

- An area located outside of a Metropolitan Area with a county population loss between the most recent decennial census and the previous decennial census of at least 10 percent; and

- An area located outside of a Metropolitan Area with a county net migration loss (out-migration minus in-migration) over the 5-year period preceding the most recent decennial census of at least 5 percent.

The CDFI Fund also modified its section on empowerment zones and enterprise communities in its investment area definition. The definition now includes an area that wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986, 26 U.S.C. 1391.

With the release of the 2000 Census data as well as the new definitions of an investment area, the NCUA Board has also updated its definition of an investment area in chapter 3 of the Chartering Manual. The NCUA Board does not expect these revisions to have any measurable impact on bringing credit union service to underserved areas. In general, the NCUA Board acknowledges that the three eliminated criteria were either redundant or not accurate measures of economic distress. The NCUA Board believes that the changes will have no adverse effect on geographic areas qualifying as investment areas. Therefore, the final investment area definition is revised to conform to the CDFI Fund's new definition.

A couple of commenters asked for the agency to abolish the requirement of a sponsor letter from a select group that a multiple common bond credit union wants to add to its field of membership. The NCUA Board believes, at this time, the sponsor letter for multiple group expansions is beneficial for credit unions because it demonstrates the desire of the group. The Board is not deleting the requirement but the NCUA Board will continue to monitor the usefulness of requiring the letter.

Finally, the NCUA Board proposed some technical wording changes to all of the chapters in the Chartering Manual and updated the Appendices. The final rule includes additional changes to the forms in Appendix D to make them easier to understand and use. These changes are not substantive.

B. Comments From Banks and Bank Trade Organizations

Bank and bank trade organization commenters objected to the proposal and argued that Federal credit unions

should be subject to taxation like banks. In general, these commenters opposed all 10 categories in the proposal listed above. Specifically, the commenters argued that the NCUA Board's proposal does not adhere to CUMAA, including the definitions of "local" and "common bond," and objected to: The proposals to use MSAs to define local communities; defining a service facility as including ATMs; the concept of the TIP occupational common bond; and the change to the standard clause to include corporate and other business sponsors.

The NCUA Board has considered all issues raised by these commenters and has previously addressed the major issues in this preamble since other commenters discussed the same provisions. As to the question of taxation, it is a statutory issue, not a regulatory issue. Most recently Congress addressed this issue in CUMAA at section 2.(4), which states that "[c]redit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes * * *".

Finally, as in the past, some of the commenters from banking organizations stated that the proposed regulation does nothing to encourage the formation of separate credit unions to serve groups of fewer than 3,000 persons. The NCUA Board strongly disagrees with this comment. In fact, the NCUA Board's policy is that any group that can meet the economic advisability requirements should form its own credit union. The NCUA Board has simply established criteria that provide guidance based on historical experience relative to those groups that may have the best opportunity to succeed. Every effort will be made to encourage new charters, but operational feasibility and requirements are valid factors and cannot be ignored in the decision making process. Nothing in this rule prevents a group with less than 3,000 from applying to charter its own credit union. In fact, NCUA has put in place an Express Chartering Program to help small but viable groups in chartering a credit union.

C. Internet Expansion Requests

The Field of Membership Taskforce has developed an internet, select group expansion form. This process allows credit unions to submit requests for occupational groups of less than 3,000 online with an expedited approval by NCUA. The Field of Membership Taskforce is in the process of developing a form to allow associational groups of less than 3,000 to be approved by NCUA online. The regional offices can provide credit unions with specific

details on how to do an expansion through the internet.

D. 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 one million dollars in assets. The final rule 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

The Office of Management and Budget control number assigned to § 701.1 is 3133-0015, and to forms included in Appendix D is 3133-0116. NCUA has determined that the final rule will not increase paperwork requirements and a 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 final rule will 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 final rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final