

Federal agency means a Government agency such that any liability in tort based on the activities of such agency would be satisfied by funds appropriated by the Congress and paid out of the United States Treasury.

Financial protection means the ability to respond in damages for public liability and to meet the cost of investigating and defending claims and settling suits for such damages.

Government agency means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

Nuclear reactor means any apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction.

Person means:

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department, except that the Department shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Plutonium processing and fuel fabrication plant means a plant in which the following operations or activities are conducted:

(1) Operations for manufacture of reactor fuel containing plutonium, where the license or licenses authorize the possession of either five or more kilograms of plutonium, excluding that contained in sealed sources and welded or otherwise sealed unirradiated or irradiated fuel rods, at the site of the plant or authorize the processing of one or more kilograms of plutonium, excluding that contained in sealed sources and welded or otherwise sealed unirradiated or irradiated fuel rods, at the plant, including any of the following processes:

(i) Preparation of fuel material;

(ii) Formation of fuel material into desired shapes;

(iii) Application of protective cladding;

(iv) Recovery of scrap material; and

(v) Storage associated with such operations; or

(2) Research and development activities involving any of the operations described in paragraph (1) of this definition, except for research and development activities where the operator is licensed to possess or use plutonium in amounts less than those specified in paragraph (1).

Source material means source material as defined in the regulations contained in part 40 of this chapter.

Special nuclear material means:

(1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

Testing reactor means a nuclear reactor which is of a type described in § 50.21(c) of this chapter and for which an application has been filed for a license authorizing operation at:

(1) A thermal power level in excess of 10 megawatts; or

(2) A thermal power level in excess of 1 megawatt, if the reactor is to contain:

(i) A circulating loop through the core in which the applicant proposes to conduct fuel experiments; or

(ii) A liquid fuel loading; or

(iii) An experimental facility in the core in excess of 16 square inches in cross-section.

Uranium enrichment facility means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

§ 140.13a [Amended]

■ 24. In § 140.13a(a), in the last sentence, add the word “specified” before “in § 140.15”.

§ 140.22 [Amended]

■ 25. In § 140.22, remove the word “Committee” and add in its place the word “Commission”.

Dated at Rockville, Maryland, this 22nd day of June 2018.

For the Nuclear Regulatory Commission.

Pamela J. Shepherd-Vladimir,

Acting Chief, Regulatory Analysis and Rulemaking Support Branch, Office of Nuclear Material Safety and Safeguards.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE31

Chartering and Field of Membership

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its chartering and field of membership rules with respect to applicants for a community charter approval, expansion or conversion. The Board will allow the option for an applicant to submit a narrative to establish the existence of a well-defined local community instead of limiting the applicant to a presumptive statistical community. Also, the Board will hold a public hearing for narrative applications where the proposed community exceeds a population of 2.5 million people. Further, for communities that are subdivided into metropolitan divisions, the Board will permit an applicant to designate a portion of the area as its community without regard to division boundaries.

DATES: The final rule becomes effective September 1, 2018.

FOR FURTHER INFORMATION CONTACT: For program issues: Martha Ninichuck, Director; JeanMarie Komyathy, Deputy Director; Robert Leonard, Assistant Director; or Rita Woods, Assistant Director, Office of Credit Union Resources and Expansion (CURE), at 1775 Duke Street, Alexandria, VA 22314 or telephone (703) 518–1140. For legal issues: Marvin Shaw, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6553.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

The NCUA’s Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of the NCUA regulations (“Chartering Manual”),¹

¹ Appendix B to 12 CFR part 701 (“Appendix B”).

implements the field of membership (“FOM”) requirements established by the Federal Credit Union Act (“Act”) for federal credit unions (“FCU”).² An FOM consists of those persons and entities eligible for membership based on an FCU’s type of charter.

In adopting the Credit Union Membership Access Act of 1998 (“CUMAA”), Congress reiterated its longstanding support for credit unions, noting their “specific mission of meeting the credit and savings needs of consumers, especially persons of modest means.”³ As amended by CUMAA, the FCU Act provides a choice among three charter types: A single group sharing a single occupational or associational common bond;⁴ a multiple common bond of groups that each have a distinct occupational or associational common bond among group members;⁵ and a community common bond among “persons or organizations within a well-defined local community, neighborhood, or rural district.”⁶

Congress has delegated to the Board broad authority in the FCU Act to define what constitutes a well-defined local community (“WDLC”), neighborhood, or rural district for purposes of “making any determination” regarding a community credit union,⁷ and to establish applicable criteria for any such determination.⁸ To qualify as a WDLC, neighborhood, or rural district, the Board requires the proposed area to have “specific geographic boundaries,” such as those of “a city, township, county (single or multiple portions of a county) or their political equivalent, school districts or a clearly identifiable neighborhood.”⁹ The boundaries themselves may consist of political borders, streets, rivers, railroad tracks, or other static geographical features.¹⁰ The Board continues to emphasize that common interests or interaction among residents within those boundaries are essential features of a local community.

Until 2010, the Chartering Manual required FCUs seeking to establish an area as a WDLC to submit for NCUA approval a narrative, supported by documentation, that demonstrated indicia of common interests or interaction among residents of a proposed community (the “narrative model”) if the community extended

beyond a single political jurisdiction.¹¹ A WDLC is required to consist of contiguous areas, and the Chartering Manual previously included the term “contiguous” in its text.¹² In 2010, the Board replaced the narrative model in favor of an objective model that provided credit unions a choice between two statistically based “presumptive communities” that each by definition qualifies as a WDLC (the “presumptive community model”).¹³ In doing so, the Board inadvertently removed the term “contiguous” from the Chartering Manual, but did not intend to remove the requirement that the relevant areas be contiguous.

One kind of presumptive community is a “Single Political Jurisdiction . . . or any contiguous portion thereof” (“SPJ”), regardless of population.¹⁴ The second is a single Core Based Statistical Area (“CBSA”¹⁵) as designated by the U.S. Census Bureau (“Census”) or a well-defined portion thereof, which under

¹¹ 75 FR 36257 (June 25, 2010).

¹² 68 FR 18334 (April 15, 2003) “The well-defined local community, neighborhood, or rural district may be met if: The area to be served is multiple contiguous political jurisdictions, *i.e.*, a city, county, or their political equivalent, or any *contiguous* portion thereof and if the population of the requested well-defined area does not exceed 500,000 . . .”

¹³ As explained in the final rule that discontinued the use of the narrative model, the Board “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 [the proposed rule] noted, the narrative approach is cumbersome, difficult for credit unions to fully understand, and time consuming. . . . While not every area will qualify as a WDLC under the statistical approach, NCUA stated it believes the consistency of this objective approach will enhance its chartering policy, assure the strength and viability of community charters, and greatly ease the burden for any community charter applicant.” 75 FR 36257, 36260 (June 25, 2010).

¹⁴ Appendix B, Ch. 2, section V.A.2. A Chartering Manual defines “single political jurisdiction” as “a city, county, or their political equivalent, or any single portion thereof.”

¹⁵ A CBSA is composed of the country’s Metropolitan Statistical Areas and Micropolitan Statistical Areas. “Metropolitan Statistical Areas are defined by OMB as having “at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties.” “Micropolitan Statistical Areas” are identical to Metropolitan Statistical Areas except that their urbanized areas are smaller, *i.e.*, the urbanized area contains at least 10,000 but fewer than 50,000 people. A “Metropolitan Division” is a subdivision of a large Metropolitan Statistical Area. Specifically, a Metropolitan Division is “a county or group of counties within a Metropolitan Statistical Area that has a population core of at least 2.5 million. OMB Bulletin No. 15–01 (July 15, 2015)

the 2010 final rule was subject to a 2.5 million population limit.¹⁶

Currently, in the case of a CBSA that the Office of Management and Budget (“OMB”) has subdivided into metropolitan divisions, a community consisting of a portion of the CBSA is required to conform to the boundaries of such divisions. Under either “presumptive community” option, an FCU was required to demonstrate that it is able to serve its entire proposed community, as demonstrated by its business and marketing plans that must accompany an application to approve a new community charter, expansion or conversion.¹⁷

B. 2016 Rulemakings

On October 27, 2016, the Board issued two rulemakings relating to the Chartering Manual. One was a final rule and the other a proposed rule. In the final rule,¹⁸ the Board comprehensively amended the Chartering Manual to organize it in a more efficient framework and to maximize member access to FCU services to the extent permitted by law. The final rule permitted an applicant to utilize, in limited circumstances, a narrative approach supported by objective documentation to demonstrate that an area adjacent to a presumptive community qualifies as part of that community.

In the proposed rule, the Board proposed three additional changes to the community charter provisions.¹⁹ Specifically, the Board proposed permitting an applicant for a community charter to submit a narrative to establish the existence of a WDLC, as an alternative to selecting a presumptive statistical community. The narrative would serve the same purpose as in years prior to 2010 when the narrative model was used exclusively. The Board also proposed increasing to 10 million the population limit on a community consisting of a statistical area or a portion thereof. In that regard, the Board requested comment on whether there should be any population limit at all for a statistical area and whether a public hearing would be appropriate for areas with large populations. Further, the Board proposed permitting an FCU to designate a portion of a statistical area as its community without regard to metropolitan division boundaries. The Board noted that consistent with its

¹⁶ *Id.* “A total population cap of 2.5 million is appropriate in a multiple political jurisdiction context to demonstrate cohesion in the community.” 75 FR 36257, 36260 (June 25, 2010).

¹⁷ Appendix B, Ch. 2, § V.A.4.

¹⁸ 81 FR 88412 (Dec. 7 2016).

¹⁹ 81 FR 78748 (Nov. 9, 2016).

² 12 U.S.C. 1759.

³ Pub. L. 105–219, § 2, 112 Stat. 913 (Aug 7, 1998).

⁴ 12 U.S.C. 1759(b)(1).

⁵ *Id.* § 1759(b)(2)(A).

⁶ *Id.* § 1759(b)(3).

⁷ *Id.* § 1759(g)(1)(A).

⁸ *Id.* § 1759(g)(1)(B).

⁹ Appendix B, Ch. 2, section V.A.2.

¹⁰ Appendix B, Ch. 2, section V.A.5.

responsibility under CUMAA to facilitate access to FCU services, the proposal sought to provide FCUs greater flexibility in that regard.

The Board received approximately 55 comments from federal and state-chartered credit unions, credit union associations, credit union leagues, banks, bank trade associations, and consultants. The majority of commenters were credit union affiliated entities, which uniformly supported the proposed rule. In contrast, the four bank-affiliated commenters uniformly opposed the proposal.

II. Federal District Court Decision

Several provisions of the 2016 final rule were challenged by the American Bankers Association. On March 29, 2018, the U.S. District Court for the District of Columbia upheld two provisions and vacated two provisions of the 2016 final rule addressing community charters.²⁰ Specifically, the court upheld the provision allowing an FCU to serve areas within a CBSA that do not include the CBSA's core.²¹ The court also upheld the provision allowing an FCU to add an adjacent area to a presumptive community. The court vacated the provision permitting automatic characterization of any individual portion of a combined statistical area ("CSA") as belonging to a local community as long as that portion contains no more than 2.5 million people.²² The court also vacated the provision to increase the population limit to 1 million people for rural districts.

III. 2018 Final Rule

A. Overview

This final rule amends the community chartering provisions of the Chartering Manual. Any modification in this final rule is consistent with the District Court decision. The rule allows for the general use of the narrative model, so that an applicant can seek Board approval to form, expand, or convert to a community charter, provided that the applicant provides sufficient supporting

documentation. The rule also provides that the NCUA will conduct a public hearing and solicit public comments on any community charter application that uses the narrative approach for an area whose population exceeds 2.5 million people. Further, the rule permits an FCU to designate a portion of a CBSA statistical area as its community without regard to metropolitan division boundaries.

With respect to the proposal to raise the population limit for a presumptive community, the Board has decided not to move forward with this amendment at this time.

B. General Applicability of Narrative Model To Establish a Well-Defined Local Community

In 2016, the Board proposed to allow the general use of the narrative model to form, expand, or convert to a community charter as an alternative to using the "presumptive community" model.²³

In response to the proposal, nearly every credit union-affiliated commenter supported allowing the narrative model as an alternative to the presumptive community model. These commenters stated that such an alternative provides added flexibility, thus potentially allowing FCUs to provide more financial services to the public. In contrast, bank-affiliated commenters opposed this proposal, claiming that it was overly subjective. They stated that the Board's 2010 decision to replace this approach with an objective one enhanced the process because it provided greater consistency.

The Board has determined that it is appropriate to permit the narrative model as an alternative to the presumptive community model. The Board believes that a significant majority of FCUs will rely on the presumptive community model for practical reasons. The presumptive community model is less costly and requires fewer resources for an applicant to expend. Further, an applicant can rely on a streamlined process, thus ensuring a more timely determination by utilizing the presumptive community model. While most applicants will be well served by the presumptive community model, the Board believes that some FCUs will find that using the narrative model will provide a better opportunity for them to establish that the relevant area is a WDLC. As is noted above, prior to 2010, a WDLC expressly needed to be "contiguous" under the narrative model. Given that contiguity is still

required in setting forth the parameters of a WDLC and for clarity, the Board specifically includes the contiguity requirement in the final rule's regulatory text.

Some commenters stated that certain potential communities do not necessarily align with CBSAs, SPJs, or other recognized statistical areas. The Board anticipates that this change to allow the narrative model as an alternative will be used sparingly, given the associated costs in preparing a narrative package. As noted in the section addressing the Paperwork Reduction Act (PRA), CURE estimates that there would be approximately 25 FCUs per year that would use the narrative approach based on data from the five years preceding 2010. The Board notes any such costs are not mandated by the NCUA but rather are voluntarily assumed by a potential applicant.

The Board has further determined that allowing such an alternative to the presumptive community model is appropriate because it expands the delivery of financial services to the public, particularly people from underserved communities, with no significant downside. The Board notes that the Act gives the Board broad discretion to define a WDLC for purposes of "making any *determination*" regarding a community credit union,²⁴ and to establish criteria to apply to any such determination.²⁵ (Emphasis added)

Under its statutory authority, the Board is adopting, with minor modifications from the proposal, a new appendix to the Chartering Manual, which sets thirteen "Narrative Criteria to Identify a Well-Defined Local Community" that an FCU should address in the narrative it submits to support its application to charter, expand, or convert to a community credit union. The Board has determined that establishing such criteria will facilitate an applicant's ability to provide justification to support the common interest or interaction standard. The Board notes that if an FCU has successfully established that an area is a WDLC through the narrative process, then another FCU may adopt that exact area as a WDLC without submitting a narrative of its own, provided it complies with the other requirements of the Chartering Manual including submitting a business plan that demonstrates its ability to serve the proposed FOM.

²⁰ *ABA v. NCUA*, 2018 WL 1542049, Case No. 16-2394, Mar. 29, 2018 ("FOM Decision").

²¹ A CBSA consists of an urban core, its county, and any surrounding counties that are, according to OMB, highly socially and economically integrated with the core. 81 FR at 88440.

²² Combined Statistical Areas are composed of adjacent CBSAs that share what OMB calls "substantial employment interchange. OMB characterizes CSAs as "representing larger regions that reflect broader social and economic interactions, such as wholesaling, commodity distribution, and weekend recreational activities, and are likely to be of considerable interest to regional authorities and the private sector." OMB Bulletin No. 15-01.

²³ 81 FR at 78749.

²⁴ 12 U.S.C. 1759(g)(1)(A) (emphasis added).

²⁵ *Id.* § 1759(g)(1)(B).

Commenters generally supported the thirteen criteria. Several commenters emphasized that the NCUA should evaluate the “totality of circumstances” in assessing applications. These commenters stated that the criteria provided solid evidence of common interests and interaction. One commenter stated that the NCUA should allow consideration of additional criteria that are unique to a community. Another commenter stated that the NCUA should allow consideration of “on line communities” given the trend toward such use. Bank commenters opposed the narrative approach, but said if it is adopted, then an applicant should be required to establish compliance with, most if not all, of the thirteen criteria.

The NCUA’s experience with community charter applications under the pre-2010 narrative model indicates that these thirteen criteria were generally the most useful and compelling, when properly addressed and documented, to demonstrate common interests or interaction among residents of a proposed community. An area need not meet all of the narrative criteria to qualify as a local community; rather, the totality of circumstances within the criteria a credit union elects to address must indicate a sufficient presence of common interests or interaction among the area’s residents. The new appendix explains each criterion in order to guide applicants in the prudent use of their resources, with minimal burden, to assess whether an area qualifies as a local community and, if so, to develop an effective and well-documented narrative to justify Board approval of its application.²⁶ The Board reiterates that the proposed area does not have to match exactly the entirety of the thirteen criteria. Rather, the more a proposed area satisfies the criteria to establish a WDLC, the stronger the applicant’s case. Consistent with this approach, Appendix B identifies for each of the thirteen criteria three levels of persuasiveness: “most persuasive,” “persuasive,” and “not persuasive” with examples of each.

Accordingly, the Board will consider the following criteria, and the supporting documentation for each, in evaluating the presence of interaction and/or common interest among residents to establish that an area is a WDLC:

1. Presence of a Central Economic Hub

The proposed community includes an economic hub. An economic hub is evident when one political jurisdiction

(city or county) within a proposed local community has a relatively large percentage of the community’s population or is the primary location for employment. The application needs to identify the major employers and their locations within the proposed community.

2. Community-Wide Quasi-Governmental Agency Services

The existence of organizations such as economic development commissions, regional planning boards, and labor or transportation districts can be important factors to consider. The more closely their service area matches the area, the greater the showing of common interests or interaction.

3. Governmental Designations With Community

Designation of the proposed community by a government agency as a region or distinct district—such a regional transportation district, a water district, or a tourism district—is a factor that can be considered in determining whether the area is a local community. The more closely the designation matches the area’s geographic boundaries, the greater the value of that evidence in demonstrating common interests or interaction.

4. Shared Public Services and Facilities

The existence of shared services and facilities, such as police, fire protection, park districts, public transportation, airports, or public utilities, can contribute to a finding that an area is a community. The more closely the service area matches the geographic boundaries of the community, and the higher the percentage of residents throughout the community using those services or facilities, the more valuable the data.

5. Hospitals and Major Medical Facility Services

Data on medical facilities should include admittance or discharge statistics providing the ratio of use by residents of each political jurisdiction. The greater the percentage of use by residents throughout the proposed community, the higher the value of this data in showing interaction. The application can also support the importance of an area hospital with documentation that correlates the facility’s target area with the proposed local community and/or discusses the relative distribution of hospitals over a larger area.

6. College and University Enrollment

College enrollment data can be a useful factor in establishing a local community. The higher the percentages of student enrollment at a given campus by residents throughout each part of the community, the greater the value in showing interaction. Additionally, the greater the participation by the college in community initiatives (e.g., partnering with local governments), and the greater the service area of these initiatives, the stronger the value of this factor.

7. Multi-Jurisdictional Mutual Aid Agreements

The existence of written agreements among law enforcement and fire protection agencies in the area to provide services across multiple jurisdictions can be an important factor.

8. Organizations’ and Clubs’ Membership and Services

The more closely the service area of an organization or club matches the proposed community’s boundaries, and the greater the percentage of membership and services throughout the proposed community, the more relevant the data.

9. Newspaper Subscriptions

A newspaper that has a substantial subscription base in an area can be an indication of common interests or interaction. The higher the household penetration figures throughout the area, the greater the value in showing common interests or interaction. Subscription data may include print copies as well as on-line access.

10. Attendance at Entertainment and Sporting Events

Data to show the percentage of residents from each political jurisdiction who attend the events. The higher the percentage of residents from throughout the proposed community, the stronger the evidence of interaction. For sporting events, as well as some entertainment events, data on season ticket holders and memberships may be available. As with overall attendance figures, the higher the percentage of residents from throughout the proposed community, the stronger the evidence of interaction.

11. Local Television and Radio Audiences

A television or radio station broadcasting in an area can be an indication of common interests or interaction. Objective data on viewer and listener audiences in the proposed

²⁶ Appendix 6 to Appendix B.

community can support the existence of a community.

12. Community-Wide Shopping Patterns

The narrative must identify the location of the major shopping centers and malls and include the percentage of shoppers coming from each part of the community. The larger the percentage of shoppers from throughout the community, the stronger the case for interaction. While of lesser value than the shopping data, identification of the shopping center's target area can be persuasive.

13. Geographic Isolation

Some communities face varying degrees of geographic isolation. As such, travel outside the community can be limited by mountain ranges, forests, national parks, deserts, bodies of waters, etc. This factor, and the relative degree of isolation, may help bolster a finding of common interests or interaction.

C. Public Hearing

In the November 2016 proposal, the Board requested comment about whether it should establish a process to give the public notice and an opportunity to comment on an FCU's application for approval of a statistical area with a population in excess of 2.5 million.

One bank-affiliated commenter supported having a public hearing along with the opportunity for comment for applications for community charters for statistical areas exceeding 2.5 million. No credit-union affiliated commenter addressed this issue.

The Board has determined that it is appropriate to require a public hearing along with opportunity for comment for charter applications using a narrative model over a certain population. The Board believes that such a procedure will allow applicants to present information, including their business and marketing plan, in a transparent manner. Other interested parties, including community groups, businesses, and competitors will have the opportunity to present their views. After further consideration of this issue and the comments, the Board has decided to modify the use of public hearings from what was discussed in the proposal. Specifically, the Board intends for the NCUA to conduct public hearings and solicit public comments on any narrative community application comprising an area whose population is in excess of 2.5 million people. Any public comments should be submitted to the Board at least twenty business days prior to the public hearing.

The Board intends to delegate to CURE the responsibility to conduct the public hearings on any narrative community applications in excess of 2.5 million people with assistance from the NCUA's Office of General Counsel (OGC). Upon receiving such an application, CURE will publish in the **Federal Register** information stating the location, time, procedures and other relevant information about the hearing at least 30 days prior to the hearing date. CURE will determine whether the hearing will be held at the NCUA's Headquarters in Alexandria, VA or a location near the applicant's anticipated community. The public hearing will last no more than four hours with interested parties being permitted to make presentations of no more than 30 minutes each. The applicant along with no more than seven other interested parties may request to make presentations. The first six entities that contact the NCUA in writing will be permitted to make such presentations. CURE will reserve one additional slot which it has the discretion to designate as eligible for a presentation by an interested party. In addition to the presentations, interested parties may submit written statements to CURE at least twenty business days prior to the hearing.

CURE will take under advisement the presentations and written statements and will make a determination as to whether to approve, deny, or make modifications to the application. CURE will make this determination based on whether the applicant demonstrated common interests or interactions among residents of the area under consideration, thus qualifying the area as a WDLC. CURE will make this determination no sooner than 30 days after the date of the public hearing.

D. Portion of CBSA as a Well-Defined Local Community Regardless of Internal Boundaries

In 2016, the Board proposed to permit an FCU to designate a portion of a CBSA as its community without regard to metropolitan division boundaries. The Board noted that when an FCU seeks to serve a portion of a single CBSA as its WDLC, the existing rule requires such a portion to conform to any boundary of a metropolitan divisions. In contrast, a CSA was not required to conform to any metropolitan division boundary, even though CSAs cover a wider geographic area. For purposes of consistency, the Board proposed permitting an FCU to designate a portion of a CBSA as its community without regard to division boundaries.

No commenter objected to this proposal, and approximately ten credit union-affiliated commenters specifically supported it. The commenters stated that the change would correct a disparity in treatment between a community consisting of a portion of a CBSA and a CSA. The commenters who supported it viewed it as affording regulatory relief via a common sense change to enhance consistency and provide flexibility.

The Board has determined that it is appropriate to amend the Chartering Manual to designate a portion of a CBSA as its community without regard to the boundaries of any metropolitan divisions within a CBSA.²⁷ This modification corrects an inconsistency that was never intended. In light of the District Court decision, the Board has removed reference to Metropolitan Divisions with respect to CSAs.

E. Eliminating the Population Limit for a Statistical Area

As noted above, the Board issued a final rule in 2010 recognizing as a presumptive community a CBSA as designated by the U.S. Census, or a CSA as designated by OMB, subject in either case to a population limit of 2.5 million and proof of the FCU's ability and commitment to serve the entire community.²⁸ At the time, the Board recognized a 2.5 million population "as a logical breaking point in terms of community cohesiveness with respect to a multijurisdictional area."²⁹

In the 2015 proposal, the Board decided to retain the existing 2.5 million population cap as the upper limit for a presumptive community, although it solicited public comment on whether to adjust the amount, and for what reasons.³⁰ Specifically, the Board stated that a CBSA qualifies as a WDLC only if its population does not exceed 2.5 million, and that "[b]y design, this population limit conforms to the population parameter by which [the Office of Management and Budget ("OMB")] recognizes metropolitan divisions within a Core Based Statistical Area."³¹

In their comments to the 2015 proposal, bankers opposed raising the existing population limit. For instance, a bank trade association stated that "NCUA's overly broad interpretation of what is 'rural' or 'local' is at odds with any reasonable interpretation of those

²⁷ The Board is modifying Appendix B to delete reference to Metropolitan Divisions in CSAs as a result of the District Court decision.

²⁸ 75 FR 36257, 36260.

²⁹ 75 FR 36257, 36259.

³⁰ 80 FR at 76749.

³¹ 80 FR at 76748-49.

terms and makes a mockery of the field of membership restrictions”

The 2016 final rule retained the 2.5 million population limit that applies to a community consisting of a CBSA or CSA. However, in the November 2016 proposed rule, the Board requested comment on its proposal to increase the limit to “up to 10 million” or to eliminate it completely. Despite affirming the then current 2.5 million population limit in that final rule, the Board stated that it anticipates that many areas that would qualify as a WDLC will experience population growth over time and that it should anticipate and accommodate inevitable growth, to the extent permissible under the Act, in order to maximize the potential membership base available to community credit unions.³²

Comments were mixed about the proposal on the population cap for statistical areas that comprise more than a single political jurisdiction. Virtually all credit union-affiliated commenters urged the Board to eliminate the population cap on statistical areas altogether. Alternatively, they preferred the 10 million cap to the 2.5 million cap, if the Board decided to retain a population cap. In contrast, bank-affiliated commenters continued to oppose increasing the existing 2.5 million population cap on CBSAs and CSAs. The bankers argued that the proposal oversteps congressional bounds established by the Act, particularly with respect to the definition of “local.” Specifically, they stated that this interpretation of “local” would “allow nearly any federal community credit union to serve almost any geographic area or population center.” The bankers further stated that a 10 million population cap would allow an FCU to serve a statistical area with a population that exceeds the population of 41 states and would add 20 additional CSAs to qualify as presumptive communities. Thus, they stated that all but two CSAs would be presumptive communities. In addition, these commenters claimed that the NCUA provided “no analysis to support this arbitrary, massive increase.”

The Board has determined that increasing the population cap for presumptive communities is not appropriate at this time. The Board is evaluating population caps for presumptive communities in light of the above-referenced District Court decision.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.³³ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.³⁴ Although this rule is anticipated to economically benefit FCUs that choose to charter, expand or convert to a community charter, the NCUA certifies that it 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 collections of information through which an agency creates a paperwork burden on regulated entities or the public, or modifies an existing burden.³⁵ 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. OMB previously approved the current information collection requirements for the Chartering Manual and assigned them control number 3133–0015.

Regarding a community charter, the rule gives community charter applicants the option, in lieu of a presumptive community, to submit a narrative to establish common interests or interaction among residents of the area it proposes to serve, thus qualifying the area as a WDLC. For that purpose, the rule includes guidance in identifying compelling indicia of common interests or interaction that would be relevant in drafting a narrative summarizing how the community meets the requirements of a WDLC. In addition, when a CBSA is subdivided into Metropolitan Divisions, the rule permits a credit union to designate a portion of the area as its community without regard to division boundaries.

The NCUA has determined that the procedure for an FCU to assemble and document a narrative summarizing the evidence to support its community charter application would create a new information collection requirement. As required, the NCUA applied to OMB for approval to amend the current information collection to account for the new procedure.

³³ 5 U.S.C. 603(a).

³⁴ 80 FR 57512 (Sept. 24, 2015).

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

Prior to 2010, when the NCUA moved to an objective model of presumptive communities, FCUs had the following three choices for a community charter: Previously approved areas; single political jurisdictions; and multiple political jurisdictions. For applications involving multiple statistical areas, the NCUA required FCUs to submit for the NCUA approval a narrative, supported by documentation that presents indicia of common interests or interaction among residents of the proposed community.

In the five-year period preceding the move to an objective model of presumptive communities, the NCUA processed an average of twenty FOM applications involving multiple statistical areas. From 2010 to 2018, the NCUA processed 2 applicants for multiple statistical areas that exceeded 2.5 million people. Based on this historical trend, the NCUA estimates that, on average, it would take an FCU’s staff approximately 160 hours to collect the evidence of common interests or interaction and to develop a narrative to support its application to expand or to convert. Accordingly, the NCUA estimates the aggregate information collection burden on existing and would-be FCUs that elect to use the narrative option to form, expand, or convert to a community charter would be 160 hours times 10 FCUs for a total of 1600 hours. The NCUA is amending the current information collection control number 3133–0015 to account for these additional burden hours.

In the proposal, the Board directed organizations and individuals who wished to submit comments on this information collection requirement to direct them to the Office of Information and Regulatory Affairs, OMB, Attn: Shagufta Ahmed, Room 10226, New Executive Office Building, Washington, DC 20503, with a copy to the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

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

- Evaluating whether the collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA’s estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

³² 80 FR at 78751.

- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

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. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. Primarily because this rule applies to FCUs exclusively, it will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The 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, 1999.³⁶

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 21, 2018.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, the NCUA amends 12 CFR part 701, Appendix B, as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority 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 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In appendix B to part 701, section V.A.2 of chapter 2 is revised and appendix 6 is added to read as follows:

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

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Chapter 2—Field of Membership Requirements for Federal Credit Unions

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V—Community Charter Requirements

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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.

For an applicant seeking a community charter for an area with multiple political jurisdictions with a population of 2.5 million people or more, the Office of Credit Union Resources and Expansion (CURE) shall publish a notice in the **Federal Register** seeking comment from interested parties about the proposed community and (2) conduct a public hearing about this application.

“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 a political equivalent, school districts, or a clearly identifiable neighborhood.

The well-defined local community requirement is met if:

- **Single Political Jurisdiction**—The area to be served is a recognized Single Political Jurisdiction, *i.e.*, a city, county, or their political equivalent, or any single portion thereof.

- **Statistical Area**—A statistical area is all or an individual portion of a Core-Based Statistical Area (CBSA) designated by the U.S. Census Bureau, including a Metropolitan Statistical Area. To meet the well-defined local community requirement, the CBSA or a portion thereof, must be contiguous and have a population of 2.5 million or less people. An individual portion of a statistical area need not conform to internal boundaries within the area, such as metropolitan division boundaries within a Core-Based Statistical Area.

- **Compelling Evidence of Common Interests or Interaction**—In lieu of a statistical area as defined above, this option is available when a credit union seeks to initially charter a community credit union; to expand an existing community; or to convert to a community charter. Under this option, the credit union must demonstrate that the areas in question are contiguous and further demonstrate a sufficient level of common interests or interaction among area residents to qualify the area as a local community. For that purpose, an applicant must submit for NCUA approval a narrative, supported by appropriate documentation, establishing that the area’s residents meet the requirements of a local community.

To assist a credit union in developing its narrative, Appendix 6 of this Manual identifies criteria a narrative should address, and which NCUA will consider in deciding a credit union’s application to: Initially charter a community credit union; to expand an existing community, including by an adjacent area addition; or to convert to a community charter. In any case, the credit union must demonstrate, through its business and marketing plans, its ability and commitment to serve the entire community for which it seeks NCUA approval.

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BILLING CODE 7535-01-P

³⁶Public Law 105-277, 112 Stat. 2681 (1998).

APPENDIX 6

NARRATIVE CRITERIA TO IDENTIFY A WELL-DEFINED LOCAL COMMUNITY

This Appendix applies when the community a federal credit union (“FCU”) proposes to serve is not a “presumptive community”, under either option in chapter 2, section V.A.2. of Appendix B to Part 701, and thus would not qualify as a well-defined local community (“WDLC”). In that event, this Appendix prescribes the criteria an FCU should address in the narrative it develops and submits to the Board to demonstrate that residents of the community it proposes to serve share common interests and/or interact with each other. The narrative should address the criteria below as the FCU deems appropriate, as well as any other criteria it believes are persuasive, to establish to the Board’s satisfaction the presence, among residents of the proposed community, of indicia of common interests and/or interaction sufficient to qualify the area as a WDLC.

1. Central Economic Hub

The proposed community includes an economic hub. An economic hub is evident when one political jurisdiction (city or county) within a proposed local community has a relatively large percentage of the community’s population or is the primary location for employment. The application needs to identify the major employers and their locations within the proposed community.

Most Persuasive	At least 25 percent of the workers living in the proposed community commute to work in the central economic hub.
Persuasive	Over 15 percent of the workers living in the proposed community commute to work in the central economic hub.
Not Persuasive	Less than 15 percent of the workers living in the proposed community commute to work in the central economic hub.

2. Quasi-Governmental Agencies

The existence of organizations such as economic development commissions, regional planning boards, and labor or transportation districts can be important factors to consider. The more closely their service area matches the area, the greater the showing of interaction and/or common interests.

Most Persuasive	The quasi-governmental agency covers the proposed community exclusively and in its entirety, derives its leadership from the area, represents collaboration that transcends traditional county boundaries, and has meaningful objectives that advance the residents’ common interests in economic development and/or improving quality of life.
Persuasive	The quasi-governmental agency substantially matches the proposed community and carries out objectives that affect the relevant common interests for the entire area’s residents.

Not Persuasive	The quasi-governmental agency does not match the proposed community and carries out only incidentally relevant objectives or carries out meaningful objectives in localized sections of the proposed community.
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3. Governmental Designations

Designation of the proposed community by a government agency as a region or distinct district – such a regional transportation district, a water district, or a tourism district – is a factor that can be considered in determining whether the area is a local community. The more closely the designation matches the area’s geographic boundaries, the greater the value of that evidence in demonstrating interaction and/or common interests.

Most Persuasive	A division of a federal or state agency specifically designates the proposed service area as its area of coverage or as a target area for specific programs.
Persuasive	A division of a federal or state agency designates a regional area that includes the coverage area, but offers special programs tailored to the common interests shared by the residents of the proposed service area.
Not Persuasive	A division of a federal or state agency designates an area as a coverage area that encompasses several local communities.

4. Shared Public Services/Facilities

The existence of shared services and facilities, such as police, fire protection, park districts, public transportation, airports, or public utilities, can contribute to a finding that an area is a community. The more closely the service area matches the geographic boundaries of the community, and the higher the percentage of residents throughout the community using those services or facilities, the more valuable the data.

Most Persuasive	Statistical evidence documents how residents from the entire proposed service area mutually benefit from a public facility. Formal agreements exist that transcend traditional county lines and provide for a common need shared by all of the residents, such as common police or fire protection.
Persuasive	Public facilities exist that cross county lines and cover the majority of the area’s population, but do not cover the area in its entirety.
Not Persuasive	The applicant cites public facilities that serve areas that do not correlate with the proposed service area.

5. Hospitals and Major Medical Facilities

Data on medical facilities should include admittance or discharge statistics providing the ratio of use by residents of each political jurisdiction. The greater the percentage of use by residents throughout the proposed community, the higher the value of this data in showing interaction. The application can also support the importance of an area hospital with documentation that correlates the facility's target area with the proposed local community and/or discusses the relative distribution of hospitals over a larger area.

Most Persuasive	The applicant provides statistics demonstrating residents from throughout the proposed community use hospitals in the major population or employment center.
Persuasive	Statistical data are not available, but the application demonstrates through other documentation a medical facility is the only viable option for a significant portion of the proposed community's residents.
Not Persuasive	The area has multiple health care facilities at geographically dispersed locations with duplicative services.

6. Colleges and Universities

College enrollment data can be a useful factor in establishing a local community. The higher the percentages of student enrollment at a given campus by residents throughout each part of the community, the greater the value in showing interaction. Additionally, the greater the participation by the college in community initiatives (e.g., partnering with local governments), and the greater the service area of these initiatives, the stronger the value of this factor.

Most Persuasive	The application provides statistical data showing the institutions of higher learning cited attract significant numbers of students from throughout the proposed community.
Persuasive	The statistical data regarding where students live is either inconclusive or unavailable. However, qualitative information exists to demonstrate the institutions' relevance to the entire proposed community, such as unique educational initiatives to support economic objectives benefiting all residents and/or partnerships with local businesses or high schools.
Not Persuasive	The statistical data tends to support the institutions recruit students from a broad based area transcending the proposed community's boundaries.

7. Mutual Aid Agreements

The existence of written agreements among law enforcement and fire protection agencies in the area to provide services across multiple jurisdictions can be an important factor.

Most Persuasive	The mutual aid agreements cover the proposed community exclusively and in its entirety, represents collaboration that transcends political boundaries such as city or county limits.
Persuasive	The mutual aid agreements substantially matches the proposed community.
Not Persuasive	The mutual aid agreements do not match the proposed community.

8. Organizations and Clubs

The more closely the service area of an organization or club matches the proposed community's boundaries, and the greater the percentage of membership and services throughout the proposed community, the more relevant the data.

Most Persuasive	Statistical data supports that organizations with meaningful objectives serve the entire proposed community.
Persuasive	Other qualitative documentation exists to support that organizations with meaningful objectives serve the entire proposed community.
Not Persuasive	The applicant lists organizations that either do not cover the proposed community in its entirety or have objectives that are too limited to have a meaningful impact on the residents' common interests.

9. Community Newspaper

A newspaper that is widely read in an area can be an indication of common interests. The higher the household penetration circulation figures throughout the area, the greater the value in showing common interests. Circulation data may include print copies as well as on-line access.

Most Persuasive	Statistical evidence indicates a significant portion of residents from throughout the proposed community read the local general interest newspaper. The paper has local stories focusing on the proposed community and has a marketing target area consistent with the proposed community boundaries.
Persuasive	Local newspapers and periodicals specifically cater to the proposed community.
Not Persuasive	The area lacks a general newspaper that covers the proposed community. There are no specialized publications catering to the entire proposed community.

10. Entertainment and Sporting Events

Data to show the percentage of residents from each political jurisdiction who attend the events. The higher the percentage of residents from throughout the proposed community, the stronger the evidence of interaction. For sporting events, as well as some entertainment events, data on season ticket holders and memberships may be available. As with overall attendance figures, the higher the percentage of residents from throughout the proposed community, the stronger the evidence of interaction.

Most Persuasive	Statistical data exist to support that the venue attracts residents from throughout the proposed community.
Persuasive	Statistical evidence is not available, but other qualitative information documents the importance the venue has for the proposed community.
Not Persuasive	The applicant lists local venues without discussing where users originate from or otherwise documenting the relevance for the residents of the entire area.

11. Local Television and Radio Stations

A television or radio station broadcasting in an area can be an indication of common interests. Data on viewership or listenership in the proposed community can support the existence of a community.

Most Persuasive	Statistical evidence indicates a significant portion of residents from throughout the proposed community view or listen to the local television and radio stations. The media has local stories focusing on the proposed community and has a marketing target area consistent with the proposed community boundaries.
Persuasive	The television and radio stations provide news and sports coverage specifically catering to the proposed community.
Not Persuasive	The area lacks television or radio stations serving the proposed community.

12. Shopping

The narrative must identify the location of the major shopping centers and malls and include the percentage of shoppers coming from each part of the community. The larger the percentage of shoppers from throughout the community, the stronger the case for interaction. While of lesser value than the shopping data, identification of the shopping center's target area can be persuasive.

Most Persuasive	The application provides statistics from a reliable third party source that demonstrates the major shopping facility cited in the application is the major shopping facility for the residents of the entire area.
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Persuasive	The applicant provides documentation supporting how the area's shopping facilities cluster within the area's hub and residents do not have other realistic alternatives to meet their shopping needs.
Not Persuasive	The applicant lists large shopping facilities without providing statistics or other documentation that demonstrates relevance to the proposed community.

13. Geography

Some communities face varying degrees of geographic isolation. As such, travel outside the community can be limited by mountain ranges, forests, national parks, deserts, bodies of waters, etc. This factor, and the relative degree of isolation, may help bolster a finding of interaction or common interests.

Most Persuasive	Area is geographically isolated and/or distinct from immediate surrounding area.
Persuasive	Area has geographic commonalities that influence other aspects of the residents' lives (i.e., tourism, allocation of government resources).
Not Persuasive	The area's geographic features do not appear to influence other social or economic characteristics of the area.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 708b

RIN 3133-AE73

Bylaws; Voluntary Mergers of Federally Insured Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is revising the procedures a federally insured credit union (FICU) must follow to merge voluntarily with another FICU. The changes: Revise and clarify the contents and format of the member notice; require merging credit unions to disclose certain merger-related financial arrangements for covered persons; increase the minimum member notice period; and provide a method for members and others to submit comments to the NCUA regarding the proposed merger. In addition, the NCUA has replaced its Merger Manual with revised model forms that conform to the requirements of this rule. The regulations now includes these forms.

DATES: This rule is effective October 1, 2018.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Wirick, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428 or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Background

In June 2017, the Board issued proposed revisions to the NCUA's voluntary merger rule.¹ The proposed rule was designed to address shortcomings in the current rule which did not always provide credit union members sufficient time to consider the merger or adequately communicate all information relevant to the merger decision.

The proposed revisions addressed the timing and contents of the notice provided to members of a merging federal credit union (FCU), provided FCU members with an opportunity to make their views known to the general membership, clarified the material that must be submitted to the NCUA for review, and revised definitions. In addition, the proposed rule reorganized the current rule to improve readability and clarity. These revisions were designed to ensure that a merging FCU's member-owners have more complete and accurate information regarding a proposed merger, including disclosure of financial arrangements that could

create potential conflicts of interest. The proposal also sought comments on whether the final rule should apply to all merging FICUs rather than only to merging FCUs.

The Board is now finalizing the proposed rule, with some changes. The changes significantly narrow the definition of a "merger-related financial arrangement" that is subject to disclosure, adopt a less burdensome method for members to communicate their views on the merger, and apply the entire rule to all FICUs.

The Board received 84 comments on the proposed rule. Seventy of the commenters opposed the rule. Of the remaining 14 commenters, eight supported the proposed rule, four supported the proposed rule except for the member-to-member communication provision, one addressed only the question of whether the rule should apply to federally insured, state-chartered credit unions (FISCU), and one requested an extension of the comment period.

In addition to the comments on the proposed rule, the Board has also been informed by a more thorough review of voluntary merger proposals since early 2017 (merger review). NCUA staff reviewed the member disclosure documents and ballot for every merger application submitted by an FCU, with an eye toward identifying ongoing issues. The direction of the final rule

¹ 82 FR 26605 (June 8, 2017).