

Proposed Rules

Federal Register

Vol. 75, No. 245

Wednesday, December 22, 2010

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AD76

Sample Income Data To Meet the Low-Income Definition

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA is proposing to permit federal credit unions (FCUs) that do not qualify for a low-income designation using the geo-coding software the NCUA has developed for that purpose to submit an analysis of a statistically valid sample of their member income data as evidence they qualify. The current rule requires, as an alternative to NCUA's geo-coding software, that member data drawn from loan applications or member surveys be used to show a majority of the members are low-income. Permitting FCUs to use a statistically valid sample of member incomes drawn from loan files or a survey will ease the burden on FCUs attempting to qualify for a low-income designation.

DATES: Comments must be received on or before February 22, 2011.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *NCUA Web Site:* http://www.ncua.gov/news/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.

- *E-mail:* Address to regcomments@ncua.gov. Include "[Your name] Comments on Proposed Rule on Sample Data for Low-Income Designation" in the e-mail subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke

Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.
- *Public Inspection:* All public comments are available on the agency's Web site at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: The following agency staff may be contacted at the address listed above or the telephone numbers provided here. Robert Leonard, Director of Consumer Access, Office of Consumer Protection, (703) 518-1143; Olga Bruslavski, Economist, Office of the Chief Economist, (703) 518-6495; Regina Metz, Staff Attorney, Office of General Counsel, (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Credit Union Act (Act) authorizes the NCUA Board to define "low-income members" so that credit unions with a membership predominantly consisting of low-income members can benefit from certain statutory relief and receive assistance from the Community Development Revolving Loan Fund. 12 U.S.C. 1752(5), 1757a(b)(2)(A), 1757a(c)(2)(B), 1772c-1.

In 2008, the Board proposed substantial changes to the rule addressing low-income designation, which had previously been based on measuring median household income, with geographic differentials for certain areas with higher costs of living. 73 FR 22836 (April 28, 2008).¹ In brief, the Board proposed, and adopted in the final rule, replacement of median

household income with median family income or median earnings for individuals as better measures, in line with standards used by other federal agencies. 73 FR 71909 (Nov. 26, 2008). NCUA also undertook as part of the regulatory changes to facilitate the low-income designation process by eliminating the requirement for credit unions to apply for the designation. NCUA is in the process of implementing geo-coding software to automate the low-income designation process for credit unions during the examination process.

NCUA will make the determination of whether a majority of an FCU's members are low-income based on data it obtains during the examination process. This will involve linking member address information to publicly available information from the U.S. Census Bureau to estimate member earnings. Using automated, geo-coding software, NCUA will use member street addresses collected during FCU examinations to determine the geographic area and metropolitan area for each member account. NCUA will then use income information for the geographic area from the Census Bureau and assign estimated earnings to each member.

73 FR at 71910-11. NCUA's software ensures that the same categories of data available for estimated member income at a particular credit union are compared with like categories of statistical data on income from the Census Bureau. In particular, individual member earnings information is compared to median individual earnings data and family income information is compared to median family income data.²

² NCUA's geo-coding software, known within the agency as the "Low-Income Designation Assessment Tool," is currently a stand-alone software program developed by NCUA's Office of the Chief Information Officer with guidance from regional staff experienced in low-income designation. Regional staff as well as Economic Development Specialists currently use the tool as needed based on requests from credit unions. Eventually, the same software rules will be embedded into the NCUA AIRES examination software. The current version performs 30 different ratio calculations for each member based on a variety of factors and data to determine whether the member meets the low-income definition. The variety of ratios is expansive in order to provide all of the possible options for members to meet the definition. Factors recognize the following: (1) Data sources include both decennial income data as well as American Community Survey income data; (2) different data is incorporated for metro vs. non-metro geographic areas; and (3) ratio options include comparisons of census tract and block group income data, to zip code, county, MSA, state, and national data, plus

¹ Section 701.34 is the rule addressing low income designation and although it specifically addresses only federal credit unions, pursuant to § 741.204(b) of the NCUA Regulations, a state chartered credit union may obtain a low-income designation from its state regulator, with the concurrence of the appropriate NCUA regional director, on the same basis as provided in § 701.34(a).

Recently, the Board issued an interim final rule amending § 701.34(a)(1) to clarify that median family income and median earnings for individuals are alternative bases on which credit union members may qualify as low income. 75 FR 47171 (Aug. 5, 2010).

In addition, the interim final rule also addressed the subsection of the rule where the option for credit unions to submit their own information for purposes of qualifying for the designation was amended to clarify that actual member data must be compared with a like category of statistical data. For example, if a credit union provides individual income information for members, the median earnings for individuals must be used to determine if the members are low-income.

The final rule in November 2008 also provided credit unions an alternative to relying on NCUA's geo-coding software, namely, the option of providing actual income information about their members as a basis for qualifying as a LICU. The Board is now proposing to amend the low-income rule further to permit credit unions that wish to submit their own data for purposes of qualifying for the designation to use a statistically valid, random sample of member incomes drawn from loan files or a member survey as the basis for the analysis.

Proposed Rule

Only one credit union has applied for a low-income designation using actual membership income data after failing to qualify on the basis of NCUA's geo-coding software. The Board recognizes several factors may be involved but, primarily, the Board believes credit unions may find it difficult to meet the requirement of collecting actual income data establishing the low-income status of at least 50% plus one of their members. Conducting a survey of members in which a credit union asks members to disclose their income poses the problem of achieving a sufficient response rate with the underlying issue of the general reluctance members may have about disclosing their income in a survey. Obtaining income information from loan applications, among other issues, may be a problem for credit unions because many simply have not made loans to over 50% of their members. For these reasons, the Board is proposing to permit those credit unions that do not qualify based on NCUA's geo-coding software to use a statistically valid, random sample of member incomes from loan files or a

comparisons of county income data to CBSA, state, and national income data.

member survey as the basis for the analysis.³

Currently, § 701.34(a)(3), with the August 5, 2010 amendment, states as follows:

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

12 CFR 701.34(a)(3). The proposed rule would add language to this paragraph permitting credit unions to rely on a data sample as long as it meets certain criteria, including a narrative describing sampling technique and evidence supporting its validity. The proposed rule would require the random sample be representative of the membership, sufficient in both number and scope on which to base conclusions, and have a minimal confidence level of 95% and a confidence interval of 5%.⁴ The Board recognizes the 95% confidence level and 5% confidence interval is a widely accepted and used threshold for statistical significance in research and policy analysis.

NCUA will evaluate the sample income data and the supporting narrative to verify it is a statistically valid, random sample. NCUA will expect the narrative and supporting materials to address the following:

- Representativeness of Members. If a credit union is relying on income data drawn from its loan files, a credit union's submission needs evidence that members with loans are representative of the broader membership. If members

³ NCUA's regulation on Supervisory Committee Audits and Verifications, 12 CFR part 715, permits a Supervisory Committee or its designee to use a statistical method in performing member account and passbook verifications. 12 CFR 715.8(b)(2). The amendment in this proposed rule includes much of the same criteria as in that rule for an acceptable sample with some changes in language to fit the context of this rule.

⁴ Confidence levels and confidence intervals are statistical concepts that relate to the precision of the estimates produced by the sampling approach. Confidence level is the probability that the results of a sampling approach are within the confidence interval of the true answer. Confidence interval specifies the allowable margin of error around the true answer. There are a number of online resources that will compute required sample size given population, confidence levels, and confidence intervals including <http://www.raosoft.com/sampleSize.html>.

with loans are not representative of the broader membership, the sampling methodology may not be appropriate. If a credit union is relying on income data from a survey, a credit union must provide evidence regarding the representativeness of its responses and adequacy of response rate.

- Income Definition and Timing: If relying on income data from a survey, the survey needs to be clear regarding its definition of income to ensure accurate responses from members and permit the credit union to use appropriate sources for comparison. If relying on income data from loan files, NCUA will expect the analysis to:

- Clearly differentiate household versus individual income and income versus earnings in the loan files and use appropriate sources for comparison.⁵

- Address the age of the income data found in loan files by excluding loan files over five years old.

- Address issues related to income verification, for example, addressing general credit union practices related to income verification and percentage of loans in the selected sample with unverified income. For surveys, address credit union verification, if any, of self-reported income information from members.

- Based on membership size and conservative statistical sampling practices and requirements, establish minimum sample size of members with income data from loan files or valid survey responses.

- Describe the method used for sampling loan files or conducting a survey, including any external validation or oversight.

- For income data from loan files, submit the well-documented data set used in the analysis and, for surveys, a copy of the survey, data summary, and narrative, as necessary to describe the conduct of the survey.

NCUA staff will review a credit union's submission, may contact a credit union to resolve any questions about its submission or to request additional information, and will inform a credit union as to whether it qualifies as expeditiously as possible. The proposed rule does not establish a time frame for a NCUA staff's review and determination because the Board believes a submission under the proposed amendment is likely to

⁵ The interim final rule the Board issued in July 2010 clarified that where a credit union submits its own information for purposes of qualifying for the designation, actual member data must be compared with a like category of statistical data, meaning individual income information for members must be compared to the median earnings for individuals. 75 FR 47171 (Aug. 5, 2010).

present issues unique to the submitting credit union. The Board believes both credit unions and NCUA will benefit from having the flexibility to evaluate a credit union's submission and potentially resolve questions without regulatory time constraints. The Board anticipates that credit unions considering a submission will find it helpful to contact NCUA staff to discuss their approach to providing sample income data before undertaking a review of loan files or conducting a survey.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. 5 U.S.C. 603(a). For purposes of this analysis, NCUA considers credit unions having under \$10 million in assets small entities. Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003). As of December 31, 2007, out of approximately 8,410 federally insured credit unions, 3,599 had less than \$10 million in assets.

This proposed rule directly affects all low-income credit unions, of which currently there are approximately 1,100. NCUA estimates approximately 700 low-income credit unions are small entities but that only one or two in a year will avail themselves of the option of providing actual data or sample data to meet the low-income criteria and receive the designation. Therefore, NCUA has determined this proposed rule will not have an impact on a substantial number of small entities.

Paperwork Reduction Act

The low-income rule contains a "collection of information" within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3502(3), to the extent it permits federal credit unions that do not qualify under NCUA's geo-coding software the option of applying on the basis of actual membership income data and, as set out in this proposed amendment to the rule, the additional option of submitting a random and statistically valid sample of membership income data to meet the rule's requirement that a majority of its members are low-income as defined in the rule.

The proposed rule would permit FCUs, which do not qualify for a low-income designation using the geo-coding software the NCUA has developed for that purpose, to submit an analysis of a statistically valid sample of

their member income data as evidence they qualify. NCUA does not believe many FCUs are likely to apply for the designation on the basis of their member income data, perhaps two applications per year.

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

In summary, NCUA estimates the total information collection burden represented by this proposal involving: 2 respondents, 80 annual burden hours, and an annual cost burden of approximately \$10,000.

Anyone wishing to submit comments on this information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Attn: NCUA Desk Officer, New Executive Office Building, Washington, DC 20503, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

The NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of 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; e.g., permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulation.

Executive Order 13132

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

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

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

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit unions, Low income, Nonmember deposits, Secondary capital, Shares.

By the National Credit Union Administration Board, on December 16, 2010.

Mary F. Rupp,
Secretary of the Board.

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

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351, 120 Stat. 1966.

2. Amend § 701.34 by adding the following at the end of paragraph (a)(3):

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

(a) * * *

(3) * * * A Federal credit union may rely on a sample of membership income data drawn from loan files or a member survey provided the federal credit union can demonstrate the sample is a statistically valid, random sample by submitting with its data a narrative describing its sampling technique and evidence supporting the validity of the analysis, including the actual data set used in the analysis. The random sample must be representative of the membership, must be sufficient in both number and scope on which to base conclusions, and must have a minimum confidence level of 95% and a confidence interval of 5%.

* * * * *

[FR Doc. 2010–32131 Filed 12–21–10; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

RIN 3133–AD79

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)¹ provides that, on a temporary basis, the NCUA Board shall fully insure the net amount that any member or depositor at an insured credit union maintains in a noninterest-bearing transaction account. Although this insurance coverage is self-implementing, and therefore already in place, this proposed rule: clarifies the definition of the term “noninterest-bearing transaction account;” provides that this new insurance coverage is separate from, and in addition to, other

coverage provided in NCUA’s share insurance rules; and imposes certain notice and disclosure requirements.

DATES: Comments must be received on or before February 22, 2011.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *NCUA Web Site:* http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.

- *E-mail:* Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule 745, Share Insurance and Appendix” in the e-mail subject line.

- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency’s Web site at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Senior Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. The Dodd-Frank Act

Section 343 of the Dodd-Frank Act amends the Federal Credit Union Act (FCU Act) to include full share insurance coverage, beyond the Standard Maximum Share Insurance Amount (SMSIA),² for the net amount held in a noninterest-bearing transaction account by any member or depositor at an insured credit union. Throughout this proposal, the term “noninterest-bearing” should be read as including “nondividend-bearing” to translate the

provisions of the Dodd-Frank Act into credit union terminology.³ Insured credit unions are not required to take any action to receive this additional insurance coverage. The additional coverage provided by Section 343 of the Dodd-Frank Act is temporary through December 31, 2012.

II. The Proposed Rule

Amendments to Share Insurance Rules

Section 343 of the Dodd-Frank Act amends the share insurance provisions of the FCU Act (12 U.S.C. 1787(k)(1)) to provide separate insurance coverage for noninterest-bearing transaction accounts. Accordingly, as discussed in detail below, NCUA proposes to revise its share insurance regulations in 12 CFR Part 745 to include this new temporary share insurance account category.

Definition of Noninterest-Bearing Transaction Account

The proposed rule incorporates the definition of noninterest-bearing transaction account in section 343 of the Dodd-Frank Act. Section 343 defines a noninterest-bearing transaction account as “an account or deposit maintained at an insured credit union with respect to which interest is neither accrued nor paid; on which the account holder or depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and on which the insured credit union does not reserve the right to require advance notice of an intended withdrawal.” This definition of noninterest-bearing transaction account encompasses only traditional, noninterest-bearing demand deposit (checking or share draft) accounts that allow for an unlimited number of deposits and withdrawals at any time,⁴

³ Federal credit unions cannot offer interest-bearing accounts; they can only pay dividends pursuant to the Federal Credit Union Act. Some State chartered, Federally insured credit unions may offer interest-bearing accounts pursuant to their State credit union acts.

⁴ The NCUA Board does not believe the general provisions of Article III, Section 5(a) of the Federal Credit Union Bylaws, or other similar provisions, affect the definition of noninterest-bearing transaction account or the share insurance coverage of this kind of account. Article III, Section 5(a) of the bylaws states that with respect to member withdrawals from share accounts, the Federal credit union’s board of directors has the right, at any time, to require members to give up to 60 days written notice of intention to withdraw the whole or any part of the amounts paid in by members. The NCUA Board considers this a broad, administrative

Continued

¹ Public Law 111–203 (July 21, 2010).

² The SMSIA is defined as \$250,000. 12 CFR 745.1(e).