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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: Final rule.

SUMMARY: The NCUA Board (Board) is amending the definition of “rural district” in NCUA’s Chartering and Field of Membership Manual. The amendment 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 250,000 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 people without regard to the population of the state containing the majority of the rural district.

DATES: This rule is effective [Insert date 30 days following date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, or Elizabeth Wirick, Staff Attorney, Office of General Counsel, at (703) 518-6545, or Robert Leonard, Director, Division of Consumer Access, Office of Consumer Protection, at (703) 518-1140.

SUPPLEMENTARY INFORMATION:

I. Background

II. Public Comments

III. Regulatory Procedures

I. BACKGROUND

A. Statutory framework and the proposed rule.

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 provides that a community credit union is one organized around a “well-defined local community, neighborhood, or rural district.”¹ In CUMAA, Congress specifically delegated to the

¹ 12 U.S.C. 1759(b)(3).

Board the authority to define by regulation the meaning of “well-defined local community” (WDLC) and “rural district” for FCU charters.²

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 analyzing and processing numerous applications for community charter conversions and expansions. With the benefit of this experience, the Board has determined that the current population limit of 200,000 people associated with establishing a rural district is too restrictive to fulfill the potential of that charter type and is limiting some FCUs’ ability to serve members in rural areas. Accordingly, the Board issued a proposed rule in September 2012 to increase the population limit associated with rural districts.³ Specifically, the proposed rule permitted 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.

B. Final rule.

Among other criteria, the final rule permits an area to qualify as a rural district if its population does not exceed the greater of 250,000 people or three percent of the population of the state in which the majority of the district is located. As revised by the final rule, NCUA’s Chartering and Field of Membership Manual⁴ continues to include two alternative sets of criteria to establish a rural

² 12 U.S.C. 1759(g).

³ 77 FR 59137 (Sept. 26, 2012).

⁴ NCUA has implemented the Act’s field of membership requirements in its Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of NCUA’s regulations. 12 CFR part 701, Appendix B. NCUA also publishes the manual as an Interpretative Ruling and Policy

district. One set requires that the district have well-defined, contiguous boundaries and more than 50% of its population must reside in areas the U.S. Census Bureau designates as rural. The other set of criteria requires that the district have well-defined, contiguous boundaries and a population density of no more than 100 people per square mile. Under either set of criteria, the population of a rural district may not exceed the greater of 250,000 or three percent of the population of the state in which the majority of the district is located.

As with all community charters, FCUs serving rural districts must develop business and marketing plans that demonstrate how they will serve their entire community.

The practical effect of the revised definition is that it allows rural districts of up to 250,000 persons in all states, and, in the 11 most populous states, rural districts may exceed the 250,000 person limit.⁵ Despite the focus on the population aspect of the definition of rural district, the other criteria in the definition not related to population remain in place and help ensure the definition as a whole does not exceed appropriate boundaries.

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 area. For example, if an FCU applies to serve a district with two

Statement (IRPS). The current version of the manual is set forth as IRPS 08-2, as amended by IRPS 10-1.

⁵ With respect to the three percent of state population component, the amended definition will only affect FCUs seeking a rural district located in states with a population above approximately 8.83 million. This is because three percent of the population of states with fewer than 8.83 million people would already be less than the 250,000 person limit.

geographically large counties and 100,000 residents in state A, plus one geographically small county and 200,000 residents in state B, the combined population of 300,000 could not exceed three percent of the population of state B.

C. How is the final rule different from the proposed rule?

The proposal would have allowed rural districts of up to 200,000 people or three percent of a state's population, whichever is greater. As discussed in more detail below, the final rule allows rural districts of up to 250,000 people or three percent of a state's population, whichever is greater.

II. PUBLIC COMMENTS

NCUA received 16 comments on the proposal: three from trade associations, nine from state credit union leagues, and four from FCUs. Fourteen commenters supported the proposed rule but urged NCUA to make other changes to the definition of rural district so more FCUs could benefit. One commenter supported the proposal without additional suggestions. Only a banking trade association opposed the proposal.

The commenters who encouraged NCUA to make additional changes mostly expressed concern that the proposal would benefit only credit unions in the most populous states. Many commenters suggested that increasing the population limit for a rural district would enhance the availability of rural district-based community charters. Two commenters suggested using a population limit of 500,000 persons, and another two commenters suggested the population should be limited to the

greater of 500,000 or four percent of a state's population. Six commenters stated the definition of rural district should be contiguous areas in a state with a total district population of less than 500,000. As discussed in the preamble to the proposed rule, NCUA is seeking a balance that permits rural districts to include a sufficient number of potential credit union members to make this a realistic chartering option in more areas, without permitting rural districts to become overly large.

The Board believes that many of the commenters have suggested population limits that would result in overly large rural districts. The Board's longstanding view is that a community charter should not encompass an entire state.⁶ For example, the 500,000 member limit suggested by many of the commenters constitutes the majority of the population in seven states⁷ and the District of Columbia. Accordingly, this suggested limit violates in principle the Board's position of restricting community charters to appropriate sizes. The 500,000 person limit also exceeds the balance the Board seeks between permitting rural districts to be large enough to be economically viable but not unreasonably or unnecessarily large taking into account the purpose of the rural district. Although the Board believes a 500,000 person population limit is too large, the Board agrees with commenters that an increase from the current 200,000 person limit is warranted. Accordingly, the Board has determined to increase the population limit for rural districts to the greater of 250,000 or three percent of the population of the state containing the rural district. Increasing the population limit to 250,000 will potentially benefit FCUs in all geographic locations, not only the 11 most populous states, but is not so drastic an increase to dilute the integrity of the purpose of rural

⁶ 75 FR 36257 (June 25, 2010).

⁷ These states are Montana, Delaware, South Dakota, Alaska, North Dakota, Vermont, and Wyoming.

districts. In other words, the Board believes this incremental increase to 250,000 reaches the balance discussed above.

The Board took into account similar considerations and applied a similar analysis in establishing the “three percent of state population” component in the definition. As noted in the preamble to the proposed rule, the Board is concerned that many rural districts are centered around a small hub city or town. When the population of the hub is included in the rural district’s total population, it often can cause the total population to exceed the 250,000 person limit.⁸ This is problematic because the inclusion of such hub cities or towns is often necessary for some rural districts to be economically viable. The addition of the three percent of state population component to the definition, as introduced in the proposed rule, potentially increases the size of a rural district.

In the discussion of the proposed rule, the Board also noted that FCUs in rural areas often have greater expenses to locate, join and serve members than FCUs whose membership is less geographically dispersed.⁹ As a result, a higher potential population is required to ensure the economic viability of many rural district charters. The proposal would have offered the higher potential population limit only to FCUs in the most populous states. The final rule increases the population limit for all FCUs.

Commenters also offered a variety of suggested changes to other components of the definition of rural district. The current definition of rural district also requires that either: (1) more than 50% of the district’s population resides in areas designated as rural by the U.S. Census Bureau; or (2) the

⁸ 77 FR 59137, 59138 (Sept. 26, 2012).

⁹ Id.

proposed district has a population density of no more than 100 people per square mile. Five commenters queried whether the definition of rural district requires any component based on census tract data, and one commenter suggested the 100 person per square mile limit is too low. Several commenters also proposed alternatives for these criteria. The Board has carefully considered these suggestions but is not making any changes to the other, existing components of the definition.

Six commenters requested that existing rural district-based FCU charters be grandfathered, but also allowed to apply for an expanded area under any new definition adopted. The Board reiterates that FCUs with current rural district charters are grandfathered, and they are able to apply to amend their charters based on the adopted definition.

III. REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (primarily those under \$50 million in assets).¹⁰ This rule does not impose any requirements on small credit unions. NCUA has determined that this final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

¹⁰ 5 U.S.C. 603(a).

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.¹¹ 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 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 rule only applies to FCUs and 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 rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

¹¹ 44 U.S.C. 3507(d); 5 CFR part 1320.

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.¹²

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996¹³ (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.¹⁴ NCUA expects that the Office of Management and Budget will determine that the final rule is not a “major rule” for purposes of SBREFA.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 21, 2013.

Mary Rupp

Secretary of the Board

¹² Pub. L. 105-277, 112 Stat. 2681 (1998).

¹³ Pub. L. 104-121, 110 Stat. 857 (1996).

¹⁴ 5 U.S.C. 551.

For the reasons set forth above, the National Credit Union Administration amends 12 CFR part 701 as follows:

PART 701 – ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 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.

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

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

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Chapter 2

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

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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 250,000 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 250,000 people or three percent of the population of the state in which the majority of the district is located.

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[FR Doc. 2013-04647 Filed 02/27/2013 at 8:45 am; Publication Date: 02/28/2013]