case, a rural district by its very nature typically covers an area that is too large to be considered "local."). The Manual applies the "well-defined" modifier to communities (including neighborhoods through references to this option in the discussion of community charters) and rural districts. *See* 12 CFR part 701, app. B., ch. 2, sec. V.A.2 (referring to the boundaries of a "well-defined rural district").

<sup>14</sup> *Id.* 1759(g)(1)(A).

<sup>15</sup> *Id.* 1759(g)(1)(B). The D.C. Circuit Court of Appeals cited this express delegation in an August 2019 decision. *Am. Bankers Ass'n v. Nat'l Credit Union Admin.*, 934 F.3d 649, 663 (D.C. Cir. 2019).

<sup>16</sup> Manual, Chapter 2, Section V.A.2.

<sup>17</sup> Manual, Chapter 2, Section V.A.5.

<sup>18</sup> 73 FR 73301 (Dec. 2, 2008). The Board updated and clarified the process of approving credit union service to "underserved areas." First, the rule clarified the procedure for establishing that an "underserved area" qualifies as a well-defined local community, as that rule required. Second, it made explicit the process for applying the economic distress criteria that determine whether an area combining multiple geographic units is sufficiently "distressed" to qualify as "underserved." Third, it updated the documentation and clarified the scope requirements for demonstrating that a proposed area has "significant unmet needs" for loans and financial services. Fourth, the rule used data provided by NCUA on the location of depository institution facilities to determine whether an area is "underserved by other depository institutions" according to the presence of their facilities within the area.

<sup>19</sup> *See* ACCESS, <https://www.ncua.gov/support-services/access>.

<sup>4</sup> 12 U.S.C. 1753.

<sup>5</sup> 12 U.S.C. 1753(3), (5).

Report, a February 2022 study by the Government Accountability Office (GAO), and a June 2022 report by the Federal Financial Institutions Examination Council (FFIEC) address the need for federal financial regulators and financial institutions to expand access to unserved and underserved communities.<sup>20</sup>

These communities often comprise what have been called “banking or financial services deserts,” and can be found in both urban and rural areas. Such deserts often are home to communities high concentrations of minorities, including those comprised of significant populations of African Americans, Hispanic Americans, Native Americans, and Asian Americans. Facilitating additional opportunities to add underserved areas would allow FCUs to fill voids where no or few other local options are available. The proposed rule changes may help FCUs willing to reach out to the underserved and low- to moderate-income individuals and seek a broader membership base.

In addition to changes to enhance access for low- and moderate-income communities, the proposal includes potential improvements to the Manual to simplify requirements and procedures based on agency experience. Simplifying such requirements will facilitate more consumers having access to safe, fair, affordable, and reliable financial services at a federally insured credit union.

The Board has carefully considered the legal requirements underlying the proposed rule and believes that the changes are consistent with the FCU Act while reducing unnecessary requirements. The proposed rule offers several changes to reduce burden by simplifying the requirements for underserved area additions, conversions from federally insured, state-chartered credit unions (FISCUs) to FCUs, and community charter actions.

The rule would also correct multiple unintended consequences of prior rules. One proposed change corrects a provision that may prevent credit unions from expanding into underserved rural areas. Specifically, the change would eliminate a limitation in which a rural district, if an underserved area, must be in, or

adjacent to, the state in which the FCU has its headquarters. Another change corrects a reference to a regulation addressing approval of credit union officials that does not apply in the chartering process.

## II. Summary of Proposed Changes and Request for Comments

### A. Underserved Area Additions

In 1998, Congress enacted CUMAA, as discussed previously in this preamble, which amended the FCU Act to authorize the Board to allow multiple common bond FCUs to serve members residing in “underserved areas,” provided the FCU establishes and maintains a facility there.<sup>21</sup> The Act currently permits only multiple common bond FCUs to add underserved areas to their FOM beyond the common bond requirements specified in the FCU Act. This option is an exception to the FCU Act’s general requirement that an FCU limit its membership to one of the three options in the FCU Act (single common bond, multiple common bond, or community).<sup>22</sup>

The FCU Act defines an “underserved area” as (1) a “local community, neighborhood, or rural district” that (2) meets the definition of an “investment area” under section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (CDFI Act) and (3) is “underserved by other depository institutions” based on data of the NCUA Board and the federal banking agencies.<sup>23</sup>

### CDFI Investment Area Definition

As noted, the first criterion for an “underserved area” established by CUMAA is that the area meets the CDFI Act’s definition of an “investment area.” The CDFI Act defines an “investment area” as a geographic area that, unless it is presently designated an Empowerment Zone or Enterprise Community, “meets the objective criteria of economic distress developed by the [CDFI] Fund” and “has significant unmet needs for loans or equity investments.”<sup>24 25</sup> By regulation, the CDFI Fund adopted a definition of investment area that established criteria

of economic distress and implemented the significant unmet needs criterion.<sup>26</sup> The regulation also dictates that “[a]n Investment Area shall meet specific geographic and other criteria” prescribed in the CDFI Fund’s investment area definition.<sup>27</sup> Further, the regulation gives the CDFI Fund sole discretion to determine whether these criteria are fulfilled.<sup>28</sup>

Under the CDFI Fund’s distress criteria, a proposed investment area’s location within or outside a designated Metropolitan Area (a Metro or Non-Metro area, respectively) determines the geographic unit(s) into which the area must be translated in order to apply the economic distress criteria.<sup>29</sup> For a Metro area, the permissible geographic units are limited to a census tract or an American Indian or Alaskan Native area.<sup>30</sup> For a Non-Metro area, the permissible geographic units are limited to a county (or equivalent area); minor civil division that is a unit of a local government; incorporated place; census tract; or an American Indian or Alaskan Native area.<sup>31</sup>

The CDFI Fund’s regulation designates as distressed a proposed area that meets the applicable economic distress criteria as reported by the most recent decennial U.S. Census.<sup>32</sup> How the distress criteria apply in each case depends on which geographic units are permitted (based on the area’s designation as Metro or Non-Metro) and whether the area consists of a single geographic unit or multiple contiguous units. A proposed Metro area consisting of a single census tract, for example, must meet the distress criterion for either unemployment, poverty, or median family income.<sup>33</sup> A proposed Non-Metro area consisting of a single county, for example, must meet the distress criterion for either unemployment, poverty, median family income or, if the area is a county, population loss or migration loss.<sup>34</sup>

A proposed area consisting of multiple contiguous geographic units (such as adjoining census tracts in a Metro area or adjoining counties in a Non-Metro area) may combine distressed and non-distressed units. But the area must satisfy a population threshold requiring the distressed units—those that “together meet one of the [applicable distress] criteria”—to

<sup>21</sup> 12 U.S.C. 1759(c)(2).

<sup>22</sup> 12 U.S.C. 1759(b) (“Membership Field”), 1759(c)(2) (“Exception for Underserved Areas”).

<sup>23</sup> 12 U.S.C. 4702(16).

<sup>24</sup> The Board notes that as a practical matter these programs are relatively inactive in that the U.S. Department of Housing and Urban Development (HUD) has not approved new Empowerment Zones or Enterprise Communities. These terms are defined in 26 U.S.C. 1391, as referenced in 12 U.S.C. 4702(16), which defines “investment area” for purposes of 12 U.S.C. 1759.

<sup>25</sup> 12 U.S.C. 4702(13).

<sup>26</sup> 12 CFR 1805.201(b)(3).

<sup>27</sup> 12 CFR 1805.201(b)(3)(i).

<sup>28</sup> 12 CFR 1805.201(a).

<sup>29</sup> 12 CFR 1805.201(b)(3)(ii)(B), (C).

<sup>30</sup> 12 CFR 1805.201(b)(3)(ii)(B).

<sup>31</sup> *Id.*

<sup>32</sup> 12 CFR 1805.201(b)(3)(ii)(D).

<sup>33</sup> *Id.* § 1805.201(b)(3)(ii)(D)(1), (3).

<sup>34</sup> *Id.* § 1805.201(b)(3)(ii)(D)(1), (3), (4), (5).

<sup>20</sup> The 2021 NCUA Annual Report is available at the link: *2021 NCUA Annual Report* (pages 21–23). The GAO report is available at the link: *GAO–22–104468, Accessible Version, BANKING SERVICES: Regulators Have Taken Actions to Increase Access, but Measurement of Actions’ Effectiveness Could Be Improved (February 2022)*. The report by the FFIEC is available at this link: <https://www.ffiec.gov/press/pr061622.htm>.

represent at least 85 percent of the area's total population.<sup>35</sup>

Finally, to qualify as an investment area, the proposed area must also "have significant unmet needs for loans or equity investments."<sup>36</sup> The CDFI Fund regulation deems this criterion fulfilled when "a narrative analysis provided by the entity demonstrates a pattern of unmet needs" within the proposed area.<sup>37</sup>

#### Incorporation of Underserved Area Authorities Into the Manual

After Congress enacted CUMAA in 1998, the Board revised the Manual to implement the new authority to allow service to underserved areas.<sup>38</sup> The NCUA's regulations define eligible areas (well-defined local communities, neighborhoods, or rural districts) and how to test whether an area is underserved by other depository institutions. The investment area element draws from the CDFI Act, which the FCU Act cites for this element. The Board has sought to maintain consistency in the Manual with the CDFI Fund's economic distress criteria.<sup>39</sup> Anticipating periodic changes to the economic distress criteria, the Board included in the Manual a reference to revise or add additional criteria that the CDFI Fund might adopt in the future.<sup>40</sup> Interested readers may also refer to the Board's preamble to Interpretive Ruling and Policy Statement 2008–2, which contains additional information on underserved areas.<sup>41</sup>

#### Proposed Amendments to the Manual for Underserved Areas

As noted in the preceding discussion, a multiple common bond FCU that seeks to add an underserved area to its FOM as an investment area must satisfy the CDFI Fund's economic distress criteria, among other requirements.<sup>42</sup> The current Manual essentially reiterates the economic distress criteria

that the CDFI Fund adopted or had in place in 2008 and requires FCUs seeking to add underserved areas to satisfy these requirements. Despite the acknowledgment of the potential for the CDFI Fund to change the criteria over time, the NCUA has received numerous inquiries about perceived conflicts between the Manual and the CDFI Fund's current regulations and policies. A 2021 NCUA Legal Opinion Letter details some of these issues, including the use of decennial census data and the types of geographic units that may constitute an underserved area.<sup>43</sup>

Based on this dynamic environment and on feedback the NCUA has received from stakeholders, the Board is proposing four changes to the requirements that apply to multiple common bond FCUs that seek to serve underserved areas. The proposed changes would accomplish the following:

- (1) clarify the Board's intent to provide flexibility to multiple common bond FCUs serving underserved areas based on rural districts;
- (2) clarify how the NCUA applies the CDFI Fund's economic distress criteria, as the FCU Act requires;
- (3) eliminate census block groups as a geographic unit for composing underserved areas, in adherence to a regulatory change that the CDFI Fund has adopted; and
- (4) simplify and reduce the burden for FCUs on the required statement of unmet needs that must accompany a request to serve an underserved area.

#### 1. Underserved Areas Based on Rural Districts

On October 27, 2016, the Board approved a final rule to Appendix B to Part 701 of NCUA's regulations to change the definition of a rural district, which is one subcategory of options for a community charter. These changes increased the population limit to one million persons. The final rule also added a restriction so that an area's boundaries would not exceed the outer boundaries of the states that are immediately contiguous to the state in which the credit union maintains its headquarters (that is, not to exceed the outer perimeter of the layer of states immediately surrounding the headquarters state).

The intent behind the headquarters restriction for a rural district's boundaries for community-chartered credit unions was to prevent areas from

becoming overly broad, while at the same time affording FCUs the opportunity to achieve sufficient scale so that serving a sparsely populated area is economically viable. However, the change made by the final rule also applies to underserved areas, thus unintentionally curtailing the options available to multiple common bond credit unions interested in adding to their FOMs underserved areas consisting of rural districts. The change also created an inconsistency between eligibility to add underserved areas consisting of rural districts versus underserved areas consisting of communities or neighborhoods, which did not include a geographic restriction in relation to an FCU's headquarters.

The NCUA's objective to allow underserved area additions "without regard to location"<sup>44</sup> reflects the FCU Act's less restrictive language in this area. Also, the addition of an underserved area without regard to location provides multiple common bond FCUs with the opportunity to increase access to financial services for those in underserved areas, particularly those of low- to-moderate income. Thus, the headquarters restriction was intended to apply only to community charter FCUs consisting of rural districts and not to underserved areas consisting of rural districts. The proposed rule removes this headquarters restriction for underserved areas.

Despite this proposed adjustment, the Board believes a number of inherent constraints will continue to prevent the addition of underserved rural districts from becoming overly broad. The underserved rural district must continue to meet all the requirements for economic distress to qualify as an investment area. This benchmark becomes more challenging as a contiguous area becomes larger and more affluent geographic units come in proximity with distressed geographic units. The FCU's business and marketing plan must also demonstrate an ability and intent to serve the entire area, which can be difficult for unduly large areas. The Board invites comments as to whether it should consider any additional requirements for an underserved area based on a rural district. For example, in finalizing the proposed rule, should the Board impose a new requirement that an underserved area based on a rural district not have boundaries exceeding the states immediately contiguous to the state in the geographic center of the underserved area, in addition to other limitations that presently apply?

<sup>35</sup> *Id.* § 1805.201(b)(3)(ii)(C)(2).

<sup>36</sup> 12 U.S.C. 4702(16)(A)(ii).

<sup>37</sup> <https://www.ecfr.gov/current/title-12/section-1805.201>.

<sup>38</sup> 63 FR 71998 (Dec. 30, 1998).

<sup>39</sup> The CDFI Fund applies its economic distress criteria in its financial and technical assistance opportunities, which enhance funding recipients' ability to provide financial products, financial services, and development services in their target markets. See 12 CFR 1805.101; see also CDFI Fund, About Us, at <https://www.cdfifund.gov/about#:~:text=Mission,investors%2C%20and%20financial%20service%20providers>.

<sup>40</sup> 67 FR 20013, 20017 (Apr. 24, 2002).

<sup>41</sup> 73 FR 73392 (Dec. 2, 2008).

<sup>42</sup> The economic distress criteria do not apply to underserved areas that qualify as Empowerment Zones or Enterprise Communities. 12 U.S.C. 4702(16)(B).

<sup>43</sup> NCUA Legal Opinion Letter, Chartering and Field of Membership Manual (July 9, 2021), available at <https://www.ncua.gov/regulation-supervision/legal-opinions/2021/chartering-and-field-membership-manual>.

<sup>44</sup> Manual, Chapter 3, Section III.A.

Depending on the feedback it receives from commenters, the Board may modify this provision in the final rule to incorporate such a requirement.

## 2. Application of CDFI Economic Distress Criteria

The Manual discusses the data an FCU and the NCUA will use to decide whether an area meets the investment area criteria for a proposed underserved area expansion. The Manual currently requires the use of the most recent decennial U.S. census data. This proposal would eliminate the term “decennial” and revise the applicable sections in Chapter 3, Section III.B.2 and Section III.B.2.a., to clarify that the census dataset should be consistent with the practices of the U.S. Department of the Treasury in overseeing the CDFI Fund.

Both the Manual and the CDFI regulation use the phrase “decennial census” when defining the term “investment area.” In a legal opinion letter dated July 9, 2021,<sup>45</sup> the NCUA communicated that for practical and legal reasons the agency has discontinued the use of decennial data and is currently using the U.S. Census Bureau’s American Community Survey (ACS) data. The use of ACS data allows for a more current assessment of economic distress for geographic units under consideration. Further, the CDFI Fund now uses ACS data in place of decennial data for most of its programs.

The ACS functionally replaced the data the U.S. Census Bureau derived, up until the 2000 decennial census, from the long form distributed to a representative sample of citizens. Continuing to use decennial long form data from 2000 or before, or its functional equivalent ACS data designed to resemble the 2010 census as if derived from the long form, would result in relying on data that is more than 10 years old. Conversely, data from more recent ACS sampling would result in using the most contemporary census data, which according to CDFI Fund staff has effectively replaced the decennial data.<sup>46</sup>

Further, continuing use of the stale decennial data would raise logistical issues because the CDFI Fund has decided to replace decennial data with the ACS. Most importantly, the CDFI

Fund’s staff has advised the NCUA that not only is the CDFI Fund solely relying on the ACS (except in certain geographic areas in which it is not available), but it views the ACS as functionally equivalent to the previous decennial data. CDFI Fund staff confirmed that the Fund changed its definition of decennial, explaining that in 2006 Congress directed the Census Bureau to replace the decennial census long form data with the 5-year ACS data. The first 5-year ACS data was released in 2010 (the 2006–2010 ACS), thereby replacing the decennial long form data which was last collected in the 2000 decennial census.

With the release of the 2010 decennial census tracts and the first full 5-year ACS data, the CDFI Fund adopted the 5-year ACS as the successor to the decennial census long form data. Thus, the CDFI Fund has determined that the statutory reference in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 to “decennial census data” has been functionally replaced by the Census Bureau with the 5-year ACS that provides the socioeconomic data used for determining program eligibility, such as investment areas.<sup>47</sup>

The Board believes it can best address these developments by amending the Manual to cross-reference the CDFI Fund’s economic distress criteria, as the CDFI Fund may amend them from time to time. This change would clarify that the NCUA defers to the CDFI Fund on these criteria, which is appropriate under the FCU Act because the CDFI Fund’s economic distress criteria determine which areas are investment areas that can count as underserved areas. The Manual would no longer replicate these criteria, which the Board believes will reduce confusion and inconsistencies as these criteria may change over time. The Board notes that it would continue to make final determinations on underserved area applications, including whether an FCU meets the economic distress criteria. The proposed change would simply clarify that, by statute, an investment area must meet the CDFI Fund’s economic distress criteria. The change would also better align the Manual with the reference resources the CDFI Fund makes available on its website.

The Board invites comments on this change and specifically on whether the Board should consider including a summary of the current CDFI Fund criteria in the Manual, despite the increased opportunity for inconsistencies, for reference along with

a statement that FCUs must follow the CDFI Fund’s criteria. The Board is interested in input on whether this approach would provide clearer information to FCUs on the NCUA’s position on the CDFI Fund’s criteria. Depending on the feedback it receives from commenters, the Board may include such a statement in the final rule regulatory text solely for the sake of clarity.

## 3. Technical Update To Eliminate Census Block Group as a Permissible Geographic Unit

The Manual outlines acceptable geographic units, which includes census block groups, by a proposed underserved area’s location for the purpose of meeting the definition of an investment area.<sup>48</sup> The Manual also indicates that the proposed area must meet the CDFI definition of investment area.<sup>49</sup>

The CDFI Fund deleted references to block groups in its regulatory definition of geographic units that may constitute an investment area in an interim final rule it issued in 2015.<sup>50</sup> Specifically, in defining geographic units, the CDFI Fund ceased including the term “census block groups.” For regulatory consistency, the Board believes it is not appropriate to include a census block group as a geographic unit. The Board notes that the CDFI Act does not expressly state that geographic units for an investment area must be as defined by the CDFI Fund; however, these units are tied closely to the CDFI Fund’s economic distress criteria and supplementary guidance and maps that the CDFI Fund issues. The Board, therefore, finds it can best implement the investment area provisions by following suit with the CDFI Fund’s elimination of the census block group geographic unit.

The Board believes that the proposed change will adequately address this development by replacing outdated quotations and paraphrases of the CDFI Fund’s criteria with a direct reference to the criteria, as the CDFI Fund may change them from time to time.

## 4. Statement of Unmet Needs

The Board is proposing changes to the current requirements on statements of unmet needs after assessing the agency’s extensive experience in processing underserved area requests. The CDFI Act, as referenced in the FCU Act, requires an investment area to have

<sup>45</sup> <https://www.ncua.gov/regulation-supervision/legal-opinions/2021/chartering-and-field-membership-manual-interpretative-letter-to-Samuel-Brownell-CU-Collaborate>.

<sup>46</sup> The following link provides a high level overview of how the Census Bureau introduced the ACS process to replace the long form: <https://www.census.gov/programs-surveys/decennial-census/about/census-acs.html>.

<sup>47</sup> Public Law 103–328.

<sup>48</sup> Manual, Chapter 3, Section III.B.2.a—Economic Distress Criteria.

<sup>49</sup> Manual, Chapter 3, Section III.B.2—Investment Area.

<sup>50</sup> 80 FR 52379 (Aug. 31, 2015).

“significant unmet needs for loans or equity investments.”<sup>51</sup> This element is separate from the economic distress criteria and the FCU Act requirement for the area to be underserved by other depository institutions. Currently, FCUs seeking to add an underserved area must submit a one-page narrative outlining that the proposed service area has significant unmet needs for credit union services (SUN statement). The SUN statement must include support in the form of objective reasons and/or accompanying documentation derived from an identified, authoritative source. The Manual further indicates that third-party documentation is most compelling.

While successful applicants generally have no difficulty in meeting the SUN statement requirements, the NCUA has found that in some instances FCUs view the requirement to submit a one-page document discussing characteristics of the investment areas as burdensome, especially when the NCUA can get this information from other sources. As detailed in this subsection, the Board is proposing to remove the length requirement and third-party data or support references that neither the FCU Act nor the CDFI Fund’s criteria require.

As discussed previously, for an area to qualify as underserved, CUMAA requires the Board to determine that the area is (1) a local community, neighborhood, or rural district which (2) qualifies as an investment area as defined in the CDFI Act and (3) is underserved by other depository institutions.<sup>52</sup> By incorporating the CDFI Act’s definition of an investment area, CUMAA’s underserved area authority also incorporated the regulations implementing that definition. The CDFI Act defines an investment area as a geographic area that, unless it is presently designated an Empowerment Zone or Enterprise Community, meets the objective criteria of economic distress developed by the CDFI Fund and has significant unmet needs for loans or equity investments.<sup>53</sup> By regulation, the CDFI Fund adopted a definition of investment area that established criteria of economic distress and implemented the significant unmet needs criterion.<sup>54</sup>

The Board emphasizes that while the statute provides that an investment area must meet the “objective criteria of economic distress developed by the [CDFI] Fund,” it does not include the same requirement for the significant

unmet needs element of the definition. Instead, the statute states only that an investment area must have “significant unmet needs for loans and equity investments.” Thus, while the CDFI Fund’s regulations and policies on this element are significant, the Board believes it is not required to have identical requirements if a different approach would meet the statutory standard. As explained in detail in the rest of this subsection, the Board believes a less prescriptive approach would continue to meet the statutory standard and would not conflict with the CDFI Fund’s standards.

In a 2008 Interpretive Ruling and Policy Statement (IRPS) that amended the NCUA’s chartering rules (titled IRPS 08–2), the Board updated and clarified the process of approving FCU service to an underserved area. In part, the IRPS updated the documentation and clarified the scope requirements for demonstrating that a proposed area has significant unmet needs for loans and financial services. It also provided a methodology to determine if an area is underserved by other depository institutions. The IRPS codified the current SUN statement requirement that the Board now proposes to change.

During the comment period for the Board’s 2008 proposed rulemaking that resulted in issuance of IRPS 08–2, the NCUA received 14 comments addressing the proposal to require a narrative statement on significant unmet needs.<sup>55</sup> Nearly all commenters said the narrative statement was redundant of the CDFI Fund’s distress criteria, contending that, by definition, a distressed area must have significant unmet needs for loans and financial services. They believed the requirement would be a costly, burdensome duplication of effort. The information to establish significant unmet needs, the commenters further maintained, is too difficult to find, too subjective to quantify, too difficult to organize by census tracts, and too difficult to document.

As noted in the preamble to the 2008 proposed IRPS, the CDFI Fund at that time accepted a one-page narrative statement describing the significant unmet capital or financial services needs within a proposed area.<sup>56</sup> IRPS 08–2 noted that the analysis must be supported by relevant, objective reasons or statistical data. The IRPS further noted there are no definitive standards

of evaluation and SUN statements are evaluated on a case-by-case basis.

In the preamble to IRPS 08–2, the NCUA concluded that it could not interpret the distress criterion or the SUN criterion as redundant of each other because the CDFI Act sets forth both criteria independently in defining an investment area. To ensure a sound record, IRPS 08–2 required a one-page SUN statement in the business plan. The rule required the business plan to explain how the credit union planned to fulfill the unmet needs for loans and credit union services it identified in its statement.

The Board has reconsidered this issue and believes the SUN statement requirement, in its current form, duplicates other elements of the application and imposes undue burden without adding material value. The Board bases this conclusion on two separate findings, each of which is sufficient on its own to support the proposed changes.

First, the CDFI Fund does not require a one-page narrative and does not require third-party data or support. Thus, the Board sees no continuing need to require the one-page narrative. Second, the CDFI Fund considers the lack of financial institution branches in an investment area as part of the SUN criterion. The Board believes that its concentration of facilities test, which measures whether an area is underserved by other depository institutions, directly addresses this point and in most cases would support a finding of significant unmet needs in an investment area.

The Board notes that it would still require the application to cover significant unmet needs, which is consistent with the statement in IRPS 08–2 that the underserved and significant unmet needs criteria are separate by law and not redundant. And, in some cases, an area could theoretically meet the concentration of facilities test but not have significant unmet needs. The proposed rule change will not detract from this principle and will instead merely reduce paperwork requirements because a less prescriptive approach may still enable FCUs to meet these separate statutory criteria.

#### Effect of Proposed Change on CDFI Certification Requirements

To determine whether the proposed changes may have unintended consequences for CDFI certification, NCUA staff inquired into the CDFI Fund’s standards for certifying institutions as CDFIs. The Manual’s current requirement that the business plan identify the credit and depository

<sup>51</sup> 12 U.S.C. 4702(13).

<sup>52</sup> 12 U.S.C. 1759(c)(2)(A).

<sup>53</sup> 12 U.S.C. 4702(16).

<sup>54</sup> 12 CFR 1805.201(b)(3)(ii) (2008).

<sup>55</sup> 73 FR 34365 (Aug. 18, 2008).

<sup>56</sup> *Id.*, at 34369, citing to the “CDFI Certification Application” (June 2007) at 11.



needs of the community and detail how the credit union plans to serve those needs can support a pattern of significant unmet needs for one or more authorized credit union services.<sup>57</sup> Therefore, the existing credit and depository needs standard is a reasonable measure of significant unmet needs, provided it addresses authorized credit union services.

The CDFI certification application requires the applicant to provide a narrative description of the unmet capital or financial services needs within each identified investment area but does not specify the length of the narrative. Moreover, the CDFI Fund's regulations do not require a separate section in the application for the SUN statement. On this basis alone, the Board believes that FCUs can demonstrate significant unmet needs without a strict one-page requirement.

Further, the CDFI certification application (referred to as the AMIS<sup>58</sup> Submission Guide, updated as of November 2018) requires simply that the applicant "provide [a] narrative description(s) of the significant unmet capital or financial service needs within each identified Investment Area." The application requires no specific length and does not call for third-party data or support. Considering the CDFI Fund's requirements for this criterion, the Board finds it reasonable to eliminate the length requirement for the SUN statement as well as the third-party support reference.

The NCUA's separate concentration of facilities test for underserved areas, which the Board adopted in IRPS 08–2, substantially satisfies the CDFI Fund's standard when provided in a narrative analysis. This test is the NCUA's methodology, as outlined in the Manual, to determine whether an area is underserved by other insured depository institutions.<sup>59</sup> The requirement that an area be underserved by other insured depository institutions is unique to the FCU Act; the CDFI Act's investment area definition does not include this element.

The NCUA's test provides statistical data to support the proposition that an area is underserved by other depository institutions, namely that the area has fewer depository institution facilities as compared to a non-distressed area, which sets a benchmark level of adequate service. As the CDFI Fund's supplemental guidance shows, the CDFI Fund allows data showing a lack of

financial institution branches in an investment area to help meet its significant unmet needs requirement. For this reason, the NCUA's separate requirement and test assure the agency that an area passing the test would be likely to meet the significant unmet needs standard.

The NCUA's experience in applying the test supports this conclusion. The NCUA has found that once an area meets the economic distress criteria and is underserved by other depository institutions, the area also has significant unmet needs. As a result, requiring FCUs to identify the significant unmet needs in the level of detail that the Manual currently requires often leads to redundant and time-consuming data gathering that does not add material value.

For each of these independent reasons, the Board proposes to amend the SUN statement requirement to eliminate any length requirement and the reference to third-party support and instead require a statement about the area's credit or depository needs and how the applicant will meet the needs. As amended, this provision would still require the business plan to address significant unmet needs. The Board believes that this change would reduce burden on applicants while still requiring compliance with the statutory standards. The provision would also continue to allow the applicant to decide which of the following needs to address in the statement: loans, share draft accounts, savings accounts, check cashing, money orders, certified checks, automated teller machines (ATMs), deposit taking, safe deposit box services, and similar services. The Board is not proposing any changes to the list of services.

#### *B. Community Charter Conversions and Expansions*

This proposed rule would make three changes to reduce the regulatory burden for community charter applications or conversions.<sup>60</sup> Specifically, the proposed rule would (1) establish a simplified business and marketing plan for community charter applications, (2) provide a standardized, fillable application for community charter conversion or expansion requests, and (3) eliminate the requirement for FISCUs converting to a federal community charter to submit a business

and marketing plan under certain conditions.

The FCU Act and the Manual require the NCUA to consider the economic advisability of chartering a new FCU and expanding an existing FOM.<sup>61</sup> The business and marketing plan requirement in the Manual achieves this by allowing the NCUA to consider whether a new FCU has realistic assumptions that support its viability and plan to serve its entire FOM. For expansion, the business and marketing plans help the NCUA test an FCU's capacity to serve the new group or geographic area. The Board continues to acknowledge the importance of these plans in promoting economic advisability and service to the entire FOM that an FCU seeks to serve.

After studying the existing requirements and considering its substantial experience in processing and reviewing various applications, the Board is proposing targeted relief in this area. These changes would not undermine the important goals that the plans serve and would instead reduce or eliminate paperwork requirements while sharpening the agency's focus on the substantive merits of each application.

#### **Simplified Business and Marketing Plan**

In implementing the economic advisability requirement of the FCU Act, the Manual requires the credit union to submit a business plan containing specified elements, which currently apply to new FCU charters and existing FCUs requesting a community charter conversion or expansion.<sup>62</sup>

Chapter 2, Section V.A.4, of the Manual defines the business plan requirements specific to community charter actions. The current requirements are:

- Provide pro forma financial statements for a minimum of 24 months after the proposed conversion;
- Provide anticipated financial impact on the credit union, including the need for additional employees and fixed assets, and the associated costs;
- Provide 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;
- Provide a marketing plan addressing how the community will be served for the 24-month period after the

<sup>60</sup> For the proposed changes discussed in this section, references to community credit unions include those federal credit unions serving a well-defined local community, neighborhood, or rural district meeting the requirements specified by the NCUA Board.

<sup>57</sup> IRPS 06–1, 71 FR at 36667 (June 22, 2006).

<sup>58</sup> AMIS is an acronym standing for Awards Management Information System.

<sup>59</sup> Manual, Chapter 3, Section III.B.3.

<sup>61</sup> 12 U.S.C. 1754; Manual, Chapter 1, Section IV.

<sup>62</sup> Manual, Chapter 2, Section V.A.4.



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;

- Provide details, terms, and conditions of the credit union's financial products, programs, and services to be provided to the entire community; and
- Provide maps showing the current and proposed service facilities, ATMs, political boundaries, major roads, and other pertinent information.

The Manual also provides for a streamlined business and marketing

plan for existing community charters applying to add bordering areas.<sup>63</sup> Existing community credit unions adding bordering areas may continue to use the streamlined business and marketing plan, as the proposed rule leaves this option intact. With respect to all other community charter requests, the specific proposed modifications to the existing plan requirements are discussed in the following paragraphs.

As noted, credit unions are currently required to provide 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. Under the proposed rule, the credit union would be required to provide branch details to include how many service facilities are in the area, whether the credit union participates in shared branching, number of ATMs (owned

and shared), any new branches planned, use of electronic delivery channels, and how the credit union will sign up low- and moderate-income individuals. By eliminating the need for providing granular details about the branch structure, the NCUA hopes to encourage applicants to spend more time determining how to best meet the evolving needs of their members and considering innovative service delivery channels like virtual banking.

The following is an example of a marketing budget that credit unions could use for a 24-month period. Under the proposed rule, a credit union may include all the various marketing media to set marketing expectations and demonstrate their intent to reach new members in the proposed community. The NCUA emphasizes that credit unions would not be required to use the marketing media set forth in the example.

#### Example Marketing Budget

#### MARKETING BUDGET

Category	Year-end actual	Projected year 1	Projected year 2
Social Media .....	\$xx,xxx	\$xx,xxx	\$xx,xxx
Geofencing .....	xx,xxx	xx,xxx	xx,xxx
Special Program for New Branch .....	xx,xxx	xx,xxx	xx,xxx
Direct Mail Campaign .....	xx,xxx	xx,xxx	xx,xxx
Television .....	xx,xxx	xx,xxx	xx,xxx
Radio .....	xx,xxx	xx,xxx	xx,xxx
Total .....	xx,xxx	xx,xxx	xx,xxx

The proposed rule would also remove the requirement that a credit union provide "details, terms, and conditions of the credit union's financial products, programs, and services to be provided to the entire community" and instead include a question on whether the credit union is full service, and if so, what unique or particularly interesting products or services it offers.<sup>64</sup> The NCUA believes there is no need to list every product or service because the regulation defines full service, and the agency wants credit unions to be able to focus their application on products tailored to the needs of their FOM, especially low-to-moderate income members. In addition, in most cases products and services are listed on the credit union's website.

#### Standardized Fillable Application for Community Charter Requests

The NCUA receives several requests each year for an application form for a community conversion or expansion request. The agency addressed this need in part by providing templates for business and marketing plans through NCUA Letters to FCUs 11-FCU-03 and 21-FCU-01.<sup>65</sup> However, because there is no NCUA form in the Manual for applicants to request community charter actions, credit unions' submissions can be voluminous and may not meet regulatory requirements. The proposed rule would require the use of a fillable, standardized application for all community charter actions. The standardized application should better focus credit unions on critical requirements and ensure uniform NCUA

reviews across applications. The use of the standardized application form should reduce the number of follow-up requests from the NCUA for additional information. The proposed form is available for review within the *Regulations.gov* docket for this notice of proposed rulemaking.

The proposed changes will not hinder the NCUA's ability to assess a credit union's economic advisability and service to low-income members. Although the proposed changes adjust the current process to require less information in total, they better target the most useful information, thereby enhancing the efficiency and effectiveness of NCUA reviews.

The Board welcomes comments on all aspects of these proposed changes and specifically requests comment on whether the new fillable application

<sup>63</sup> Manual, Chapter 2, Section V.B 1.

<sup>64</sup> The Manual defines full service as "providing, at a minimum, savings accounts, share draft accounts, mortgages, home-equity loans, automobile loans, money orders, wire transfers, interactive

website, home banking, bill payment, and mobile banking."

<sup>65</sup> <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/community-charter-conversions-and-expansions> and [https://](https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/community-charter-conversions-and-expansions)

[www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/community-charter-conversions-and-expansions-0](https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/community-charter-conversions-and-expansions-0).

should be mandatory. The Board's intention is to reduce burden on applicants and the agency by making the process simpler without sacrificing the quality of the information and analysis. The Board is interested in whether a free-form narrative option is preferable and may consider making the form optional, depending on the feedback from commenters. The Board also requests comment on whether it should codify the new form in the Manual. The advantage of codifying it is making it more readily accessible, but the disadvantage is that even minor changes may require a new notice-and-comment rulemaking to avoid confusion.<sup>66</sup> The Board may decide not to codify the form or label the form as being subject to modification by CURE from time to time in the final rule, depending on the feedback it receives from commenters.

#### Requirements for Community-Based State-Chartered Credit Union Converting to an FCU

FISCUs converting to a federal community charter are currently also subject to the business and marketing plan requirements discussed in the preceding section of this preamble.<sup>67</sup> The proposed rule eliminates this requirement for FISCUs converting to a federal community charter if they will continue to serve the same community. The economic advisability of granting a community charter in a conversion to a federal credit union is more readily determinable because the applicant applying to convert is an existing insured credit union whose management and operations the NCUA has examined or supervised and that has an established history of serving the community.

The Manual defines the business and marketing plan requirements for a community credit union. The business and marketing plan must demonstrate the credit union's "ability and commitment to serve the entire community for which it seeks NCUA approval."<sup>68</sup> The Board did not propose changes to the charter conversion

requirements in the 2016 FOM rulemakings on community charters. The Board acknowledges that it relies on sound business and marketing plans to ensure that expanded community chartering options are reasonable and viable.<sup>69</sup>

In addition, the Manual implements the statutory requirements governing the conversion of a state charter to a federal charter.<sup>70</sup> In general, conversions "are treated the same as any initial application for a federal charter."<sup>71</sup> However, "[s]ince the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant."<sup>72</sup>

The Manual also requires that, "[i]f the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V, of this manual."<sup>73</sup> Among other requirements, this section notes how the NCUA will not approve an application for a community charter consisting of all or a portion of a combined statistical area or a core-based statistical area unless the applicant demonstrates in its business and marketing plan the credit union will (1) serve a community that is contiguous and (2) provide financial services to low- and moderate-income and underserved people. The NCUA must also ensure the credit union has not selected its service area to exclude low- and moderate-income and underserved people or to engage in illegal discrimination.<sup>74</sup>

<sup>69</sup> See 81 FR 88412, at 88413 (Dec. 7, 2016) providing that "What critics of repealing the 'core area' service requirement overlook is that NCUA has in place a supervisory process to assess management's efforts to offer service to the entire community an FCU seeks to serve. NCUA holds credit union management accountable for the results of an annual evaluation that encompasses a community FCU's implementation of its business and marketing plans, extending for three [3] years after the credit union either is chartered, converts, or expands. Experience confirms that the agency's evaluations are a more effective means of ensuring that the low-income and underserved populations are fairly served compared to the rest of the community, in contrast to a requirement forcing a credit union to serve the 'core area' of the portion of a CBSA that comprises its community." See also 81 FR 88412, at 8814 ("As with any community an FCU seeks to serve, a Combined Statistical Area would be subject to NCUA's practice of periodically reviewing the FCU's implementation of its business and marketing plans to assess its capability of, and success in, serving its original or previously expanded community.").

<sup>70</sup> 12 U.S.C. 1771(b); Manual, Chapter 4, Section II.

<sup>71</sup> Manual, Chapter 4, Section II.A.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Manual, Chapter 2, Section V.A.8.

The proposed rule would amend the Manual's business and marketing plan requirement for FISCUs that already serve the community applying to become a federal community charter. In place of the plan, the NCUA would only require a FISCU to submit a statement addressing the following three topics:

1. Does the existing community consist of a portion of a Core Based Statistical area or Combined Statistical Area? If so, please explain the credit union's basis for selecting its service area.

2. Describe products and services you offer or plan to offer to low- and moderate-income and underserved members.

3. How will you market to the low- and moderate-income, and underserved (economically distressed) people, and those with unique needs, in the community?

The Board believes that the proposed removal of the business and marketing plan requirement for FISCUs conversions will not hinder the NCUA's ability to assess the applicant's economic advisability and its capacity to provide services to low- and moderate-income members. This would be accomplished through the NCUA's review of the FISCU's Financial Performance Report, review of examination reports, including reports related to compliance with consumer financial protection and fair lending statutes and regulations. The proposed changes will reduce the time involved for both the credit union and NCUA staff.<sup>75</sup>

A FISCU converting to an FCU community charter would not be subject to the NCUA's 3-year business and marketing plan review.<sup>76</sup> The NCUA believes it is able to review for non-discrimination through other means, such as the FISCU's track record, state examination results, including results related to any fair lending reviews, and other information available to the agency.

This proposed change would not apply to single or multiple common bond FISCUs converting to an FCU community charter. These credit unions would have to submit a business and marketing plan. This change would also not apply to non-federally insured credit unions. As stated previously, the NCUA has an opportunity to conduct ongoing reviews of FISCUs that provide insight into the credit union's management and operations. Because

<sup>75</sup> During the period of 2011–2021, the NCUA approved 19 FISCUs converting to federal community charters. The NCUA estimates approximately 40 hours of paperwork burden for each charter conversion.

<sup>76</sup> Manual, Chapter 2, Section V.A.4.

<sup>66</sup> Some changes may meet the Administrative Procedure Act's good cause exception to the general requirement for an agency to provide the public prior notice and an opportunity for comment before adopting a rule. See 5 U.S.C. 553. For example, non-substantive changes may meet the "unnecessary" prong of the good cause standard. See, e.g., *Mack Trucks, Inc. v. E.P.A.*, 682 F.3d 87, 94 (D.C. Cir. 2012) ("This prong of the good cause inquiry is 'confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'") (citation and quotation mark omitted).

<sup>67</sup> Manual, Chapter 2, Section V.A.4.

<sup>68</sup> Manual, Chapter 2, Section V.A.2.

the NCUA does not have the same opportunity with non-federally insured credit unions, the Board believes that the basis for this change is not applicable. The Board specifically invites comments on whether to treat any conversions of non-federally insured credit unions differently in this respect. After reviewing any input from commenters on this issue, the Board may consider expanding this flexibility to non-federally insured credit unions in finalizing the proposed rule.

### *C. Groups Sharing a Common Bond With Community Areas*

The Board is also proposing a targeted addition to the affinity groups eligible for membership in community FCUs.<sup>77</sup> The Manual defines an affinity as a relationship on which a community charter is based. The affinity concept, which the FCU Act does not set forth or restrict, complements the community FOM. The community FOM tells a prospective member which geographic area is relevant—a well-defined local community, neighborhood, or rural district. The affinities tell them which relationships to that area are enough to make a bond suitable for membership.

The Manual currently defines four types of affinity groups eligible for membership in FCUs serving communities or rural districts, namely persons who live in, worship in, attend school in, or work in the community or rural district.<sup>78</sup>

While the current regulatory structure is generally effective, it imposes limits on credit unions serving, or desiring to serve, a community which has employers with staff located outside the community boundaries. This limitation potentially discourages credit unions from pursuing a federal community charter if they have an existing working relationship with the employees of an employer headquartered within its operational area, but would, upon converting, lose the ability to serve the employer's staff working from another location.

The Board is also concerned the current affinities permitted for community credit unions do not satisfactorily address changing trends in the workplace. Most significantly, the concept of employment location has changed over time, particularly in the post-COVID-19 world which increased the trend for telecommuting and decentralized workplaces. Advances in

technology have significantly changed how employees conduct work and communicate with one another, and there is less of a need for persons working for the same entity to share a common work location. Although the concept of where people work is changing, especially through the increase in the number of persons working from remote locations, we also believe individuals in another locale who are employed by a company headquartered in the community still maintain important ties to their company's headquarters.

Since March 2020, the collective efforts of companies to adapt to the COVID-19 pandemic offer even more pronounced evidence of how a staff member's physical location has become less important in maintaining an employment affinity that enables an employer to accomplish its mission. Subsequent to the pandemic, employers may generally be more likely to structure operations to accommodate more geographically dispersed workforces. As a result, the current constraints affecting FCUs serving well-defined local communities, neighborhoods, or rural districts could have a more adverse impact as employees in many workplaces now work at home in remote locations which are not in a commutable distance from the company's physical location.

As of June 30, 2022, there were 1,009 community chartered FCUs with \$253.7 billion in assets that provide service to over 17 million members. The overwhelming majority of existing community charters began as single or multiple common bond credit unions, and many had to sacrifice the ability to serve persons working for employers in the community if those employees resided outside the community. This change will permit these FCUs to maintain or expand their membership base, promote financial inclusion, and expand access to credit union services to more individuals.

To address this limitation, the Board proposes adding a fifth affinity to include a paid employee for a legal entity headquartered in the community, neighborhood, or rural district. The Board believes this rule change will help FCUs adapt to serve everyone with ties to a community by providing employees access to a community credit union with which they have a bond through their employer, even if they do not physically work in the well-defined local community or rural district.

The addition of the "paid employee for a legal entity headquartered in the well-defined local community, neighborhood or rural district" also has

safety-and-soundness benefits to FCUs. It will allow community FCUs to reduce their risk to localized economic downturns and disasters. In addition, it will help address the reality that more employers are moving to a business model in which more staff members can work in remote locations.

### *D. Eligibility of Immediate Family Members of Decedents*

The Board is also proposing an update to the groups of persons who may join an FCU based on a common bond with its members or the FCU. Many of these provisions, including those on spouses of persons who died while within the field of membership, volunteers, and pensioners, were in the NCUA's chartering regulations and policies before CUMAA and reflected the agency's judgment on which relationships show a common bond that supports extending membership eligibility.<sup>79</sup> The proposed update would modestly expand an existing option to reflect changes in society and alleviate logistical hurdles to funds transfer and succession for FCU members.

Under the current options available for FCUs to enroll secondary members, immediate family or household members of decedents are not eligible for membership unless the person was a spouse of a person who died while within the field of membership of the credit union. As a result of the survivors not retaining membership eligibility, the Board has learned FCUs may lose the funds the decedents held in the credit union to another financial institution, along with any goodwill associated with a longstanding relationship the credit union had with the decedent.

Immediate family or household members who are not surviving spouses may not have joined a federal credit union when the decedent was still living due to an oversight, lack of awareness regarding eligibility, or a perceived lack of need in cases where the decedent handled the finances of the family or household. Also, in the case of accounts established in joint tenancy, a survivor may have mistakenly believed he or she already is a member.

The Board proposes amending the Manual to address these concerns and minimize the potential for future confusion, especially when a consumer is undergoing a period of bereavement. The amendment will update the definition of secondary members for

<sup>77</sup> For this section, references to community credit unions include those federal credit unions serving a well-defined local community, neighborhood, or rural district meeting the requirements specified by the NCUA Board.

<sup>78</sup> Manual, Chapter 2, Section V.A.1.

<sup>79</sup> See 44 FR 43737, 43739 (July 26, 1979) (proposed rule on chartering that discussed the common bond that certain persons have with the basic group that an FCU serves).

each common bond type to include every member of a decedent's immediate family or household for a 6-month period following the decedent's passing.

In developing the proposed rule change, the Board patterned the agency's approach after the principles the NCUA already recognizes in its share insurance regulation, which allows a grace period of 6 months for survivors of a decedent to restructure accounts to maintain coverage after a member passes away. This provision allows survivors to act as if the decedent were still living for the purposes of maintaining an insured coverage relationship with the credit union when possible.<sup>80</sup>

If the NCUA followed the same principle relative to general membership enrollment, it would allow a similar grace period after a member or individual who is within the field of membership passes away for survivors to exercise a right that existed while the member or potential member was still living. In addition to being consistent with language on insurance coverage, it would avoid a situation that allows eligibility for survivors in perpetuity even if they themselves are not otherwise within the field of membership. Allowing eligibility in perpetuity could create problems verifying eligibility and stretches the assertion that an individual is eligible based on his or her relationship to the decedent, which may have ended many years prior. While the Board believes the proposed rule offers a fair approach to handling a sensitive issue, it welcomes comments as to whether an alternative timeframe is appropriate.

The Board, while welcoming comments on any aspect of this proposed rule change, specifically requests comment on a potential variation on the proposal which would allow immediate family members, other than a surviving spouse, to join the FCU after a person's death only if the decedent was a member of the credit union, as opposed to being just a potential member, at the time of death. This option would preserve the right of a surviving spouse of a member or potential member to remain eligible for credit union membership as permitted under the current regulatory framework. It would, however, only allow eligibility for other members of the immediate family or household for 6 months if their ties were with an actual, not

potential, member who passed away. The Board requests comments to better understand the membership succession needs of FCUs and consumers when faced with the loss of a member of the immediate family or household.

#### *E. Updated References for Review of Prospective Management and Officials*

This proposed rule makes a technical clarification and correction to the Manual provision regarding the agency's evaluation and disapproval of directors and other management officials for applicants for NCUSIF coverage. The goal of the change is to reduce confusion for applicants and provide a clearer explanation of which authorities govern this review process.

Section 201(c) of the FCU Act requires the NCUA to ensure that the management of applicants for insurance are of good "general character and fitness."<sup>81</sup> Chapter 1, Section IV.B., of the Manual implements this statutory requirement. Separately, section 104 of the FCU Act states "an investigation shall be made for the purpose of determining . . . the general character and fitness of subscribers" to the FCU organization certificate in the Board's approval of a new FCU charter.<sup>82</sup> An FCU's subscribers—the individuals who seek to charter a new FCU—often apply to serve as officials of the prospective FCU.

The present wording of the Manual incorrectly cites to the NCUA regulation in § 701.14, which does not pertain to sections 104 or 201(c) of the FCU Act. The regulation implements section 212 of the FCU Act, which provides separate statutory authority for disapproval of directors and management officials of certain federally insured credit unions.<sup>83</sup> The regulation only applies in cases of federally insured credit unions in troubled condition or newly chartered credit unions (defined in § 701.14(c)(1)(ii) as those chartered for less than 2 years).<sup>84</sup> These requirements, including time limitations for application review and approval, do not apply to credit unions that are applying for an FCU charter or insurance of member of accounts. The Manual and § 701.14 apply similar standards to prospective directors and management officials, but under the FCU Act and the NCUA's regulations, these procedures are distinct.

The proposed rule removes the reference to § 701.14 in Chapter 1, Section IV.B., of the Manual to clarify

that the NCUA relies on the authority of section 201(c) of the FCU Act in disapproving a director or other management official of an applicant for NCUSIF coverage, as well as section 104 on the character and fitness of FCU subscribers. The proposed change does not alter the NCUA's current procedures for such disapprovals. By proposing this change, the Board intends solely to ensure the accuracy and clarity of the Manual.

#### **III. Questions for Commenters on Possible Future Actions**

The Board is also interested in seeking input from commenters to inform future policies or rulemaking outside the scope of this proposed rule. In addition to the specific requests for comment included with the discussion of proposed changes elsewhere in this preamble, the Board welcomes comments on the following topics, which the Board may address in future actions but not in connection with this proposed rule or any final rule based on the proposed rule.

*Application of "well-defined" to underserved areas.* Currently, the Manual applies the "well-defined" requirement to communities, neighborhoods, and rural districts that an applicant seeks to serve as an underserved area.<sup>85</sup> But, the FCU Act does not apply this term in the provision on underserved areas. The statute requires that these areas may include persons or organizations within a "local community, neighborhood, or rural district." If the Board revisits the current requirement, how would commenters recommend the Board describe the required boundaries for a qualifying area? Currently, the "well-defined" requirement is defined as having specific geographic boundaries. How would commenters recommend that the Board distinguish a well-defined area from one that may not need to be well-defined? Should the Board consider amending the "well-defined" definition to provide a clear basis to distinguish such areas?

*Concentration of facilities.* Currently, the Manual provides three options for an applicant to establish that a proposed underserved area is underserved by other depository institutions, as the FCU Act requires.<sup>86</sup> First, the Manual provides for a specific calculation based on the non-distressed tracts within an area. This is the test the NCUA runs to see whether an area qualifies. Second, the Manual provides that an

<sup>80</sup> 12 CFR 745.2(e) provides that a member's death will not affect the member's share insurance coverage for 6 months following death, unless someone restructures the deceased member's account(s) before 6 months are up.

<sup>81</sup> 12 U.S.C. 1781(c).

<sup>82</sup> 12 U.S.C. 1754.

<sup>83</sup> 12 U.S.C. 1790a.

<sup>84</sup> 12 CFR 701.14(a).

<sup>85</sup> Manual, Chapter 3, Section III.B.1.

<sup>86</sup> 12 U.S.C. 1759(c)(2)(A)(ii); 12 CFR 701, Manual, Chapter 3, Section III.B.3.

underserved county, as designated by the Consumer Financial Protection Bureau, will qualify as underserved for purposes of this test. Third, the Manual provides that an area may qualify based on a credit union's own "metric" if the credit union's measure is based on data from the NCUA or other federal banking agencies. Do commenters believe these options, including the current flexibility for an applicant to provide its own data and analysis, provide sufficient latitude to establish that an area is underserved? What additional measures or metrics do commenters recommend, and could they fit within the third option described in this paragraph? Alternatively, should the Board consider adopting an additional option based on a national benchmark of depository institution facilities? What sources do commenters recommend the Board consider in studying this issue?

*Neighborhoods as a chartering option.* Currently, the Manual does not include a detailed description and set of specific criteria to define a permissible charter based on a neighborhood, as 12 U.S.C. 1759(b) allows. In the agency's experience, communities (and likely rural districts) typically subsume neighborhoods. The proposed rule contains some minor elaboration and suggested clarifications on neighborhoods but is not proposing any substantive changes. Should the Board consider proposing or otherwise developing guidance or requirements for neighborhood-based charters? Do commenters believe that some neighborhoods may extend beyond or not be co-extensive with a community or rural district in some instances? Would development of this option assist FCUs in expanding access to financial services?

#### IV. Regulatory Procedures

##### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemaking in which an agency creates a new or amends existing information collection requirements.<sup>87</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 and Field of Membership

Manual are approved under OMB control number 3133–0015.

The proposed rule would introduce a simplified application for community-based FCUs by eliminating duplicative and unused reporting and providing a standard format for business and marketing plans. The NCUA estimates that 50 percent of the respondents of the current application will use the new simplified version for an estimated reduction of 560 burden hours.

The proposed rule would also eliminate the one-page narrative and third-party data from FCUs seeking to add an underserved area. The elimination of this reporting requirement is estimated to reduce the burden by 2 hours per response to complete the application for a total reduction of 42 burden hours.

A FISCO converting to a federal community charter is currently subject to the business and marketing plan requirements. The proposed rule would eliminate this requirement for FISCUs when converting to a federal community charter if they already serve the same community. It is estimated that one FISCO would fall in this category. A reduction of 2 burden hours would be due to the elimination of this reporting requirement.

A program change attributed with this proposed rulemaking is estimated to reduce the overall burden hours by 604.

*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 hours per response:* 0.53.

*Estimated total annual burden hours:* 15,619.

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") or to (2) National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; or email at [PRAComments@ncua.gov](mailto:PRAComments@ncua.gov).

##### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule only applies to FCUs and would not have substantial direct effects 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. Although the rule, in part, streamlines some of the requirements for converting from a FISCO to an FCU, the NCUA's experience generally indicates the application process itself has not been a determinative factor in an existing credit union's choice of jurisdictional authority. Accordingly, the NCUA believes that the effect of this change on the states would be limited. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

##### *Assessment of Federal Regulations and Policies on Families*

The Board has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>88</sup> Although the provision on extending membership eligibility to surviving family members may affect members and their families by extending access to financial services, the Board does not believe that the change would affect family well-being as described in factors included in the legislation, which include the effect of the action on the stability and safety of the family; on parental authority and rights in the education, supervision, and

<sup>87</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

<sup>88</sup> Public Law 105–277, 112 Stat. 2681 (1998).

nurture of their children; on the ability of families support their functions or substitutes governmental activity for these functions; and on increases or decreases to disposable income. The Board's proposed change would potentially affect where family members access funds after a members' death, but the proposal would not affect access to the funds themselves.

#### List of Subjects in 12 CFR Part 701

Credit Unions.

By the NCUA Board on February 16, 2023.

**Melane Conyers-Ausbrooks,**

*Secretary of the Board.*

For the reasons stated in the preamble, the NCUA Board proposes to amend 12 CFR part 701, as follows:

### PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 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:

■ a. Amend chapter 1 by revising section IV.B;

■ b. Amend chapter 2 by:

■ i. Revising sections II.H, III.H, IV.J, and V.A.1;

■ ii. Redesignating section V.A as section V.A.4 and revising it; and

■ iii. Revising section V.G;

■ c. Amend chapter 3 by:

■ i. Adding a new sentence at the end of section III.B.1;

■ ii. Revising section III.B.2;

■ iii. Removing section III.B.2a; and

■ iv. Redesignating section III.B.2.b as section III.B.2.a and revising it;

■ d. Amend chapter 4 by revising section II.B; and

■ e. Amend Appendix 1 Glossary by revising the definition of “Affinity”.

The revisions and addition read as follows:

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

##### Chapter 1—Federal Credit Union Chartering

\* \* \* \* \*

##### IV—Economic Advisability

\* \* \* \* \*

##### IV.B—Character and Fitness Analysis

Section 104 of the Federal Credit Union Act, 12 U.S.C. 1754, requires NCUA to ensure that the subscribers are of good “general

character and fitness.” Section 201(c) of the Federal Credit Union Act, 12 U.S.C. 1781(c), requires NCUA to consider the “general character and fitness” of management in reviewing an application by a credit union for insurance of member accounts. Prospective officials and employees, including those who elect to serve on a voluntary basis, will be the subject of credit and background investigations. In many cases, a federal credit union's subscribers—the individuals who seek to charter a new credit union—simultaneously apply to serve as officials of the proposed charter. The investigation report must demonstrate each applicant's ability to effectively handle financial matters. Employees and officials should also be competent, experienced, honest, and of good character. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of fraud and dishonesty. Further, factors such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

Section 201 of the Federal Credit Union Act, 12 U.S.C. 1781(c), sets forth the criteria for evaluation of the general character and fitness of the management of a credit union that applies to the NCUA Board for federal share insurance of member accounts. The Federal Credit Union Act, 12 U.S.C. 1754, requires an appropriate investigation be made into the general character and fitness of the subscribers to the organization certificate before the organization certificate may be approved. If the application of a prospective official or employee to serve is not acceptable to the Office of Credit Union Resources and Expansion Director, the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the Office of Credit Union Resources and Expansion Director's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an acceptable new applicant must be provided before the charter can be approved.

\* \* \* \* \*

#### Chapter 2—Field of Membership Requirements for Federal Credit Unions

\* \* \* \* \*

##### II—Occupational Common Bond

\* \* \* \* \*

##### III.H—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Employees of this credit union;

- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of the immediate family or household, including those of a member or person eligible for membership who died no longer than 6 months prior to the date of the application for credit union membership;
- Honorably discharged veterans who served in any of the Armed Services of the United States listed in this charter;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit. Membership eligibility is extended only to individuals who are members of an “immediate family or household” of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or school.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as “once a member, always a member.” The “once a member, always a member” provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

#### III—Associational Common Bond

\* \* \* \* \*

##### III.H—Other Persons Eligible for Credit Union Membership

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

- Employees of this credit union;
- Volunteers;
- Members of the immediate family or household, including those of a member or person eligible for membership who died no longer than 6 months prior to the date of the application for credit union membership;
- Honorably discharged veterans who served in any of the Armed Services of the United States in this charter;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. One example is volunteers working at a church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

#### IV—Multiple Occupational/Associational Common Bonds

\* \* \* \* \*

##### IV.J—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of the immediate family or household, including those of a member or person eligible for membership who died no longer than 6 months prior to the date of the application for credit union membership;
- Honorably discharged veterans who served in any of the Armed Services of the United States in this charter;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an

"immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

#### V—Community Charter Requirements

##### 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 five types of affinity on which both a community charter, including a well-defined local community or neighborhood, and a rural district can be based on persons who live in, worship in, attend school in, work in, or are a paid employee for a legal entity headquartered 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.4.—Business Plan Requirements for a Community Credit Union

For the purpose of this section, references to community credit unions include those federal credit unions serving a well-defined local community, neighborhood, or rural district meeting the requirements specified by the NCUA Board. 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 submit a business plan incorporating the following data in the form prescribed by the NCUA:

- 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 number and location of service facilities in the community, whether the credit union participates in shared branching, the number of ATMs owned or shared by the credit union in the community, any new branches the credit union plans to establish in the community, the credit union's use of electronic delivery channels, and how the credit union will provide services to low- and moderate-income individuals;
- A marketing plan, including a budget, 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; and the credit union's timetable for implementation, not just a calendar of events; 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 3 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 or Office of National Examinations and Supervision Director 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 or ONES intends to take.

\* \* \* \* \*

#### *V.G—Other Persons With a Relationship to the Community*

A number of persons who have a close relationship to the community may be included, at the charter applicant's option, in the field of membership. These include the following:

- Employees of this credit union;
- Volunteers in the community;
- Members of the immediate family or household, including those of a member or person eligible for membership who died no longer than 6 months prior to the date of the application for credit union membership; and
- Organizations of such persons

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit. Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

#### **Chapter 3—Low-Income Credit Unions and Credit Unions Serving Underserved Areas**

\* \* \* \* \*

#### **III—Service to Underserved Communities**

##### *III.B.1—Local Community*

\* \* \* For areas qualifying as a rural district under this section III, the boundaries are not limited to the outer boundaries of the states that are *immediately contiguous* to the state in which the credit union maintains its headquarters.

##### *III.B.2—Investment Area*

To be approved as an "underserved area," the proposed area must meet the CDFI definition of an "investment area," as developed pursuant to The Community Development Banking and Financial

Institutions Act of 1994, as amended from time to time.

##### **III.B.2.a—Proposed Area's "Significant Unmet Needs"**

A proposed area that is "distressed" also must display "significant unmet needs" for loans or for one or more of the financial services credit unions are authorized to offer. To meet this criterion, the credit union must include within its Business Plan a narrative description, entitled "Significant Unmet Needs for Credit Union Services" ("SUN statement"), that identifies the credit and depository needs of the community and details how the credit union plans to serve those needs. The credit union may choose which among the following "credit and depository needs" to address in the SUN statement: loans, share draft accounts, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and similar services.

\* \* \* \* \*

#### **Chapter 4—Charter Conversions**

\* \* \* \* \*

##### **II—Conversion of a State Credit Union to a Federal Credit Union**

\* \* \* \* \*

##### *II.B—Submission of Conversion Proposal to NCUA*

The following documents must be submitted with the conversion proposal:

- Conversion of State Charter to Federal Charter (NCUA 4000);
- Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section should be completed and, where applicable, signed by the credit union officials.
- Report of Officials and Agreement to Serve (NCUA 4012);
- The Application to Convert from State Credit Union to Federal Credit Union (NCUA 4401);
- The Application and Agreements for Insurance of Accounts (NCUA 9500);
- Certification of Resolution (NCUA 9501);
- Written evidence regarding whether the state regulator is in agreement with the conversion proposal; and
- Business plan, including the most current financial report and delinquent loan schedule. A state-chartered community credit union converting to a federal charter is not required to submit a business plan or a marketing plan if the credit union will serve the same community or a portion thereof that it served as a state charter. However, if the state credit union is a community credit union consisting of all or part of a CSA or a CBSA, the state credit union must submit written evidence of its compliance with the requirements of Chapter 2, Section V.A.8. Further, if the state credit union proposes to amend its field of membership, the Office of Credit Union Resources and Expansion Director may, after taking into account the significance of the proposed amendment, require the applicant to submit a business plan addressing specific issues (see Chapter 2, Section II.C.2).

If the state charter is applying to become a federal community charter, it must also

comply with the documentation requirements included in Chapter 2, Section V.A.2 of this Manual.

\* \* \* \* \*

#### **APPENDIX 1 GLOSSARY**

\* \* \* \* \*

*Affinity*—A relationship upon which a community charter is based. Acceptable affinities include living, working, worshiping, attending school, or being a paid employee of a legal entity headquartered in a well-defined local community, neighborhood, or rural district.

\* \* \* \* \*

[FR Doc. 2023–03684 Filed 2–27–23; 8:45 am]

**BILLING CODE 7535–01–P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[USCG–2023–0112]

RIN 1625–AA00

#### **Safety Zone; Back River, Hampton, VA; Air Show**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a safety zone for certain waters in the vicinity of the northwest branch of the Back River. This action is necessary to provide for the safety of life on these navigable waters near Langley Air Force Base, Hampton, VA, during an annual airshow. This proposed rulemaking would prohibit persons and vessels from entry in the safety zone unless authorized by the Captain of the Port Virginia or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before March 30, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG–2023–0112 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LCDR Ashley Holm, Chief Waterways Management Division U.S. Coast Guard; 757–617–7986, [Ashley.E.Holm@uscg.mil](mailto:Ashley.E.Holm@uscg.mil).