PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

3. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

§ 106.6 [Amended]

4. In § 106.6, paragraphs (c) and (f) are removed and reserved.

Dated: December 21, 2009.

On behalf of the Commission,

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–30768 Filed 12–28–09; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD65

Chartering and Field of Membership for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

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

DATES: Comments must be postmarked or received by March 1, 2010.

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/proposedregs/proposedregs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule IRPS 09–1,'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

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

SUPPLEMENTARY INFORMATION:

A. Background and Overview

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

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

The Board has gained broad experience in determining what constitutes a WDLC by analyzing numerous applications for community charter conversions and expansions. In this process, the Board has exercised its regulatory judgment in determining whether, in a particular case, a WDLC exists. This involves applying its expertise to the question of whether a proposed area has a sufficient level of interaction and/or shared common interests to be considered a WDLC. The Board is aware that there is considerable uncertainty among community charter applicants regarding two important issues, particularly in connection with applications involving large multi-jurisdictional areas. The first is how an applicant can best demonstrate the requisite interaction and/or shared common interests of a WDLC. The second is how much evidence is required in a particular case. The primary purpose of this proposal is to eliminate that uncertainty and conserve the economic and human resources of applicants and NCUA. To this end, the Board proposes to define WDLC in terms of objective and quantifiable criteria that, in the Board's opinion, conclusively demonstrate interaction and/or common interests.

Using objective and easy to apply criteria will replace the current, burdensome practice of requiring an applicant to demonstrate the existence of a WDLC using a narrative approach with supporting documents. This approach will enable applicants to easily, quickly, and inexpensively determine, with certainty, if the geographic area they wish to serve is a WDLC.

Under the current proposal, as discussed more fully below, a geographic area would automatically qualify as a WDLC in the following three ways:

1. As a single political jurisdiction less than an entire State, or a defined portion of that single political jurisdiction;

2. As a statistical area limited to 2.5 million or less people, so designated by the Office of Management and Budget (OMB), if it has a single core area and the core satisfies a concentration threshold for employment and population or as a portion of that statistical area provided the smaller area independently meets the same employment and population requirements; and

3. As an existing, previously approved area ''grandfathered'' for use by future applicants.

Additionally, the NCUA Board proposes to define the term ''rural district'' for chartering purposes. The Board believes this will help extend credit union services to individuals living in rural America without adequate access to reasonably priced financial services. Finally, the Board proposes to provide community charter applicants with more detailed guidance on NCUA's expectations regarding the adequacy of an applicant's business and marketing plans required as part of the charter application.

B. Current Community Charter Rules

In the single political jurisdiction context, it is easy to demonstrate that an area is a WDLC, a single, geographically well-defined local community or neighborhood where individuals have common interests and/or interact. A single political jurisdiction such as a city, county, or their political equivalent or any contiguous portion thereof automatically qualifies as a WDLC.

It is much more complicated, however, for an applicant to demonstrate that an area comprised of multiple, contiguous political jurisdictions is a WDLC. In that instance, the current rules require a credit union to submit a narrative describing how the area meets the standards for community interaction and/or common interests with supporting documentation. Supporting documentation often includes information regarding commuting patterns, employment patterns, major trade areas, shared common facilities, organizations and clubs within the requested area, newspaper penetration, festivals, and entertainment centers. Compiling this potentially voluminous amount of information can be difficult, time consuming, and expensive for the applicant and is a wasted effort in those instances where the narrative and supporting documents do not sufficiently make the case for the existence of a WDLC.

Because the nature of the supporting documentation can be subjective, it is time consuming and labor intensive for NCUA to review a narrative application. As part of the process, NCUA often requests the applicant clarify some of the information provided or supply additional information to help NCUA properly analyze the application in accordance with the requirements of the Chartering Manual. While requesting more or clarified information is often necessary for NCUA to make a decision, it increases the credit union's time and expense of preparing a community charter application.

Another problem related to NCUA determining that a multiple, contiguous political jurisdiction is a WDLC based on a narrative application is the risk of litigation. Because the narrative approach is inherently a subjective one, it is vulnerable to legal challenges. NCUA believes it would benefit all involved to eliminate the great expense, effort, and uncertainty associated with the narrative approach in favor of a simpler, more objective method.

Finally, NCUA believes the absence of a regulatory definition of ''rural district'' in NCUA's current chartering rules is an impediment to expanding credit union services to individuals in rural areas.

C. May 2007 Proposal

The NCUA Board issued proposed revisions to the Chartering Manual in May 2007 to clarify and amend NCUA's community chartering policies and solicited public comment on the proposed amendments. 72 FR 30988 (June 5, 2007). In that rulemaking, NCUA sought to clarify the meaning of WDLC. Specifically, the proposal identified single political jurisdictions and statistical areas as presumptive WDLCs and required a credit union seeking a local community consisting of multiple political jurisdictions, if not a presumed WDLC, to provide a narrative with documentation to support that the requested geographical area meets the standards for community interaction and/or common interests. While the May 2007 proposal embraced using more objective standards to determine whether a particular area is a WDLC, it continued to allow community charter applicants to submit narrative applications with supporting documentation in the multiple, political jurisdictions context where there was no presumed WDLC. For the reasons discussed above, that aspect of the proposal is undesirable and would perpetuate the inefficiencies of the current process.

The 2007 proposal also provided that when the narrative approach was required to support the existence of a WDLC, a public notice and comment period would be used to inform the public about the application and assist NCUA in determining if the area was a WDLC. At the time, the Board thought a 30-day public notice and comment period might assist it in its critical analysis of the evidence and provide the public with an opportunity to provide timely comments and relevant information on the proposed local community. The notice and comment provision has become moot because the NCUA Board is proposing to eliminate the continued use of the narrative application.

NCUA had not attempted to define the term ''rural district'' prior to the 2007 proposal, although there is statutory language authorizing credit unions to be chartered to serve a rural district. Rural districts tend to lack the traditional characteristics of interaction or shared common interests found in WDLCs. In 2007, the Board proposed a definition of rural district stating it expected a rural district would be less densely populated than WDLCs NCUA had considered in the past and noted that rural districts frequently lack any centralized urban core or cluster. The Board also stated that although a proposed rural district may include contiguous counties it believed such a district should have a relatively small, widely disbursed, population. The Board proposed to define a rural district as an area that is not in a metropolitan statistical area (MSA) or micropolitan statistical area (MicroSA), as those terms are defined below, has a population density that does not exceed 100 people per square mile, and where the total population does not exceed 100,000. That definition would have excluded the majority of the United States population that lives in and around large urban areas yet, based on census data, still include the vast majority of counties in the United States having fewer than 100,000 persons. Population density varies widely but many counties also have a density of less than 100 persons per square mile. Those requirements would have assured that an area under consideration as a rural district would have a small total population and a relatively light population density.

When developing that proposed definition, the Board considered the criteria other executive branch agencies use as a framework for defining what is rural in the United States. These agencies are the U.S. Census Bureau (Census), OMB, and the Economic Research Service (ERS) of the U.S. Department of Agriculture (USDA). The following table summarizes each agency's definition of what constitutes a rural area.

	Definition of rural area
Census	The Census Bureau defines rural area by exclusion by considering areas *outside* urbanized areas or urban clusters rural. • The Census defines an *urbanized area* as an area consisting of adjacent, densely settled, census block groups and census blocks that meet minimum population density requirements. The urbanized area definition also includes adjacent densely settled census blocks that collectively have a population of at least 50,000 people.

	Definition of rural area
	• The Census defines *urban clusters* as contiguous, densely settled, census block groups and census blocks that meet minimum population density requirements. This definition also includes adjacent densely settled census blocks that collectively have populations ranging from 2,500 to less than 50,000 people. • The Census Bureau relies upon the standards implemented by the OMB, as discussed below, for classifying areas as metropolitan areas. The Census Bureau considers all other areas rural. [*Reference: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-6186-filed.pdf.*]
OMB	The OMB defines MSAs, or metropolitan areas, as central (core) counties with one or more urbanized areas, and outlying counties that are economically tied to the core counties as measured by work commuting. OMB uses the MicroSA classification to identify a non-metro county with an urban cluster of at least 10,000 persons or more. Non-core counties are neither micro nor metro. Agencies outside of OMB often designate non-metro counties as rural. [*Reference: http://www.whitehouse.gov/omb/bulletins/fy2007/b07-01.pdf.*]
ERS	ERS of the USDA considers areas rural if the OMB has not designated any part of the area as an MSA or core county. ERS also consider some areas designated by OMB as MSAs rural based on their assessments of Census data and other agency research. ERS has developed several classifications to measure rurality within individual MSAs. ERS researchers who discuss conditions in rural America refer to non-MSA areas that include both micropolitan and non-core counties as rural areas. When the OMB classifies an area as a MicroSA, the ERS still considers these areas rural according to their definition. Rurality is a term used by the USDA ERS to explain the rural nature of an area. [*Reference: http://www.ers.usda.gov/Briefing/Rurality/WhatIsRural/.*]

The Census Bureau, the OMB, and the ERS all provide definitions of rurality based on their analysis of 2000 census data. *See* 72 FR 30988, 30992 (June 5, 2007).

After a review of the comments, and upon further consideration, the Board believes the definition of rural district proposed in 2007 does not adequately reflect the unique nature of rural areas. Accordingly, the Board proposes a revised definition of rural district in the current proposal, as discussed below, that it believes is easier to apply and better reflects NCUA's goal to use a simpler, more objective approach to reviewing community charter applications.

D. Current Proposal

Upon further reflection, including having considered the public comments to the May 2007 proposed rule, the NCUA Board has decided to issue this proposal as a substitute for the May 2007 proposal. As noted, some provisions of the May 2007 proposal have been brought forward into the current proposal without change, while others have been modified or eliminated. NCUA believes the current proposal is a better method for improving the community charter policies of NCUA's Chartering Manual.

1. Well Defined Local Communities

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

a. WDLCs

i. Single Political Jurisdictions

The FCUA provides that a ''community credit union'' consists of ''persons or organizations within a well-defined local community, neighborhood, or rural district.'' 12 U.S.C. 1759(b)(3). The FCUA expressly requires the Board to apply its regulatory expertise and define what constitutes a WDLC. 12 U.S.C. 1759(g). It has done so in the Chartering Manual, Chapter 2, Section V, Community Charter Requirements. In 2003, the Board, after issuing notice and seeking comments, issued IRPS 03–1 that stated any county, city, or smaller political jurisdiction, regardless of population size, is by definition a WDLC. 68 FR 18334, 18337 (Apr. 15, 2003). An entire State is not acceptable as a WDLC. Under this definition, no documentation demonstrating that the political jurisdiction is a WDLC is required.

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

ii. Statistical Areas

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

The Board's experience has been that WDLCs can come in various population and geographic sizes. While the statutory language 'local community' does imply some limit, Congress has directed NCUA to establish a regulatory

definition consistent with the mission of credit unions. While single political jurisdictions below the State level meet the definition of a WDLC, nothing precludes a larger area comprised of multiple political jurisdictions from also meeting the regulatory definition. There is no statutory requirement or economic rationale that compels the Board to charter only the smallest WDLC in a particular area.

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

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

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

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

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

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

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

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

CBSA—''A statistical geographic entity consisting of the county or counties associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and Micropolitan Statistical Areas are the two categories of Core Based Statistical Areas.'' 65 FR 82238 (Dec. 27, 2000).

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

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

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

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

Historically, commuting has been an uncomplicated method of demonstrating functional integration. NCUA agrees with OMB's conclusion that ''Commuting to work is an easily understood measure that reflects the social and economic integration of geographic areas.'' 65 FR 82233 (Dec. 27, 2000). The Board also finds compelling OMB's conclusion that commuting patterns within statistical areas demonstrate a high degree of social and economic integration with the central county. OMB's threshold for qualifying a county as an outlying county eligible for inclusion in either a MSA or MicroSA is a threshold of 25% inter-county commuting. OMB also considers a multiplier effect (a standard method used in economic analysis to determine the impact of new jobs on a local economy) that each commuter would have on the economy of the

county in which he or she lives and notes that a multiple of two or three generally is accepted by economic development analysts for most areas. 65 FR 82233 (Dec. 27, 2000).

''Applying such a measure in the case of a county with the minimum 25 percent commuting requirement means that the incomes of at least half of the workers residing in the outlying county are connected either directly (through commuting to jobs located in the central county) or indirectly (by providing services to local residents whose jobs are in the central county) to the economy of the central county or counties of the CBSA within which the county at issue qualifies for inclusion.'' 65 FR 82233 (Dec. 27, 2000).

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

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

Also, the Board acknowledges that not all areas of the country are the same and there may be a CBSA that does not contain a sufficiently dominant core area or contains several significant core areas. Such situations also dilute the cohesiveness of a CBSA. For these reasons, the Board proposes to require that a CBSA contain a dominant core city, county, or equivalent that contains the majority of all jobs and ⅓ of the total population contained in the CBSA in order to meet the definition of a WDLC. These additional requirements will assure that the core area dominates any other area within the CBSA with respect to jobs and population. Applicants can find information about an area's population and number of local jobs, based upon an analysis of where people who work in an area reside, at the Census' Internet site (*http://www.census.gov*). Information about the current definitions of CBSAs is available at OMB's Internet site (*http://www.whitehouse.gov/omb*). Community charter applications for part of a CBSA are acceptable provided they include the dominant core city, county, or equivalent.

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

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

NCUA believes the presence of these criteria clearly demonstrate that individuals in those communities have sufficient interaction and/or common interests. As previously mentioned, NCUA believes this more objective approach will benefit all involved by making the application and review process faster, simpler, and less labor intensive, and will provide a more certain outcome. Also, using objective criteria as the basis for granting a community charter will help ensure that NCUA makes consistent and uniform decisions from regional office to regional office.

Finally, an applicant that does not wish to serve an entire single political jurisdiction or statistical area that is defined as a WDLC may apply for a portion of that area. With respect to single political jurisdictions, the existing community definition will still apply. With respect to statistical areas, for reasons discussed throughout, the definition does not automatically apply. Rather, the applicant must demonstrate that the portion of the statistical area it wishes to serve independently satisfies the criteria for establishing a statistical area is a WDLC that meets the required population and employment criteria as discussed throughout.

2. Narrative Approach

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

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

To put this in perspective, NCUA analyzed the sixty-one largest statistical areas in the United States, based on 2007 population estimates, to determine how many would qualify as WDLCs under the proposed policy changes. Eleven of those statistical areas contain metropolitan divisions. Of the sixty-one statistical areas, twenty-seven would qualify in their entirety. Of the remaining thirty-four statistical areas that would not qualify as WDLCs as a whole, NCUA found virtually all of the areas encompass smaller segments that would include a majority of the statistical area's residents by virtue of: (1) Having a large single political jurisdiction within the statistical area; (2) having been previously approved as a WDLC by the NCUA Board; or (3) containing a metropolitan division that would qualify as a WDLC on its own.

3. Grandfathered WDLCs

An area previously approved by NCUA as a WDLC, prior to the effective date of any amendment to the Chartering Manual, in the event the subject proposed amendments are finalized, will continue to be considered a WDLC for subsequent applicants who

wish to serve that exact geographic area. After that effective date, an applicant applying for a geographic area that is not exactly the same as the previously approved WDLC must comply with the Chartering Manual's WDLC criteria then in place.

4. Rural District

NCUA is proposing a different definition of ''rural district'' from that in the May 2007 proposal. For the same reasons discussed with respect to WDLCs, the NCUA Board believes the definition of a rural district should be based on quantifiable and objective criteria. The Board continues to believe that a rural district should be less densely populated and smaller in population than those areas that qualify as a WDLC.

The NCUA Board proposes to define a rural district as a contiguous area that has more than 50% of its population in census blocks that are designated as rural and the total population of the area does not exceed 100,000 persons. These requirements will ensure that a rural district has both a small total population and a majority of its population in areas classified as rural by Census. The Board believes this definition will help credit unions serve future members in areas that currently have few financial services options. In addition, the Board believes there will be minimal overlap between the definitions of ''rural district'' and ''statistical area'' but recognizes that the definitions of ''rural district'' and ''single political jurisdiction'' could overlap in some cases.

5. Underserved Communities

The FCUA defines an underserved area as a local community, neighborhood, or rural district that is an ''investment area'' as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The Board proposes to amend the language in the Chartering Manual's underserved communities section concerning the ''local community, neighborhood, or rural district'' requirement to conform it with the proposed new definitions of WDLC and rural district by referring the reader to Chapter 2 for the actual text of the definitions. This change will avoid confusion and eliminate any need for future changes to the underserved communities section in the event additional changes are made to the definitions in Chapter 2.

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

Using data supplied by NCUA, the ''concentration of facilities'' methodology compares the ratio of depository institution facilities to the population within a proposed area's ''non-distressed'' portions against the same facilities-to-population ratio in the proposed area as a whole. When that ratio in the area as a whole shows more persons per facility than does the same ratio in the ''non-distressed'' portions, the rule deems the area to be ''underserved by other depository institutions.'' Since the final rule was adopted, a perception has arisen that this methodology is an obstacle to establishing that an area which clearly meets the ''economic distress criteria'' also is ''underserved by other depository institutions'' as required for the area to qualify as underserved. For example, there could be a distressed area that contains more financial institutions than a non-distressed area, but the products and services offered by the financial institutions in the distressed area are geared to businesses and high-income individuals. In this instance, the distressed area would not qualify as underserved despite truly lacking affordable financial services for low to moderate income individuals. Accordingly, the NCUA Board invites public comment on alternative methodologies, based on publicly accessible data about both credit unions and other depository institutions, for implementing the Act's ''underserved by other depository institutions'' criterion.

6. Ability To Serve and Marketing Plans

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

Under the current Chartering Manual, a credit union converting to or expanding its community charter must provide ''a marketing plan that addresses how the community will be served.'' The Board proposes clarifying NCUA's marketing plan requirement to provide credit unions with additional guidance on NCUA's expectations. FCUs need to be realistic in assessing their ability to serve a particular community. For example, an FCU with $150 million in assets cannot reasonably expect to be able to serve a community of 1.5 million people. NCUA believes that a meaningful marketing plan must demonstrate, in detail:

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

These requirements will serve to ensure that if the community charter is granted, the credit union will be well positioned to safely serve the entire community. Additionally, the appropriate regional office will follow up with an FCU every year for three years after the FCU has been granted a new or expanded community charter, and at any other intervals NCUA believes appropriate, to determine if the FCU is satisfying the terms of its marketing and business plans. An FCU failing to satisfy those terms will be subject to supervisory action. As part of this review process, the regional office will report to the NCUA Board instances where an FCU is failing to satisfy the terms of its marketing and business plan and indicate what administrative actions the region intends to take.

NCUA recognizes that determining from a marketing plan if an FCU has the ability to serve a particular WDLC requires some degree of subjectivity, and NCUA believes its substantial experience enables it to make that determination. NCUA would prefer, however, to receive comments from interested parties on whether there are other more objective ways to measure an FCU's ability to serve a particular WDLC.

7. Timing

NCUA will accept community charter applications based only on grandfathered WDLCs, as discussed above, and single political jurisdictions between the issuance of this proposal on December 17, 2009 and the effective date of any final amendments the Board adopts regarding the Chartering Manual. NCUA will accept all community charter applications, based on any permitted criteria, on or after that effective date. Those applications will be considered under the revised version of NCUA's community chartering policies as amended by this proposal.

8. Emergency Mergers

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

NCUA must first determine that a credit union is either insolvent or in danger of insolvency before it makes the additional findings that an emergency exists, other alternatives are not reasonably available, and that the public interest would be served by the merger. The statute, however, does not define when a credit union is ''in danger of insolvency'' nor has NCUA previously issued a formal definition. NCUA now believes it advisable to adopt an objective standard to aid it in making the ''in danger of insolvency'' determination. This will provide certainty and consistency in how NCUA interprets the standard.

NCUA believes that a credit union is in danger of insolvency if it falls into one or more of the following three categories:

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

2. The credit union's net worth is declining at a rate that will take it under two percent (2%) net worth within 12 months. A credit union with a net worth ratio of less than two percent (2%) falls into the PCA category of ''critically undercapitalized.'' 12 U.S.C. 1790d(c)(1)(E); 12 CFR 702.102(a)(5). Congress, in adding the PCA mandates to the Act, created a presumption that a critically undercapitalized credit union should be liquidated or conserved if its financial condition does not improve within a short period. 12 U.S.C. 1790d(i); 12 CFR 702.204(c). Note also that NCUA staff reviewed State credit union statutes and found that the Illinois Credit Union Act defines a credit union as ''in danger of insolvency'' if its net worth to asset ratio falls below two percent (2%).[2] This is the same as the critically undercapitalized net worth category under NCUA's PCA provisions.

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

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

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

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

E. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions, primarily those under ten million dollars in assets. The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

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

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

[2] 17 Ill. Comp. Stat. Ann. 305/1.1. An alternative definition of danger of insolvency under the Illinois statute is if the State supervisory authority is unable to ascertain, upon examination, the true financial condition of the credit union. *Id.*

paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects 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 that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order because it only applies to Federal credit unions.

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

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

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 17, 2009.

Mary Rupp,

Secretary of the Board.

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

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNION

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.,* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions, also known as the Chartering and Field of Membership Manual, are set forth in appendix B to this part and are available on-line at *http://www.ncua.gov* .

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

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

* * * * *

II.D.2—Emergency Mergers

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

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

* * * * *

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

III.D.2—Emergency Mergers

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

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

* * * * *

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

IV.D.3—Emergency Mergers

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

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

* * * * *

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

Chapter 2

V.A.1—General

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

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

NCUA has established the following requirements for community charters:

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

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

In addition to the documentation requirements in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

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

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

The well-defined local community requirement is met if:

- *Single Political Jurisdiction*—The area to be served is in a recognized single political jurisdiction, *i.e.,* a city, county, or their political equivalent, or any contiguous portion thereof.
- Statistical Area—
- The area is a designated Core Based Statistical Area (CBSA) or part thereof, or in the case of a CBSA with Metropolitan Divisions, the area is a Metropolitan Division or part thereof; and
- The area contains a city, county or equivalent with a majority of all jobs in the CBSA or metropolitan division; and
- The city, county or equivalent contains at least ⅓ of the CBSA's or metropolitan division's total population; and
- The area must have a population of 2.5 million or less people.

The rural district requirement is met if:

- Rural District—
- The district has well-defined, contiguous geographic boundaries;
- More than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the United States Census Bureau; and
- The total population of the district does not exceed 100,000 people.

The OMB definitions of CBSA and Metropolitan Division may be found at 65 FR 82238 (Dec. 27, 2000). They are incorporated herein by reference. Access to these definitions is available through the main page of the **Federal Register** Web site at *http://www.gpoaccess.gov/fr/index.html* and on NCUA's Web site at *http://www.ncua.gov*.

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

V.A.3—Previously Approved Communities

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

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

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development and promotion of savings programs and in the collection of loans. Accordingly, to support an application for a community charter, an applicant Federal credit union must develop a business plan incorporating the following data:

- *Pro forma* financial statements for a minimum of 24 months after the proposed conversion, including the underlying assumptions and rationale for projected member, share, loan, and asset growth;
- Anticipated financial impact on the credit union, including the need for additional employees and fixed assets, and the associated costs;
- A description of the current and proposed office/branch structure, including a general description of the location(s); parking availability, public transportation availability, drive-through service, lobby capacity, or any other service feature illustrating community access;
- A marketing plan addressing how the community will be served for the 24-month period after the proposed conversion to a community charter, including detailing: how the credit union will implement its business plan; the unique needs of the various demographic groups in the proposed community; how the credit union will market to each group, particularly underserved groups; which community-based organizations the credit union will target in its outreach efforts; the credit union's marketing budget projections dedicating greater resources to reaching new members; and the credit union's timetable for implementation, not just a calendar of events;
- Details, terms and conditions of the credit union's financial products, programs, and services to be provided to the entire community; and
- Maps showing the current and proposed service facilities, ATMs, political boundaries, major roads, and other pertinent information.

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

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

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

V.A.5—Community Boundaries

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

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

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

V.A.6—Special Community Charters

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

V.A.7—Sample Community Fields of Membership

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

- Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine;
- Persons who live, worship, work (or regularly conduct business in), or attend school on the University of Dayton campus, in Dayton, Ohio;
- Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York;
- Persons who live, work, or worship in the Binghamton, New York, MSA, consisting of Broome and Tioga Counties, New York (a qualifying CBSA in its entirety);
- Persons who live, work, worship, or attend school in the portion of the Oklahoma City, OK MSA that includes Canadian and Oklahoma counties, Oklahoma (two contiguous counties in a portion of a qualifying CBSA that has seven counties in total); or
- Persons who live, work, worship, or attend school in Adams County and Lincoln County, Wyoming, a rural district.

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

- Persons who live or work within and businesses located within a ten-mile radius of Washington, DC (using a radius does not establish a well-defined area);
- Persons who live or work in the industrial section of New York, New York. (not a well-defined neighborhood, community, or rural district); or
- Persons who live or work in the greater Boston area. (not a well-defined neighborhood, community, or rural district).

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

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

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

V.D.2—Emergency Mergers

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

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and

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

* * * * *

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

9. The glossary to appendix B to part 701 is amended by adding a definition of ''in danger of insolvency'' to be added in alphabetical order to read as follows:

* * * * *

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

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

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

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

* * * * *

[FR Doc. E9–30557 Filed 12–28–09; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. SW014; Notice No. 29–014–SC]

Special Conditions: Erickson Air-Crane Incorporated S–64E and S–64F Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Erickson Air-Crane Incorporated (Erickson Air-Crane) S–64E and S–64F rotorcraft. These rotorcraft have novel or unusual design feature(s) associated with being transport category rotorcraft designed only for use in heavy external-load operations. At the time of original type certification, a special condition was issued for each model helicopter because the applicable airworthiness regulations did not contain adequate or appropriate safety standards for turbine-engine rotorcraft or for rotorcraft with a maximum gross weight over 20,000 pounds that were designed solely to perform external-load operations. At the request of Erickson Air-Crane, the current type certificate (TC) holder for these helicopter models, we propose the following to resolve reported difficulty in applying the existing special conditions and to eliminate any confusion that has occurred in Erickson's dealings with a foreign authority. Specifically, we are proposing to consolidate the separate special conditions for each model helicopter into one special condition to clarify and more specifically reference certain special condition requirements to the regulatory requirements, to add an inadvertently omitted fire protection requirement, to recognize that occupants may be permitted in the two observer seats and the rear-facing operator seat during other than external-load operations, and to clarify the requirements relating to operations within 5 minutes of a suitable landing area.

The requirements in this special condition continue to contain safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards existing at the time of certification.

DATES: We must receive your comments by February 12, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration (FAA), Rotorcraft Standards Staff, Attention: Docket No. SW014 (ASW–111), Fort Worth, Texas 76193–0110. You may deliver two copies to the Rotorcraft Standards Staff (ASW–111) at 2601 Meacham Blvd., Fort Worth, Texas 76137. You must mark your comments: Docket No. SW014. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m. The docket is maintained in the Rotorcraft Directorate at 2601 Meacham Blvd., Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Stephen Barbini, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff (ASW–111), Fort Worth, Texas 76193–0110, telephone (817) 222–5196, facsimile (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested persons to take part in this rulemaking by sending written comments, data, or views on the changes made by this special condition, which are detailed in the Discussion section of this preamble. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel on these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 27, 1967, Sikorsky Aircraft Corporation (Sikorsky) filed an application for type certification for its Model S–64E helicopter. This rotorcraft is the civil version of the United States Army Model CH–54A flying crane. The S–64E has a maximum weight of approximately 30,000 pounds when flying only with internal fuel loadings and personnel, and without external loads. It has a maximum weight of 42,000 pounds, of which a maximum of 20,000 pounds may be external loads. Type certificate H6EA was issued on August 21, 1969, which included special condition No. 29–6–EA–2. This special condition includes conditions for type certification for carrying Class B external loads.

On April 2, 1969, Sikorsky filed for an amendment to its type certificate to add the Model S–64F. This aircraft is the civil version of the United States Army Model CH–54B flying crane. The S–64F has a maximum weight of approximately 30,000 pounds when flying only with internal fuel loadings