

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

#### Organization and Operations of Federal Credit Unions

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

**ACTION:** Notice of proposed rulemaking (NPR).

**SUMMARY:** NCUA is issuing proposed amendments to its rules regarding service to underserved areas. These amendments are being proposed because of NCUA's experience addressing field of membership issues and the uncertainty resulting from recent litigation challenging existing chartering policy. This proposed rule will ensure continued reliable and efficient service to federal credit union members located in underserved areas.

**DATES:** Comments must be received on or before March 28, 2006.

**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/news/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/news/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Proposed Rule Part 701.1" in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McKenna, Deputy General Counsel, John K. Ianno, Senior Trial Attorney, or Regina Metz, Staff Attorney, Office of General Counsel,

1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6540.

#### SUPPLEMENTARY INFORMATION

##### A. Background

NCUA's chartering and field of membership policy is set out in NCUA's Chartering and Field of Membership Manual (Chartering Manual), Interpretive Ruling and Policy Statement 03-1. 68 FR 18333, Apr. 15, 2003. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1.

In establishing a federal credit union system Congress recognized that a primary purpose was to make credit more available to persons of modest means. This goal has been a long-standing priority of the NCUA Board. From 1994 through 1998, NCUA rules permitted federal credit unions, regardless of charter type, to include low-income communities and associations in their field of membership.

In 1998 Congress passed the Credit Union Membership Access Act (CUMAA) in order to codify the authority of NCUA to charter multiple common-bond credit unions. Pub. L. 105-219, 112 Stat. 914 (1998). As part of that legislation, Congress expressly recognized that multiple common-bond credit unions would be authorized to serve persons or organizations within an area that was underserved. CUMAA also provided a definition of an "underserved area." In response, NCUA changed its field of membership regulations to utilize the term "underserved area" and its definition, instead of the previous authority for all charter types to serve low-income communities and associations. Since then, service to underserved areas, as defined in Chapter 3 of the Chartering Manual, has remained a priority of the NCUA Board.

Recently certain Utah banks and the American Bankers Association (collectively the Bankers) have filed suit challenging NCUA's policy related to adding underserved areas. The Bankers' complaint recognizes that CUMAA expressly authorizes the chartering of multiple common-bond credit unions but argues that the legislation permits only that type of charter to serve underserved areas.

One of CUMAA's primary purposes was to codify in statute the legality of

multiple common-bond credit unions. NCUA believes that the statutory language also reflects Congress' intent to make clear that this new charter type was authorized to add underserved areas, not as the Bankers argue, to prohibit the other two federal charter types from doing so. This conclusion is supported by the legislative history and the fact that at the time Congress enacted CUMAA it was aware of NCUA's long-standing policy allowing all federal charters to serve communities and groups in need of additional financial services.

NCUA is mindful of the ongoing litigation and recognizes that the statutory language is susceptible to different interpretations. We believe that these issues create a degree of uncertainty about the continued authority of non-multiple common-bond credit unions to serve underserved areas. We are concerned about the financial effect of continuing to approve new requests to serve underserved areas by non-multiple common-bond credit unions that then invest resources in serving these areas. We also believe that it is unfair to provide persons of limited means with needed financial services where the possibility exists that they could suddenly be deprived of those services.

Faced with this uncertainty, on December 29, 2005, the NCUA Board issued a moratorium suspending that portion of its chartering policy allowing non-multiple-common-bond credit unions to add new underserved areas. That moratorium will remain in place until further notice.

Since establishing a moratorium the NCUA has conducted a comprehensive review of its underserved area policy. As a result of this review, the NCUA Board believes it prudent to propose two amendments to its field of membership policy. Both changes will apply only prospectively.

The first change will limit the addition of new underserved areas to only multiple common-bond credit unions.

The second change is to the definition and location of the service facility when adding underserved areas. The Board believes that a physical presence in the underserved areas is likely to assure better service to members in these locations. The definition of a service facility and where it may be located has

been modified. This will assure a physical presence in the area and further encourage a very active role by the credit union in the underserved area. There has been no change to the requirement that the service facility be established within two years.

#### B. Request for Comments

The NCUA Board welcomes all comments on its existing policy regarding service to underserved areas. In addition we are particularly interested in comments related to the following areas:

- (1) NCUA's authority to permit expansions into underserved areas for all three federal charter types;
- (2) The impact of limiting expansions into underserved areas to only multiple common-bond credit unions;
- (3) Whether, if only multiple common-bond credit unions are permitted to add underserved areas, they should be permitted to retain these areas in the event they change charter type;
- (4) The type and extent of existing investment by non-multiple common-bond credit unions in underserved areas including for example; capital investment, loans, share deposits, and other programs targeting low income people; and
- (5) The impact to members of underserved areas, and non-multiple common-bond credit unions, of restrictions on the addition of new members in underserved areas they are currently serving.

#### *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 \$10 million 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*

The Office of Management and Budget control numbers assigned to Section 701.1 are 3133-0133 and 3133-0116. NCUA has determined that the proposed amendments 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 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 this proposed 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 this proposed 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).

#### List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 19, 2006.

#### **Mary Rupp,**

*Secretary of the Board.*

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 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, 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 are set forth in Interpretive Ruling and Policy Statement 03-1, Chartering and Field of Membership Manual, as amended by IRPS 06-1, Copies may be obtained by contacting

NCUA at the address found in § 792.2(g)(1) of this chapter.

(Approved by the Office of Management and Budget under control number 3133-0015 and 3133-0116.)

**Note:** The text of the IRPS 03-1, as amended by the IRPS 06-1, does not appear in the Code of Federal Regulations.

3. IRPS 03-1, Chapter 3, Section III.A is revised to read as follows:

A multiple common-bond federal credit union may include in its field of membership, without regard to location, communities satisfying the definition of underserved areas in the Federal Credit Union Act. Adding an underserved area will not change the charter type of the multiple common-bond federal credit union. More than one multiple common-bond federal credit union can serve the same underserved area. The Federal Credit Union Act 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.

For an underserved area, the well-defined local community, neighborhood, or rural district requirement is met if:

- 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;
- The area to be served is in 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; or

- The area to be served is a Metropolitan Statistical Area (MSA) or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed 1,000,000.

If the area to be served does not meet the MSA or multiple political jurisdiction requirements outlined above, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district.

For an underserved area, an investment area includes any of the following (as reported in the most recently completed decennial census or equivalent government data):

- 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 (26 U.S.C. 1391);

- An area where the percentage of the population living in poverty is at least 20 percent;

- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;

- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

- An area where the unemployment rate is at least 1.5 times the national average;

- An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or service facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, or an office operated on a regularly scheduled weekly basis. This definition does not include an ATM or the credit union's Internet Web site.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a multiple common-bond federal credit union adding such a community will not change. Therefore, the multiple common-bond federal credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of nonmember deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the

credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the community are being met as well as requiring such reports before NCUA allows a multiple common-bond federal credit union to add an additional underserved area.

[FR Doc. E6-908 Filed 1-26-06; 8:45 am]

BILLING CODE 7535-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 292

[Docket No. RM06-10-000]

#### New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities

Issued January 19, 2006.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing small power production and cogeneration in response to section 1253 of the Energy Policy Act of 2005 (EPA 2005), which added section 210(m) to the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission seeks public comment on the amended regulations proposed herein.

**DATES:** Comments are due February 27, 2006. Reply Comments are due March 28, 2006.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

#### FOR FURTHER INFORMATION CONTACT:

Deborah Wyrick (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6113.

Marka Shaw (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8641.

Samuel Higginbottom (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8561.

Giuseppe Fina (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8696.

#### SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Sudeen G. Kelly.

#### I. Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPA 2005)<sup>1</sup> was signed into law. Section 1253(a) of EPA 2005 adds a new section 210(m) to the Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>2</sup> which provides for termination of an electric utility's obligation to purchase energy and capacity from qualifying cogeneration facilities and qualifying small power production facilities (QFs), if the Federal Energy Regulatory Commission (Commission) finds that certain conditions are met. Section 210(m)<sup>3</sup>: (1) Provides a procedure for an electric utility to file an application for relief from the mandatory purchase obligation on a service territory-wide basis; (2) provides a procedure for any affected entity or person to apply to the Commission for an order reinstating the electric utility's obligation to purchase energy; (3) provides for termination of an electric utility's obligation to sell to QFs energy and capacity if the Commission finds that certain conditions are met; (4) protects existing rights and remedies under any contract or obligation in effect or pending approval involving the purchase of energy or capacity or sale of energy or capacity to a QF; and (5) allows the Commission to issue and enforce

<sup>1</sup> Public Law 109-58, § 1253, 119 Stat. 594 (2005).

<sup>2</sup> 16 U.S.C. 824a-3 (2000).

<sup>3</sup> We note that the Commission has issued a notice of proposed rulemaking regarding added section 210(n) in Docket No. RM05-36-000. That section makes clear that no new qualifying cogeneration facility can enter into a contract with an electric utility unless the cogeneration facility satisfies criteria for new qualifying cogeneration facilities that will be established by the Commission. *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Notice of Proposed Rulemaking, 70 FR 60,456 (Oct. 18, 2005), FERC Stats. & Regs. ¶ 32,590 (2005).