

# Proposed Rules

Federal Register

Vol. 77, No. 187

Wednesday, September 26, 2012

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-AE02

### Chartering and Field of Membership Manual for Federal Credit Unions

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The NCUA Board (Board) proposes to amend the definition of “rural district” in NCUA’s Chartering and Field of Membership Manual. The proposed amendment to the definition of “rural district” permits a geographic area to qualify as a rural district if, among other criteria, it has a total population that does not exceed the greater of 200,000 people or three percent of the population of the state in which the majority of the district is located. The current definition limits the rural district’s population to 200,000, regardless of the population of the state containing the majority of the rural district.

**DATES:** Comments must be received on or before November 26, 2012.

**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/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.

- *Email:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]—Comments on Notice of Proposed Rulemaking for Chartering and Field of Membership Manual” in the email subject line.

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

- *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:* You may view all public comments on NCUA’s Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments 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 email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

#### FOR FURTHER INFORMATION CONTACT:

Frank Kressman, Associate General Counsel, or Elizabeth Wirick, Staff Attorney, Office of General Counsel, at the above address or by telephone (703) 518-6545, or Robert Leonard, Director, Division of Consumer Access, Office of Consumer Protection, at the above address or by telephone (703) 518-1150.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Credit Union Act (Act), as amended by the Credit Union Membership Access Act of 1998 (CUMAA), establishes requirements for membership in federal credit unions (FCUs). The Act gives the Board broad rulemaking authority over FCUs. 12 U.S.C. 1766(a). NCUA has implemented the Act’s field of membership requirements in its Chartering and Field of Membership Manual (Chartering Manual), incorporated as Appendix B to Part 701 of NCUA’s regulations. 12 CFR Part 701, Appendix B. NCUA also publishes the Chartering Manual as an Interpretative Ruling and Policy Statement (IRPS). The current version of the Chartering Manual is set forth as IRPS 08-2, as amended by IRPS 10-1.

##### Rural District

The Act provides that a community credit union is one organized around a “well-defined local community, neighborhood, or rural district.” 12 U.S.C. 1759(b)(3). In CUMAA, Congress also specifically delegated to the Board the authority to define by regulation the meaning of “well-defined local community” (WDLC) and “rural

district” for FCU charters. 12 U.S.C. 1759(g).

Since CUMAA’s enactment, the agency has gained significant experience in determining the criteria that establish an area as a WDLC or rural district by fully analyzing and processing numerous applications for community charter conversions and expansions. With the benefit of this extensive experience, the Board is concerned that the current population limit associated with establishing a rural district is too restrictive to fulfill the potential of that charter type and is limiting some FCUs’ abilities to serve members in rural America.

##### II. Proposed Change to the Definition of Rural District

The Chartering Manual currently includes two alternative sets of criteria to establish a rural district. One set of criteria is:

- The district has well-defined, contiguous boundaries;
- More than 50% of its population resides in areas the U.S. Census Bureau designates as rural; and

- The district’s total population does not exceed 200,000.

The alternate criteria require:

- The district has well-defined, contiguous boundaries;
- It has a population density of no more than 100 people per square mile; and
- The district’s total population does not exceed 200,000.

12 CFR part 701, Appendix B; Chartering Manual, Chapter 2.V.A.2. Thus, under either alternative, the upper limit on the population of a rural district is currently 200,000 persons.

The Board believes that the limit of 200,000 persons may, in many instances, be too low to sustain a viable rural district FCU for several reasons. A rural area may often be anchored by a small hub city or town. A relatively high portion of individuals living in the rural area may periodically travel to that small hub for shopping, entertainment, medical care or financial services. That hub is important to the rural district for services, and it is important to be included in the rural district to enhance an FCU’s economic potential. Unfortunately, when included in the rural district for chartering purposes, the hub could cause the area to exceed the 200,000 person population limit

under the current definition. Additionally, the Board is aware that it is difficult for an FCU to reach and attract members living in large rural areas with widely dispersed populations. FCUs often incur greater expenses to locate, join, and serve these members than members in a smaller geographic area with a higher population density. Accordingly, a higher potential population is often necessary to ensure the economic viability of many rural district charters.

Since first defining the term rural district in 2010, NCUA has seen only modest usage of the rural district charter. In fact, currently there are fewer than 50 FCUs operating as a rural district charter. For the reasons noted above, the Board believes a higher population limit for an area to be considered a rural district is appropriate. Rather than simply imposing a larger numerical limit to attempt to fit all circumstances, the Board proposes to permit an area to qualify as a rural district if its population does not exceed the greater of (1) 200,000; or (2) three percent of the total population of the state in which the majority of the district is located.

The Board believes the addition of the three percent of state population component is broad enough to enhance an FCU's ability to serve individuals living in rural America, who often suffer from a lack of affordable financial services. The Board also believes that this component is sufficiently limited to permit the designation of a rural district only in geographic areas that are truly rural. Specifically, the enhanced definition will only affect FCUs seeking a rural district located in states with a population above approximately 6.67 million. This is because three percent of the population of states with fewer than 6.67 million people would already be less than the current 200,000 person limit. There are 13 states of this size. This will protect against having a rural district that is unreasonably large in relation to the size and population of a state. The Board has considered using a higher limit but is concerned that a higher limit could result in overly large rural districts. For example, if the limit were set at four percent, then that would affect FCUs seeking rural districts located in states with populations greater than approximately 5 million. This is because four percent of the population of states with fewer than 5 million people would already be less than the current 200,000 person limit. There are 22 states of this size. NCUA believes this higher limit could result in rural districts disproportionately large in relation to states of this size.

Nonetheless, NCUA would appreciate receiving comments on this aspect of the proposal. Additionally, even with the proposed amendment to the definition, the other criteria in the definition not related to total population remain in place and help ensure the definition as a whole does not exceed appropriate boundaries. Although NCUA is not proposing changes to the other criteria in the definition of rural district at this time, NCUA welcomes comments on these aspects of the definition as well.

For FCUs seeking a rural district that includes portions of two or more states, the three percent state population component will be based on the population of the state containing the majority of the proposed rural district. The majority of a multi-state rural district will be based on population rather than geographic areas. For example, if an FCU applies to serve a district with two counties and 100,000 residents in one state, plus one county and 200,000 residents in a second state, the combined population of 300,000 could not exceed three percent of the population of the second state.

FCUs with current rural district charters are grandfathered, but they would also be able to apply to amend their charters based on the proposed criteria. As with all community charters, FCUs serving more populated rural districts must develop business and marketing plans that demonstrate how they will serve their entire community.

### III. Regulatory Procedures

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (primarily those under \$10 million in assets). This proposed rule does not impose any requirements on small credit unions. NCUA has determined that this proposed rule will not have a significant economic impact on a substantial number of small credit unions.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has

determined that this proposed rule does not impose a new information collection requirement or increase an existing burden.

#### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. 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 will 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. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

#### *Treasury and General Government Appropriations Act, 1999*

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

### List of Subjects

#### *12 CFR Part 701*

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 20, 2012.

**Mary Rupp,**

*Secretary of the Board.*

For the reasons set forth above, NCUA proposes to amend Appendix B of 12 CFR part 701 as follows:

### **PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS**

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

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 12 U.S.C. 4311-4312.

#### **Appendix B [Amended]**

2. Revise the fifth paragraph of Section V.A.2 of Chapter 2 of Appendix B to part 701 to read as follows:

## Chapter 2

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

\* \* \* \* \*

The rural district requirement is met if:

- Rural District—
- The district has well-defined, contiguous geographic boundaries;
- More than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the United State Census Bureau; and
- The total population of the district does not exceed the greater of 200,000 people or three percent of the population of the state in which the majority of the district is located; or
- The district has well-defined, contiguous geographic boundaries;
- The district does not have a population density in excess of 100 people per square mile; and
- The total population of the district does not exceed the greater of 200,000 people or three percent of the population of the state in which the majority of the district is located.

\* \* \* \* \*

[FR Doc. 2012-23643 Filed 9-25-12; 8:45 am]

BILLING CODE 7535-01-P

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Parts 702, 741 and 791

RIN 3133-AE07

## Prompt Corrective Action, Requirements for Insurance, and Promulgation of NCUA Rules and Regulations

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

**ACTION:** Proposed rule and Interpretive Ruling and Policy Statement 12-2 with request for comments.

**SUMMARY:** The NCUA Board (Board) proposes to amend Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2, and two NCUA regulations that apply asset thresholds to grant relief from risk-based net worth and interest rate risk requirements. The amended IRPS would result in more robust consideration of regulatory relief for more small credit unions in future rulemakings. The amended regulations would grant immediate and prospective relief from regulatory burden to a larger group of small credit unions.

**DATES:** Send your comments to reach us on or before October 26, 2012. We may not consider comments received after the above date in making our decision on the proposed rule.

**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/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.

• **Email:** Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]—Comments on Proposed Rule 702, 741, 791 and IRPS 12-2” in the email subject line.

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

• **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:** You can view all public comments on NCUA's Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments 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 email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Kevin Tuininga, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6543.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. The Rule as Proposed
- III. Regulatory Procedures

**I. Background**

*A. What changes does this proposed rule make?*

The Regulatory Flexibility Act, Public Law 96-354, as amended (RFA), generally requires federal agencies to determine and consider the impact of proposed and final rules on small entities. Since 2003, the Board has defined “small entity” in this context as a credit union with less than \$10 million in assets.<sup>1</sup> This proposed rule and IRPS 12-2 redefines “small entity” as a credit union with less than \$30 million in assets. The proposed rule also amends 12 CFR 702.103, where a \$10 million asset threshold is used to define a “complex” credit union for

determining whether risk-based net worth requirements apply, and 12 CFR 741.3(b)(5)(i), set to go into effect September 30, 2012, where an asset range of \$10 million to \$50 million is used as part of the determination of whether a federally-insured credit union (FICU) is subject to certain interest rate risk rule requirements.

*B. Why is the Board proposing this rule?*

The Board is proposing this rule and IRPS to implement an updated measure of immediate and prospective regulatory relief for small FICUs across multiple applications, while avoiding undue risk to the National Credit Union Share Insurance Fund (NCUSIF). The Board believes the \$10 million asset threshold used to define “small entity” for purposes of the RFA and for other provisions in NCUA's regulations where the Board has discretion to set asset thresholds is outdated. Increasing these thresholds will account for industry asset growth, consolidation, and inflation. It will provide an updated, reasonable, and historically consistent threshold for FICUs with respect to RFA coverage, regulatory compliance relief, and risk to the NCUSIF.

*C. What is the history and purpose of the RFA?*

Congress enacted the RFA in 1980 and amended it with the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. The RFA in part requires federal agencies to determine whether a proposed rule will have a significant economic impact on a substantial number of small entities.<sup>2</sup> If so, agencies must prepare an analysis that describes the proposed rule's impact on small entities.<sup>3</sup> The analysis must include descriptions of any significant alternatives that minimize the impact.<sup>4</sup> This requirement encourages federal agencies to give special consideration to the ability of smaller entities to absorb compliance burden imposed by new rules.

In 1981, the Board initially defined “small entity” for purposes of the RFA as any credit union with less than \$1 million in assets.<sup>5</sup> IRPS 87-2 superseded IRPS 81-4 but retained the definition of “small entity” as a credit union with less than \$1 million in

<sup>2</sup> 5 U.S.C. 603, 604, 605(b). The term “small entity” as used in the RFA includes small businesses, small organizations, and small government jurisdictions. 5 U.S.C. 601(6). Credit unions fall within the definition of organization. 5 U.S.C. 601(4). The RFA gives agencies authority to establish their own definition of “small entity.” Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> IRPS 81-4, 46 FR 29248 (June 1, 1981).

<sup>1</sup> IRPS 03-2, 68 FR 31949 (May 29, 2003).