paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 19. Amend § 1221.10 by revising paragraph (a) to read as follows:

§ 1221.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this part, and at such time as initial margin or variation margin is required to be collected or posted under § 1221.3 or § 1221.4, as applicable; and

* * * * *

■ 20. Section 1221.11 is revised to read as follows:

§ 1221.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 1221.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 1221.2; and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Dated: September 17th, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 21, 2019.

Ann E. Misback,

Secretary of the Board. Federal Deposit Insurance Corporation. By order of the Board of Directors.

Dated at Washington, DC, on September 17, 2019.

Robert E. Feldman,

Executive Secretary.

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 17th day of September, 2019.

Dale L. Aultman,

Secretary.

Dated: August 27, 2019.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

[FR Doc. 2019–23541 Filed 11–6–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 8070–01–P; 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AF06

Chartering and Field of Membership

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule and supplemental statement.

SUMMARY: The NCUA Board (Board) is proposing to amend its chartering and field of membership (FOM) rules with respect to applicants for a community charter approval, expansion, or conversion. Specifically, the Board is proposing to re-adopt a provision to allow an applicant to designate a Combined Statistical Area (CSA), or an individual, contiguous portion thereof, as a well-defined local community (WDLC), provided that the chosen area has a population of 2.5 million or less. Separately, in accordance with an August 2019 opinion and order issued by the D.C. Circuit Court of Appeals (court) with respect to communities based on a Core-Based Statistical Area (CBSA) or a portion thereof, the Board is providing further explanation and support for its elimination of the requirement to serve the CBSA's core area as provided for in a 2016 rulemaking. In addition, the Board is proposing to clarify existing requirements and add an explicit provision to its rules to address concerns about potential discrimination in the FOM selection for CSAs and CBSAs.

DATES: Comments must be received by December 9, 2019.

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 Website: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.

• *Email:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Chartering and Field of Membership Proposed Rule'' in the email subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for email.

• *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's website at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6540 or send an email to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: For program issues: Martha Ninichuk, Director, or JeanMarie Komyathy, Deputy Director; Office of Credit Union Resources and Expansion, at 1775 Duke Street, Alexandria, VA 22314 or telephone (703) 518–1140. For legal issues: Michael J. McKenna, General Counsel, Ian Marenna, Associate General Counsel, or Marvin Shaw, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

As discussed below, the Board is: (1) Proposing to re-adopt the presumptive WDLC option consisting of a CSA or an individual, contiguous portion of a CSA, provided that the chosen area, whether it is an entire CSA or a portion of one, is no more than 2.5 million; [1] (2) explaining further, with additional reasoning and factual support, the basis for eliminating the core area service requirement for FCUs that choose a CBSA as a WDLC; and (3) proposing to amend the NCUA's regulations regarding community FOM applications, amendments, and expansions for CSAs and CBSAs to require the applicant to explain why it has selected its FOM and to demonstrate that its selection will serve low- and moderate-income segments of a community. The proposal also would provide express authority for the NCUA to review and evaluate the foregoing explanation and submission regarding low- and moderate-income individuals, and to reject an application if the agency determines that the FCU's selection reflects discrimination. The Board proposes to apply this provision to CSAs and CBSAs because, unlike other community-based FOMs that are based on political jurisdictions or rural districts, there could be a potential to engage in ''gerrymandering'' or ''redlining,'' although the Board emphasizes there is a lack of evidence of FCUs engaging in such gerrymandering. The following sections provide background on the relevant legislation, rulemakings, and court decisions that inform this action.

A. Overview

Under the Federal Credit Union Act (Act), seven or more individuals may create a federal credit union (FCU) by presenting a proposed charter to the Board and paying a fee.[2] These individuals, referred to as ''subscribers,'' must pledge to deposit funds for shares in the FCU and describe the FCU's proposed FOM.[3] An FOM consists of those persons and entities eligible for membership based on an FCU's type of charter. Before granting an FCU charter, the Board must complete an appropriate investigation and determine the character and fitness of the subscribers, the economic advisability of establishing the FCU, and the conformity of the organization certificate (referred to as the charter or chartering document) with the Act.[4] Under the Act, FCUs may choose from two general categories of FOM: Common-bond and community.[5]

The NCUA's Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of the NCUA regulations (Chartering Manual),[6] implements the chartering and FOM requirements that the Act establishes for FCUs. The Chartering Manual provides generally that the NCUA will grant a charter if the FOM requirements are met, the subscribers are of good character and fit to represent the proposed FCU, and the establishment of the FCU is economically advisable.[7] In addition, ''[i]n unusual circumstances, the NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved.'' [8]

In adopting the Credit Union Membership Access Act of 1998 (CUMAA), which amended the Act, 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.'' [9] As amended by CUMAA, the Act provides a choice among three charter types: A single group sharing a single occupational or associational common bond; [10] a multiple common bond consisting of groups each of which have a distinct occupational or associational common bond among members of the group; [11] and a community consisting of ''persons or organizations within a well-defined local community, neighborhood, or rural district.'' [12]

Congress has expressly delegated to the Board substantial authority in the Act to define what constitutes a WDLC, neighborhood, or rural district for purposes of ''making any determination'' regarding a community credit union,[13] and to establish applicable criteria for any such determination.[14] 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.'' [15] The boundaries themselves may consist of political borders, streets, rivers, railroad tracks, or other static geographical features.[16] The Board continues to emphasize that common interests or interaction among residents within those boundaries are essential features of a local community.

[1] References to CSAs or portions thereof in this proposed rule should be understood to carry this 2.5 million population limit. As noted above, under the proposed rule, an applicant may select an entire CSA as its WDLC if its population is 2.5 million or below. Alternatively, if the CSA's population is greater than 2.5 million, the applicant may still base its WDLC on the CSA but must select an individual, contiguous portion of the CSA that has a population no greater than 2.5 million.

[2] 12 U.S.C. 1753(3).

[3] 12 U.S.C. 1753(5).

[4] 12 U.S.C. 1754.

[5] 12 U.S.C. 1759(b).

[6] Appendix B to 12 CFR part 701 (Appendix B). The Chartering Manual is a single regulation that addresses all aspects of the chartering of FCUs. In that respect, it is similar to the regulations of the Office of the Comptroller of the Currency applicable to the chartering of national banks or Federal savings associations. 12 CFR part 5.

[7] Appendix B, Ch. 1, § 1.

[8] Id.

[9] Public Law 105–219, 2, 112 Stat. 913 (Aug 7, 1998).

[10] 12 U.S.C. 1759(b)(1).

[11] Id. 1759(b)(2)(A).

[12] Id. 1759(b)(3).

[13] Id. 1759(g)(1)(A).

[14] Id. 1759(g)(1)(B).

[15] Appendix B, Ch. 2, section V.A.2.

[16] Appendix B, Ch. 2, section V.A.5.

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 (''SPJ'').[17] A WDLC was (and still is) required to consist of a contiguous area, as reflected in the current text of the Chartering Manual.[18] In 2010, the Board replaced the narrative model in favor of an objective model that provided FCUs a choice between two statistically based ''presumptive communities'' that each by definition qualifies as a WDLC (the ''presumptive community model'').[19] The Board did so because it found the narrative model cumbersome, time-consuming, and subjective. By contrast, the Board found that the presumptive community approach, and particularly the use of statistical areas, would minimize ambiguity and make the application process less time-consuming.[20] Further, the Board carefully considered the expertise and reasoning of the agencies that devised the statistical areas in deciding to designate these areas as WDLCs. In particular, the Board noted its agreement with the Office of Management and Budget (OMB) that commuting patterns within statistical areas demonstrate a high degree of social and economic integration with the central county.[21]

One kind of presumptive community is an ''[SPJ] . . . or any contiguous portion thereof,'' regardless of population.[22] The second is a single CBSA [23] (as defined above) as designated by the U.S. Census Bureau (Census Bureau), or a well-defined portion thereof, which under the 2010 final rule was subject to a 2.5 million population limit.[24]

For CBSAs that OMB has subdivided into metropolitan divisions, a community consisting of a portion of the CBSA was required to conform to the boundaries of such divisions. That is, the community could not cover multiple divisions within a CBSA. Under either of the ''presumptive community'' options, an FCU was required to demonstrate its ability to serve its entire proposed community, as demonstrated by the required business and marketing plans.[25]

B. 2015 and 2016 Rulemakings

On November 19, 2015, the Board approved a proposed rule to amend various provisions of the Chartering Manual, including the WDLC and rural district options for community FOMs (''2015 Proposed Rule'').[26] As relevant here, in the 2015 Proposed Rule, the Board proposed to amend the community FOM options by: (1) Eliminating the requirement for an FCU serving a CBSA to serve its core area; (2) permitting FCUs to serve a portion of a CBSA up to a 2.5 million population limit, even if the CBSA's total population is greater than 2.5 million; [27] (3) permitting FCUs to serve CSAs,[28] which combine contiguous CBSAs, or a portion of a CSA, provided that the chosen area has a population no greater than 2.5 million; (4) permitting FCUs to apply to the NCUA to add adjacent areas to existing WDLCs consisting of SPJs, CBSAs, or CSAs, based on a showing of interaction by residents on both sides of the adjacent areas; and (5) increasing the population limit for rural district FOMs from the greater of 250,000 or 3 percent of the relevant state's population to 1 million, subject to a requirement that the rural district not expand beyond the states immediately contiguous to the state in which the FCU has its headquarters.

On October 27, 2016, the Board approved two rulemakings relating to the Chartering Manual. One was a final rule and the other a proposed rule. In the final rule,[29] the Board adopted the five provisions of the 2015 Proposed Rule that are set forth above (''2016 Final Rule''). In the new proposed rule, the Board proposed additional changes to the community charter provisions (''2016 Proposed Rule'').[30] 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 stand alongside the SPJ and presumptive statistical community options. According to the proposed rule, the narrative model would serve the same purpose as in years prior to 2010, when the narrative model was used exclusively. Further, among other matters, the Board proposed permitting an FCU to designate a portion of a statistical area as its community without regard to metropolitan division boundaries.

C. March 2018 Federal District Court Decision

The American Bankers Association (ABA) challenged several of the community FOM provisions under the Administrative Procedure Act (APA).[31] On March 29, 2018, the U.S. District Court for the District of Columbia upheld, or left in place, three provisions and vacated two provisions of the 2016 Final Rule (''March 2018 District Court

[17] 75 FR 36257 (June 25, 2010).

[18] Appendix B., Ch. 2., section V.A.2. The Chartering Manual also contained this requirement in 2003 under the narrative model. 68 FR 18334 (Apr.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.'' (emphasis added).

[19] As explained in the 2010 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).

[20] 75 FR 36257, 36259, 36260 (June 25, 2010).

[21] 75 FR 36257, 36259 (June 25, 2010).

[22] Appendix B, Ch. 2, section V.A.2.A of the Chartering Manual defines ''single political jurisdiction'' as ''a city, county, or their political equivalent, or any single portion thereof.''

[23] 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).

[24] 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).

[25] Appendix B, Ch. 2, § V.A.4

[26] 80 FR 76748 (Dec. 10, 2015).

[27] Similar to CSAs, as discussed in note 1, this provision allows an applicant to serve an entire CBSA if its population is no greater than 2.5 million. If the CBSA's population exceeds 2.5 million, an applicant may still base its WDLC on the CBSA but must select an individual, contiguous area that has a population no greater than 2.5 million.

[28] CSAs 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.

[29] 81 FR 88412 (Dec. 7, 2016).

[30] 81 FR 78748 (Nov. 9, 2016).

[31] 5 U.S.C. 702.

Decision'').[32] Specifically, the court upheld the provision allowing an FCU to serve areas within a CBSA that do not include the CBSA's core, holding that the definition was a reasonable interpretation of ''local community'' and that the elimination of the core area service requirement was supported by the administrative record. The court also upheld the provision allowing an FCU to add an adjacent area to a presumptive community, similarly holding that this provision was reasonable under the Act and that the Board chose reasonable factors to evaluate whether adjacent areas are part of the same local community. Also, the court upheld the elimination of the requirement that a CBSA as a whole have a population of no more than 2.5 million in order for even a portion of the CBSA to qualify as a WDLC, holding that the plaintiff had waived this challenge by failing to raise it in the rulemaking.

The court vacated the provision defining any individual portion of a CSA, up to a population limit of 2.5 million, as a WDLC, holding that it was manifestly contrary to the Act. Finally, the court also vacated the provision to increase the population limit to 1 million people for rural districts, finding it manifestly contrary to the Act.

Both parties appealed this decision. The NCUA appealed the court's rulings on CSAs and the expansion of a rural district's population limit to 1 million. The ABA appealed only the ruling on the core area service requirement. The CSA and rural district provisions remained vacated while the appeal was pending. Accordingly, the NCUA rescinded approvals granted under those provisions and ceased approving new applications. The NCUA filed a notice with the court on April 19, 2018, stating that it did not interpret the court's March 29, 2018, order as mandating de-listing of members who joined FCUs under the vacated provisions. The notice also stated that the ABA did not intend to seek an order de-listing such members.

D. 2018 Final Rule

On June 21, 2018, while the appeal was pending, the Board adopted certain limited aspects of the 2016 Proposed Rule in a final rule (''2018 Final Rule'').[33] Specifically, the 2018 Final Rule amended the Chartering Manual to: (1) Allow an FCU seeking to serve a community FOM to submit a narrative to support its chosen area, as an alternative to the presumptive community options; and (2) eliminate the requirement that a WDLC based on a CBSA must be confined to a single metropolitan division within a CBSA. For the narrative model for establishing a WDLC for a community FOM, the Board established a public hearing process for any such proposed community with a population greater than 2.5 million. Further, with regard to the change to CBSA limitations based on metropolitan division boundaries, the Board noted that no commenters objected to this relatively technical change. In addition, in light of the March 2018 District Court Decision vacating the CSA option, the Board removed the CSA option from the Chartering Manual while it amended the portions of the Chartering Manual that contained this option. The 2018 Final Rule contained no statement on the validity of the CSAs or any other indication that the Board had decided to abandon or re-visit this definition. Because the 2016 Proposed Rule did not propose any changes to the rural district definition, the Board did not amend or remove the rural district provision in the 2018 Final Rule.

E. August 2019 Court of Appeals Decision

On August 20, 2019, a three-judge panel of the D.C. Circuit Court of Appeals issued a decision on the appeal (''August 2019 Court of Appeals Decision'').[34] The court reversed the district court's rulings on CSAs and rural districts and directed the district court to enter summary judgment for the NCUA on both issues. The court also reversed the ruling on the core area service requirement for CBSAs, remanding the issue to the agency for further explanation without vacating the provision.

With respect to CSAs and rural districts up to 1 million people, the court held that both provisions are consistent with the Act and were reasonably explained. First, the court found the CSA provision consistent with the ''local community'' provision of the Act.[35] Further, the court found that the CSA definition, which is based on commuting relationships, rationally advances the statutory purpose of ensuring an affinity or common bond among members.[36] The court also found that the definition rationally advances the Act's safety and soundness purposes.[37] On this point, the court found that allowing for larger communities could promote the economic viability of community FCUs.[38] The court also held that the 2018 Final Rule's removal of the CSA option from the Chartering Manual did not render that issue moot, citing evidence of the Board's intention to re-promulgate this provision if the court upheld it.[39]

Second, the court held that the expansion of the rural district definition to areas including 1 million people is consistent with the Act.[40] The court found that the term ''rural district'' does not connote specific population or geographic constraints.[41] The court also found that the Board reasonably explained the expansion, including the 2016 Final Rule's discussion of the agency's experience with several larger rural districts under the pre-2016 rule.[42]

By contrast, the court reversed the district court's ruling on the core area service requirement and directed the district court to enter summary judgment for the plaintiff on this provision and remand, without vacating, this provision to the agency for further explanation.[43] The court held that this provision is consistent with the Act but that the 2016 Final Rule did not adequately explain it in light of the concern that commenters raised about the potential for FCUs to engage in redlining or gerrymandering of CBSAs to avoid serving minority or low-income individuals.[44] The court did not find the 2016 Final Rule's discussion of the agency's ongoing evaluations and supervisory process adequate to explain the provision because the court found that those efforts related to service of those within the FOM, not those excluded from it by definition.[45] In considering whether to vacate this provision or remand it without vacating it, the court found that vacating the provision would raise a substantial likelihood of disruptive effect by making it more difficult for poor and minority suburban residents to receive adequate financial services.[46] The court also noted the potential for the Board to provide sufficient justification for the provision on remand.[47] Accordingly, the court directed the district court to

[32] *Am. Bankers Ass'n* v. *Nat'l Credit Union Admin.,* 306 F. Supp. 3d 44 (D.D.C. 2018).

[33] 83 FR 30289 (June 28, 2018).

[34] *Am. Bankers Ass'n* v. *Nat'l Credit Union Admin.,* 934 F.3d 649 (D.C. Cir. 2019).

[35] Id. at 664.

[36] Id. at 665.

[37] Id. at 665–66.

[38] Id. at 666.

[39] Id. at 661–62.

[40] Id. at 672.

[41] Id. at 672–73.

[42] Id. at 673.

[43] Id. at 674.

[44] Id. at 670.

[45] Id. at 670–71.

[46] Id. at 674.

[47] Id.

remand this provision without vacating it, and noted that it expected the Board to act ''expeditiously.'' [48] The court did not prescribe a specific deadline or procedure for the Board to follow. Therefore, this provision and approvals that the agency has granted under it remain in effect while the matter is on remand to the agency.

Currently, the Chartering Manual does not contain CSAs or portions thereof as an option for a WDLC. As a result of the August 2019 Court of Appeals Decision, the Board proposes to re-adopt the provision allowing a CSA or an individual, contiguous portion of a CSA, to be a presumptive statistical-based WDLC, provided that the chosen area has a population of no more than 2.5 million. The 2016 Final Rule's expanded definition of rural districts remains in the Chartering Manual and was upheld by the court's decision. Accordingly, the Board does not need to address rural districts in this proposed rule.[49] Finally, the Board provides further explanation and support, and proposes to add a provision to the Chartering Manual with respect to potential discrimination to address the August 2019 Court of Appeals Decision. The Board is issuing this proposed rule promptly after the decision in light of the Court of Appeals' expectation that the agency act expeditiously to provide further explanation on the CBSA core area service requirement.

II. FOM 3 Proposed Rule and Further Explanation on Core Area Service Requirement

A. Overview

The Board emphasizes that this proposed rule is limited in scope and is intended to address only three aspects of the August 2019 Court of Appeals Decision regarding WDLCs. Specifically, the Board is: (1) Proposing to re-adopt the presumptive WDLC option consisting of a CSA or a portion of a CSA with a population of up to 2.5 million; (2) explaining further, with additional reasoning and factual support, the basis for eliminating the core area service requirement for FCUs that choose a portion of a CBSA as a WDLC; and (3) proposing to amend the Chartering Manual as it applies to applications, conversions, and expansions for CSAs and CBSAs to require the applicant to explain why it has selected its FOM and to demonstrate that its selection is not based on discriminatory intent, and to provide express regulatory authority for the NCUA to review this aspect of the application, conduct a further evaluation, if appropriate, and reject an application if the agency determines that the selection is based on discriminatory intent.

The Board notes that these proposed changes to the chartering process reaffirm the current application and review process and make more explicit the steps that the applicant and the agency each follow. As a matter of well-established practice, after the agency receives an application for a community charter, the Office of Credit Union Resources and Expansion (CURE) conducts a thorough review of the application and frequently consults with other agency offices, including the Office of General Counsel for legal issues, and the appropriate Regional Office and the Office of Examination and Insurance for safety and soundness issues. CURE has the option of approving, denying, or requesting more information about the application.[50]

The Board is providing a 30-day comment period in light of the focused nature of the proposed rule and the Court of Appeals' expectation that the Board would act ''expeditiously'' on remand.[51] The Board emphasizes that it is not re-visiting any other portion of the 2015, 2016, or 2018 FOM rulemakings and is not soliciting comments on those other matters. In particular, the Board is not re-visiting these elements (among others) of the 2016 Final Rule: (1) The expansion of permissible rural districts up to one million people; (2) the option to add an adjacent area to a presumptive community; and (3) the elimination of the 2.5 million population cap on CBSAs as a whole, which had previously disqualified as WDLCs portions of any CBSAs with total population over 2.5 million, even if the chosen portion was within that limit.[52]

B. CSAs

For the reasons stated in the 2015 and 2016 rulemaking, the Board proposes to revise the definition of WDLC in the Chartering Manual to include, as it did before the 2018 Final Rule, a CSA or a single, contiguous portion thereof with a population of up to 2.5 million. As stated above, in the 2018 Final Rule, when the Board amended other portions relating to WDLCs that contained references to CSAs, the Board removed the CSA provisions in light of the 2018 District Court Decision. In doing so, the Board did not intend to change or re-visit its carefully reasoned determination in the 2016 Final Rule that such areas constitute WDLCs, but instead modified the rule to be ''consistent with the District Court decision.'' [53] Because the 2019 Court of Appeals Decision reversed the lower court's decision on this issue and upheld the CSA provision from the 2016 Final Rule, the Board now proposes to re-adopt this provision. As the Board details below, it relies on the same reasons it cited in the 2016 Final Rule and restates those below.

i. 2016 Final Rule

In the 2016 Final Rule, the Board noted that many commenters supported the proposal on CSAs, concurring that OMB's approach in designating CSAs is consistent with the NCUA's long-standing consideration of factors such as employment, commuting patterns, and economic interaction to identify a WDLC. Commenters also cited social and economic integration among residents within CSAs given that CSAs represent the same ''commonality of substantial employment interchange'' that an individual CBSA's residents must have.

Bank trade associations opposed recognizing CSAs as ''presumptive communities.'' One criticized the proposal as exceeding the reasonable definition of ''local.'' Others contended that a CSA is necessarily too expansive to be ''local'' because it ''represents larger regions'' that can encompass thousands of square miles crossing county and state borders. One opponent predicted that CSAs would be used to create state-wide FOMs, believing that this was not what Congress intended. Another claimed that Congress sought to impose narrow limits on areas a community credit union serves.

The Board observed that those commenters overlooked certain facts that contradict the notion that a CSA is too expansive to be ''local.'' First, of the

[48] Id.

[49] On October 4, 2019, the ABA filed a petition for rehearing *en banc* with respect to panel's ruling on the CSA and rural district provisions. The petition is pending as of the date of this proposed rule.

[50] CURE staff reviews applications for new or amended charters for compliance with the Act and the requirements of the Chartering Manual, including an applicant's ability to serve low- and moderate-income individuals in the community. After CURE completes its review, it obtains input from other divisions in the agency, as noted above. Accordingly, the Board notes that the review process typically takes several months, and the decision to grant a community charter is not automatic.

[51] See NCUA Interpretive Ruling and Policy Statement 87–2, as amended, 52 FR 35231 (Sept. 18, 1987).

[52] In addition, the Board is not proposing to re-visit any of the non-community FOM changes that it made in the 2016 Final Rule.

[53] 83 FR at 30291.

174 CSAs that OMB had designated at that time, the 22 largest would not qualify as a WDLC because each, as a whole, exceeds the 2.5 million population cap.[54] Second, the average geographic size among the 152 CSAs that would each have qualified as a WDLC at that time, at 4,553 square miles, was comparable to the average geographic size among the 243 individual CBSAs the Board has approved since 2010, at 4,572 square miles.

The Board adopted the proposal because a CSA simply unifies, as a single community, two or more contiguous CBSAs that each independently met the existing rule's definition of a ''statistical area'' that presumptively qualifies as a WDLC. Accordingly, subject to the existing 2.5 million population limit for a CBSA, the 2016 Final Rule added to the ''statistical area'' definition ''all or an individual portion of . . . a Combined Statistical Area designated by the U.S. Office of Management and Budget.'' [55]

As summarized above, the 2018 District Court Decision vacated the CSA provision, and the 2019 Court of Appeals Decision reversed this ruling, finding the commuting relationships that OMB uses to define CSAs to be a reasonable proxy for community.

ii. New Proposal

For all the reasons set forth above, the Board proposes to re-adopt the CSA provision from the 2016 Final Rule. The Board continues to believe CSAs or a single portion thereof, with the chosen area being subject to a 2.5 million population limit, are sufficiently compact to promote interaction and common interests among its residents. The factual record regarding CSAs is materially identical to what existed in 2016, and the Board is aware of no substantial changes in these statistical areas that warrant departing from the well-founded basis for this provision in the 2016 Final Rule. The only change from the 2016 Final Rule is clarifying language in the proposed text of the Chartering Manual on the requirement that an FCU select a single, contiguous portion of a CSA to meet the WDLC requirement. Such a change is consistent with the current regulatory text for SPJs and CBSAs,[56] the 2016 Final Rule preamble on CSAs, and the NCUA's longstanding, consistent practice with respect to geographic areas. The Board solicits comments on this proposal and will consider any comments it receives. The Board notes, however, that it is most interested in any comments that differ from or expand upon those that the Board thoroughly reviewed in connection with the 2016 Final Rule.

C. CBSA Core Area Service Requirement

As discussed above, the 2019 Court of Appeals Decision remanded to the Board for further explanation the provision of the 2016 Final Rule that amended the WDLC definition to include CBSAs or portions thereof with a population up to 2.5 million without the requirement to serve the core area of the CBSA. The Court of Appeals did not accept the Board's explanation in the 2016 Final Rule that its periodic evaluations of service policies and its experience in this area addressed this issue. As explained in detail below, the Board is issuing further explanation on this issue in light of the court's decision. In addition, the Board is elaborating on its support and basis for this provision. The Board believes that each reason that it lays out below is independently sufficient to support this provision. The Board is soliciting public comments generally on the issues concerning the CBSA core area service requirement. The Board would also be interested specifically in any comments on how the core area service requirement may affect FCUs' ability to serve low- and moderate-income segments of communities.

i. 2015 Proposed Rule

As discussed in the 2015 Proposed Rule, in its 2010 rulemaking on CBSAs, the Board required that when an FCU applies to serve a community consisting of a portion of a CBSA, that portion include the CBSA's ''core area,'' which the NCUA defines as the most populated county or named municipality in the CBSA's title.[57] The primary purpose of this requirement was to acknowledge the core area as the typical focal point for common interests and interaction among residents. The NCUA's review of progress under approved FCUs' business and marketing plans between 2010 and 2015 indicated that those FCUs are adequately serving low-income persons and underserved areas without regard to their location within the community. Accordingly, the Board proposed to repeal the core area requirement as an indicator of service to low-income persons and underserved areas, in favor of the agency's practice of annually reviewing the progress of business and marketing plans for three years following charter approval or expansion, and relying on those plans to assess those service objectives within an original or an expanded community.

ii. 2016 Final Rule

In the 2016 Final Rule, after considering public comments on this issue, the Board adopted the proposal to eliminate the core area service requirement.

The majority of commenters favored repeal of the core area service requirement, stating that it is not mandated by the Act and thus unnecessarily imposes an additional constraint on whom FCUs can serve. They further stated that relief from an obligation to serve a ''core area'' would give FCUs the flexibility to adapt to the specific area each initially is able to serve reasonably and safely, allowing each FCU to establish and maintain a ''marketplace footprint'' there. Other commenters criticized the ''core area'' service requirement for dividing an otherwise viable community or excluding portions that would enhance its viability; for causing an FCU to sacrifice service to other areas within the chosen portion of a CBSA; and as a disincentive to serve populated urban areas due to the additional cost and resources of serving a core area.

In contrast, bank-affiliated commenters generally favored retaining the ''core area'' service requirement. One predicted that its absence would effectively permit ''redlining'' through formation of a community primarily consisting of wealthier areas within a CBSA, while excluding areas where low-income and minority populations are concentrated. Another urged the Board to retain the core area service requirement given that, unless expressly required by state law, credit unions typically are not subject to the Community Reinvestment Act of 1977 (CRA), which requires financial institutions *other than credit unions* to publicly document service to people of modest means.[58]

In response to those opposing the proposal, the Board cited the agency's supervisory process and its ability to follow up on member complaints of discrimination affecting low- and

[54] As of the date of this proposed rule, there are 175 CSAs. OMB Bulletin 18–04 (Sept. 14, 2018).

[55] Appendix B, Ch. 2, § V.A.2. The 2.5 million population cap on CBSAs as a whole was eliminated in the 2016 Final Rule, as discussed in footnote 27 above.

[56] Appendix B, Ch. 2, V.A.2 (providing that the WDLC requirement is met for SPJs if the area is a recognized SPJ ''or any single portion thereof'' and for statistical areas if the area is a CBSA or ''a portion thereof,'' which ''must be contiguous'').

[57] 75 FR 36257, 36260 (June 25, 2010).

[58] 12 U.S.C. 2902(2). Congress has amended the CRA seven times (1989, 1991, 1992, 1994, 1995, 1999, and 2005) since its initial enactment and has declined to apply the CRA requirements to credit unions each time.

moderate-income and underserved populations. Further, the Board observed that the Act does not mandate any such requirement for a community.

Based on these considerations, the Board repealed the core area service requirement in the 2016 Final Rule. As discussed above, the Court of Appeals has remanded this provision for further explanation.

iii. Further Explanation and Support

The Board has carefully reviewed the 2018 District Court Decision, the 2019 Court of Appeals decision, and the record associated with the 2016 Final Rule. As described below, the Board now provides further explanation for the elimination of the core area service requirement for CBSAs. The Board also sets forth new information and data that support eliminating this requirement and seeks comments on that information. To be clear, the Board believes that the further explanation based solely on the record reflected in the 2016 Final Rule is sufficient to support this provision. The new information and data provide additional support that is also sufficient on its own to support this provision. In light of both sets of considerations, the Board continues to find that it is consistent with the Act and its underlying purposes to eliminate this requirement.

1. Background on the CRA, the Federal Credit Union Act, and Anti-Discrimination Laws Applicable to FCUs

As discussed above, the Court of Appeals noted that it did not believe that the NCUA had adequately responded to commenters' objections that the elimination of the core requirement might permit FCUs to engage in discriminatory redlining. In addressing this issue, the Board has reviewed the history of redlining and how it relates to the establishment and mission of FCUs. This background informs the Board's response to the court's direction to provide further explanation.

The term ''redlining'' has a long history associated with banks denying financial services to low-income and minority communities. In the 1930s, allegations of ''redlining'' certain neighborhoods originated with the Federal Housing Administration. The Federal Home Loan Bank Board—a predecessor to the Office of the Comptroller of the Currency (OCC) in regulating federal savings associations—supervised the Home Owners' Loan Corporation, which created ''residential security maps'' to withhold mortgage capital from neighborhoods that were deemed ''unsafe.'' In contrast, the contemporaneous FCU Act of 1934 did not encourage such discriminatory practices. In fact, by focusing on common bonds, the Act encouraged lending to people of modest means and diverse backgrounds.

With respect to chartering new financial institutions, Congress focused on the concept of ''redlining'' with respect to chartering banks and has not applied this term to chartering new community credit unions.[59] Rather, compared to its decision to apply the anti-redlining provisions in the CRA to banks, Congress established a different statutory framework for FCUs to encourage providing financial services to low- and moderate-income residents.

The Board is mindful that Congress has developed several statutory regimes to encourage financial institutions to provide credit to residents of low- and moderate-income neighborhoods. Banks and federal savings associations are subject to the CRA; government-sponsored enterprises (GSEs), such as Fannie Mae and Freddie Mac, are subject to affordable housing goals relating to underserved areas under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008; [60] and FCUs are subject to the Act, which is intended to improve access to credit for underserved communities.

With respect to banks, the OCC noted that Congress enacted the CRA to ''encourage efforts to meet the credit needs of all community members, including residents of low- and moderate-income neighborhoods.'' [61] In addition, the CRA has a second mandate to prohibit redlining (*i.e.,* the denying of or increasing the cost of banking of residents of racially defined neighborhoods).[62] In explaining its supervisory obligation under the CRA, the Federal Reserve states that, among other things, it ''examines state member banks to evaluate and rate their performance under the CRA; considers banks' CRA performance in context with other supervisory information when analyzing applications for mergers, acquisitions, and branch openings; and shares information about community development techniques with bankers and the public.[63] Similarly, the FDIC states the ''CRA requires the FDIC to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered.'' [64]

By contrast, with respect to FCUs, Congress enacted the Act to encourage lending to communities with low and moderate incomes. Specifically, in 1998, Congress enacted CUMAA to amend the Act. Section 2, which sets forth CUMAA's ''Findings,'' states: ''Credit unions . . . have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.'' Further, section 109 of the Act facilitates the formation of community-chartered FCUs to provide financial services to underserved areas.[65] For instance, the accompanying House Report to CUMAA noted that ''[a]ny person or organization within an underserved local community, neighborhood, or rural district may be added to multiple common bond credit unions which establishes and maintains an office or facility in the underserved areas.'' [66] Congress then directed the Board to issue regulations to implement the FOM requirements, including special provisions encouraging service to such underserved communities. The Board did so by issuing the Chartering Manual.

The Board has issued these regulations to further encourage FCUs to provide credit and other financial services to members in underserved areas. For instance, the 2016 Final Rule's elimination of the core area service requirement was intended to provide additional flexibility to community-based FCUs, thereby allowing newly chartered or expanded FCUs to provide financial services to low- and moderate-income segments of

[59] 12 U.S.C. 2901. The ''Findings'' section of this provision directs banks to ''serve the convenience and needs of the communities in which they are chartered to do business.'' 12 U.S.C. 2901(a)(1). In addition, Congress required the banking regulators to ''assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution, and take such record into account in its evaluation of an application for a deposit facility by such institution.'' 12 U.S.C. 2903(a)(1) and (2).

[60] Public Law 110–289 (July 30, 2008); 12 U.S.C. 4511. With respect to the GSEs, Congress directed them to comply with an affordable housing mandate to encourage mortgage lending to underserved communities. Specifically, the GSEs are subject to goals for single-family mortgages for low-income families. The Housing and Economic Recovery Act of 2008 also subjects the GSEs to duty-to-serve rules aimed at facilitating a secondary market for mortgages for very low-, low-, and moderate-income families in manufactured housing, affordable housing preservation, and rural housing. 12 U.S.C. 4565(a).

[61] *https://www.occ.gov/topics/consumers-and-communities/cra/index-cra.html.*

[62] Id. See also, American Bankers Association, Community Reinvestment Act, *https://www.aba.com/banking-topics/compliance/acts/community-reinvestment-act.*

[63] *https://www.federalreserve.gov/consumerscommunities/cra_about.htm.*

[64] *https://www.fdic.gov/regulations/cra/.*

[65] 12 U.S.C. 1759.

[66] H.R. Rep. No. 105–472, at 19 (1998).

communities that are outside the core. As explained below, this reflects the fact that some areas outside some of the core areas may have more low- and moderate-income areas, while the core, which is often closer to business centers, may sometimes have more affluent residents. Further, many FCUs, which often are not large financial institutions, do not have the financial wherewithal to serve both the core of a CBSA and the rest of the CBSA.[67] Allowing such an FCU the flexibility to serve the CBSA without the core results in the FCU being financially capable of providing reasonably priced financial services to more low- and moderate-income individuals rather than fewer.

The Board further notes that the ABA, in its comments about redlining, appears to intermix the two concepts at the heart of the CRA.[68] As the OCC's CRA Handbook explains, the CRA addresses both the initial chartering of banks as well as lending practices. As noted above, the CRA's directive to banks during the chartering process to ''encourage efforts to meet the credit needs of all community members, including residents of low- and moderate-income neighborhoods'' is not a statutory provision applicable to FCUs. Rather, under the Act, FCUs provide financial services to underserved communities through the statute's unique chartering and application process. For instance, a major component of the CRA, as applied to banks, is supervising the branching decisions of applicants for bank charters; in contrast, with respect to community charters, Congress has not found it necessary to direct the NCUA to supervise FCUs' branching decisions. Second, the CRA directs banks to prohibit redlining in its lending and operations decisions. In addition to the fact that Congress has never mandated that the CRA apply to FCUs, the Board further notes that Congress has applied many other anti-discrimination statutes to FCUs. Accordingly, the potential for discrimination by an FCU is further lessened because, like other financial institutions, FCUs are subject to consumer protection statutes such as the Equal Credit Opportunity Act of 1974 [69] (referred to as ECOA), which is implemented by Regulation B,[70] and the Fair Housing Act of 1968.[71] Further, the member-based, cooperative nature of FCU ownership and management is an organic incentive for an FCU to serve its low- and moderate-income member-owners in a way that does not exist in a for-profit bank's relationship with its customers.

Given these important historical distinctions between the chartering of FCUs and banks and the other provisions that help to limit potential discrimination by FCUs based on income or other considerations, the Board concludes that the best way to address the Court of Appeals' concern is in a tailored manner. The Board can do so by clarifying and bolstering protections against potential discrimination through further explanation of the 2016 Final Rule and by adopting new requirements for certain community-based FCUs to address these issues more explicitly in the application process. The discussion below details the Board's reasoning and proposal.

2. Further Explanation of the 2016 Final Rule's Elimination of the Core Area Service Requirement

The Board has reviewed the record from the 2016 Final Rule and concludes that removing the core area service requirement will better allow FCUs to serve low- or moderate-income segments of communities in areas outside the cores. This consideration is consistent with a view that credit union-affiliated commenters expressed in response to the 2015 Proposed Rule. After reviewing the decisions from the District Court and the Court of Appeals in this matter and the comment letters from the 2015 and 2016 rulemaking, the Board has determined that this factor supports eliminating the core area service requirement. In the 2016 Final Rule, the Board relied on the agency's supervisory processes and experience in eliminating the requirement to serve the core area. The Board has reconsidered the matter and concludes that the provision is appropriate because the enhanced flexibility would facilitate service to low-income communities outside core areas. Because cores are relatively populous, retaining the core area service requirement would in many instances make it more difficult for an FCU applicant to serve areas beyond the core. Given the potential to serve low- or moderate-income residents in areas outside the core, the Board believes that eliminating this requirement would provide benefits to low- or moderate-income individuals.

Accordingly, the Board affirms this provision because it would expand access to financial services to low- or moderate-income individuals, which is directly responsive to the concern raised in the prior rulemaking and discussed by the court.

3. Consideration of Supplemental Information

In addition, to supplement the record and offer further support for this provision, the Board has reviewed data reflecting the distribution of incomes across CBSAs in several metropolitan areas.

In response to the court's concern that the ABA warned against redlining and objected that community credit unions could now ''serv[e] wealthier suburban counties and exclud[e] markets containing low-income and minority communities that reside in core area,'' [72] the Board has conducted quantitative analysis indicating that core areas often contain higher-income communities and more expensive housing than certain suburban and exurban areas surrounding the core.

Washington, DC Example

Without the core area service requirement, a new or expanded community charter could be granted to serve low- and moderate-income areas, including Silver Spring/Takoma Park, in Montgomery County and Prince George's County Maryland, which are within close proximity to Washington, DC. These areas have the following median household income based on the America Community Survey, which is produced by the Census Bureau.[73] The latest year for which data are available is 2017.

Zip code	Median household income
20783 Hyattsville (Prince George's County)	$60,783
20903 Hyattsville	63,106
20912 Silver Spring	73,961

[67] In fact, as of June 30, 2019, approximately 75% of all FCUs have total assets under $100 million. Further, approximately 60% of community-based FCUs have total assets under $100 million.

[68] In addition, the ABA itself appears to contend that the CRA is not effective in providing credit to underserved communities. For instance, on its website, the ABA states: ''The rules implementing CRA, however, have not kept pace with the times or with new technologies and are actually holding back investment in the very communities the law is intended to serve.'' Further, in a comment letter to the bank regulators regarding the CRA, the ABA stated that ''the objectives of the CRA statute are being undermined by outdated implementing regulations.'' See ABA Comment Letter to OCC Docket ''Reforming the Community Reinvestment Act Regulatory Framework,'' Docket ID OCC 2018–0008.

[69] 15 U.S.C. 1691 et. seq.

[70] 12 CFR part 1002.

[71] Public Law 90–284, 82 Stat. 73 (enacted Apr. 11, 1968).

[72] 934 F.3d at 669.

[73] *https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml.*

With the core area service requirement, such a new community charter would have to include the entire District of Columbia because that is the ''named'' community in the CBSA. Mandating the core provision would require far more FCU resources, which may not exist, thereby making it more difficult—and potentially impossible—for a potential applicant for a community charter to serve the entire community for several reasons. First, the geographic footprint would be much larger; and second, it would require the new FCU to establish branches in some affluent areas with significantly higher leasing costs. For instance, the following zip codes in Northwest DC—Foxhall, Friendship Heights, and Tenleytown—have the following median incomes, which are roughly double that of some suburban areas.

Northwest Washington

Zip code	Median household income
20007—Foxhall	$123,154
20008—Van Ness	120,342
20016—Friendship Heights	140,545

Atlanta Example

Similarly, Fulton County is the core of the Atlanta metropolitan area, yet certain neighborhoods in Fulton County have much higher median household income than neighboring DeKalb and Gwinnett Counties. Without the core area service requirement, a new community charter could be granted to serve low- and moderate-income areas, including Chamblee and Doraville, in DeKalb County and Norcross in Gwinnett County, both of which border Fulton County. These areas have the following median household income based on the America Community Survey, which is produced by the Census Bureau.[74] The latest year for which data are available is 2017.

DeKalb and Gwinnett County Areas

Zip code	Median household income
30093—Norcross—Gwinnett County	$37,862
30340—Doraville—DeKalb County	50,076
30341—Chamblee—DeKalb County	54,142

Fulton County

Zip code	Median household income
30327—Buckhead	$148,480
30022—Alpharetta	103,228
30305—Paces Ferry	98,506

The situation in which household income is sometimes higher in certain neighborhoods in a CBSA's core as compared to suburban areas in adjacent counties outside the ''core'' is common in many other metropolitan areas, including Boston, Philadelphia, and others. A further irony is that the core area service requirement would often require an applicant to provide financial service to relatively wealthy individuals in high-income areas who have ample options for their financial needs. Thus, the requirement may result in a potential applicant for a community charter either not seeking a charter for the low- to moderate-income areas or expending resources on wealthier areas in the core that have less need for such new services.

Based on the above discussion and examples, the Board has concluded that this requirement may decrease potential credit opportunities for low- and moderate-income segments of communities in some circumstances. By removing the ''core'' provision, the Board anticipates that a potential FCU applicant can focus its limited resources to better serve such communities.

In addition to the data on income cited above, the Board has considered data reflecting that community FCUs tend to serve most CBSA core areas across the country. Currently, the NCUA's data show that a substantial majority of CBSAs, including their core areas, are currently served by community-based FCUs. FCUs of various other charter types also serve core areas across the country. In addition, FCUs currently serve the entirety of several of the most populous SPJs in the country—Los Angeles County, California; Houston, Texas; Philadelphia, Pennsylvania; and San Antonio, Texas. If any of these FCUs seeks to amend their FOM to exclude the core area, such a request will be evaluated by the NCUA, and the NCUA will consider whether the proposed amended charter is discriminatory.[75] Because of this expansive coverage of core areas by community FCUs, which the Board does not expect to change substantially, the Board finds that it is reasonable to eliminate the core area service requirement. As the data show, FCUs, and community FCUs in particular, are currently serving core areas extensively across the country. This finding is independent of the finding above regarding income, and the Board views each factor as independently sufficient to support this provision.

Furthermore, approximately 700 community-based FCUs are currently designated as low-income credit unions pursuant to the Act and the NCUA's regulations.[76] These credit unions have the potential to serve over 10 million members across the country. As directed by Congress, the NCUA accords this designation to credit unions that predominantly serve low-income members. By obtaining this designation, credit unions gain greater flexibility in accepting nonmember deposits,[77] are exempt from the aggregate loan limit on business loans that otherwise applies to all federally insured credit unions,[78] may offer secondary capital accounts to strengthen their capital base,[79] and gain access to grants and loans from the Community Development Revolving Loan Program for Credit Unions.[80] Accordingly, the Board believes that community-based FCUs have both strong incentives and a strong record of providing service to low-income segments of communities.

Separately, the agency's experience in implementing this provision since 2016 indicates that FCUs generally have non-discriminatory bases for pursuing this option. For example, in the three applications that the agency granted between 2016 and 2019 under this provision, the agency detected no evidence of discrimination. Instead, the applicants selected their FOMs either to operate within their current capacity limitations or to be able to serve outlying areas in CBSAs with a populous core area. For example, one FCU that was serving a county outside a core area added an adjacent (also non-core) county given its proximity and its lack of credit union services. This FCU also made this selection based on its branch structure and capacity. Another FCU that invoked this option selected areas outside of New York City within that CBSA. If the FCU had been required to include the core area, it would not have been able to include any outlying areas in its FOM due to resource concerns and the limitations of its

[74] *https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml.*

[75] 81 FR at 88414.

[76] 12 U.S.C. 1757(6); 12 CFR 701.34.

[77] 12 U.S.C. 1757(6).

[78] 12 U.S.C. 1759a(b)(2)(A).

[79] 12 CFR 701.34(b)–(d). Credit unions must submit a secondary capital plan under § 701.34(b)(1) before issuing secondary capital accounts.

[80] 12 CFR 705.2.

ability to serve a certain number of members. The third FCU that chose this option decided to serve a single county and two adjacent municipalities. This FCU has under $50 million in assets, and thus this modest expansion was consistent with its resources and ability to serve. In light of these experiences, as distinct from the data discussed above, the Board finds that the risk of discrimination is minimal and that FCUs have invoked the subject provision to serve areas outside the core that would otherwise have been omitted if the core area service requirement had been in place.

4. Proposed New Factor in the Chartering Manual To Address Service to Low- and Moderate-Income Individuals

Separately, the Board proposes to amend the Chartering Manual to clarify and bolster the NCUA's authority to reject applications to serve community-based FOMs consisting of CSAs or CBSAs, if the agency determines that the FCU's proposal is based on discriminatory intent or a desire to exclude low- or moderate-income individuals. This provision, if adopted, would serve as an additional means to address the issue that the court raised regarding redlining and other forms of illegal discrimination. In essence, this provision would require an FCU to demonstrate that its choice of FOM, including choosing not to serve the core, is based on sound legal and business judgment and not an attempt to redline or discriminate on an illegal basis. This provision would add to the existing requirement for applicants to submit acceptable business plans, which applies to all community-based FOM applications. The Board believes that the further explanation and support set forth above is sufficient on its own to sustain the 2016 Final Rule's elimination of the core area service requirement.

At the outset, as discussed in detail above, the Board notes that the CRA and the frequently associated ''redlining'' prohibition does not specifically apply to FCUs by statute or regulation. The Board has reviewed and understands the 2019 Court of Appeals Decision's distinction between redlining in the CRA context and other potential gerrymandering of a service area with the intention of excluding low-income or minority individuals, or both. The Board is mindful of the potential harm caused by discrimination in various contexts and reinforces its long-standing commitment to require compliance with all applicable anti-discrimination laws. In the context of chartering and selecting a community-based FOM, the Board believes that it can clarify and add to its existing authorities to ensure that it has the necessary tools to address any discrimination that it may encounter in the community FOM chartering process. The Board finds it unnecessary to impose this requirement for WDLCs consisting of SPJs or to rural districts because those community types do not pose the same potential for redlining or gerrymandering that the court considered.[81]

The Board notes that its existing requirements and practices already address community service in the chartering or FOM expansion process. As discussed in the 2016 Final Rule, FCUs seeking or expanding a community FOM must submit a business plan supported by realistic assumptions.[82] Specifically, the Chartering Manual currently requires an applicant for a community charter to submit a ''marketing plan addressing how the community will be served for the 24-month period after the proposed conversion to a community charter, including detailing: How the credit union will implement its business plan; the unique needs of the various demographic groups in the proposed community; how the credit union will market to each group, particularly underserved groups; which community-based organizations the credit union will target in its outreach efforts; the credit union's marketing budget projections dedicating greater resources to reaching new members; and the credit union's timetable for implementation, not just a calendar of events.'' [83]

In the agency's experience, these business plans explain the applicant's reason for selecting a particular FOM, including cost or marketing considerations. The Board proposes to build on that existing practice to more expressly address the court's decision through specific provisions and requirements in the Chartering Manual applicable to CSAs and CBSAs.

Taking this experience and background into account, the Board is proposing to make explicit that an applicant for a community FOM consisting of a CSA or CBSA must address how it will serve low- and moderate-income segments of a community. To make certain that the agency has explicit discretion to ensure that the FCU applicant will not exclude service to low- and moderate-income segments of communities, the Board proposes to amend the Chartering Manual to provide that the NCUA may require additional information on how the FCU's business needs support its selection, conduct any further inquiry that it deems appropriate, and reject either an initial charter application or an expansion or amendment request if the NCUA determines that a community-based FCU has chosen its specific geographic FOM based on discriminatory intent or effect.

In the ordinary course, the Board would expect CURE, in consultation with other agency offices, as necessary, to consider income distribution or other statistical evidence to gauge whether a particular application may call for further review. In addition, under this proposal, CURE may consider other information in determining whether further review is needed, including, but not limited to, inclusion or exclusion of predominantly low- or moderate-income Census tracts within a statistical area, the statements and supporting information from the applicant FCU regarding how it intends to serve low- and moderate-income individuals, and, if applicable, the FCU's record of consumer compliance or fair lending violations. If CURE denies an application on this basis, the applicant could appeal to the Board, as with other whole or partial application denials under the Chartering Manual. To complement this express regulatory authority, the Board also proposes to amend the Chartering Manual to require community-based FCUs that select a CSA or a CBSA to document that it has a non-discriminatory purpose(s) for selecting its FOM and for the NCUA to review such submissions and follow up as appropriate.

The Board believes that this measured approach would provide the agency clear authority in the text of the Chartering Manual to act in appropriate cases based on its extensive experience in evaluating FCUs' service plans. This approach is also appropriate because it expands on the existing principle and provision in Chapter 1 of the Chartering Manual that the NCUA may examine

[81] Under the SPJ provision, an FCU may serve an entire SPJ regardless of population, which limits the potential for the redlining that the court discussed. Likewise, rural districts present limited potential for this conduct because the provision enables FCUs to serve a combination of urban and rural areas to build sufficient capacity to be viable. It would therefore be contrary to this model for FCUs to use the rural district provision to attempt to exclude low- or moderate-income areas, since rural areas are predominantly populated by individuals with low and moderate incomes. See 81 FR at 88417 (''[T]he Board finds it compelling that in 97 percent of non-metropolitan counties, more than 50 percent of the population is either low, moderate, or middle income.'')

[82] FCUs amending their FOMs to add bordering areas submit a ''streamlined'' business plan. Appendix B, Ch. 2., V.B.

[83] Appendix B, Ch. 2, V.A.4.

other factors in unusual cases when deciding whether to grant a charter, including other federal laws and public policy.[84] It would also be consistent with the purposes animating the NCUA's organic Act, which recognizes that FCUs ''have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.'' [85] The proposed amendment would more clearly apply these considerations to community expansion and amendment requests and provide more specific considerations than the general principle in Chapter 1. In sum, after reviewing the August 20, 2019 Court of Appeals Decision and the existing authority in the Chartering Manual, the Board proposes to build on this existing general provision to address this issue.

iv. Summary

As discussed above, the Board has carefully reviewed the court decisions and the 2016 Final Rule and affirms the elimination of the core area service requirement for CBSA-based FOMs. The Board has offered further explanation of the issues raised in the August 2019 Court of Appeals Decision. Specifically, several commenters have made a persuasive case that eliminating this requirement may enable FCUs to serve more low- or moderate-income individuals. Separately, as an independent basis to support this provision, the Board has considered supplemental data relating to CBSAs and concludes that this additional information would also support eliminating the requirement. These data show that a substantial majority of core areas in CBSAs receive service from community FCUs. In addition, the Board has identified several CBSAs in which low- or moderate-income individuals could receive greater access to financial services if FCUs are permitted to serve an FOM consisting of the non-core areas of those CBSAs. Further, and also as an independent basis for affirming this provision, the Board proposes to add a provision to the Chartering Manual under which the Board would retain clear discretion to require additional information, conduct an inquiry, and ultimately reject an initial application, expansion, or conversion, if the Board finds discrimination in the selection of a portion of a CSA or a CBSA, thus minimizing the likelihood of redlining. In this context, the Board notes that many FCUs may choose not to serve core areas because they lack the financial wherewithal, not for discriminatory reasons.[86] The Board believes that each consideration cited above is sufficient on its own to explain and justify the elimination of the core area service requirement, and when combined, provide even stronger justification for this provision. The Board solicits public comments generally on the issues concerning the CBSA core area service requirement. The Board would also be interested specifically in any comments on how the core area service requirement may affect an FCU's ability to serve low- and moderate-income segments of communities.

D. Limited Scope of This Rulemaking

As the Board explains above, this proposed rule has a limited scope. The Board is proposing to re-adopt the CSA presumptive WDLC option that it originally adopted in the 2016 Final Rule and is providing further explanation and support for its elimination of the core area service requirement for CBSAs in the 2016 Final Rule. The Board is also proposing a new provision in the Chartering Manual to enhance service to low- and moderate-income individuals for community FOMs based on CSAs and CBSAs. The Board seeks comments on those issues. The Board is not proposing to re-visit or change any other provisions of the 2016 Final Rule or the Chartering Manual. In particular, the Board is not re-visiting the following elements (among others) of the 2016 Final Rule: (1) The expansion of permissible rural districts up to one million people; (2) the option to add an adjacent area to a presumptive community; or (3) the elimination of the 2.5 million population cap on CBSAs as a whole.[87]

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.[88] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[89] Although this proposed rule is anticipated to economically benefit FCUs that choose to charter, expand, or convert to a community charter, the NCUA certifies that it would 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 rulemaking in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure, or recordkeeping requirement, referred to as information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection unless it displays a valid Office of Management and Budget (OMB) control number.

The rule proposes to amend Chapter 2 of Appendix B to part 701 by adding Section V.A.8 to require applicants of community FOM applications, amendments, and expansions of CSAs and CBSAs to explain why they have selected their FOM and to demonstrate that the selection will serve low- and moderate-income segments of a community, as outlined by the new section V.A.8.

The current information collection requirements for the Chartering and Field of Membership Manual are approved under OMB control number 3133–0015. It is estimated that 20 respondents applying, amending, or expanding a community FOM would be affected by the proposed amendment. It is estimated that these respondents would need an additional two hours to prepare the necessary documentation to demonstrate its selection, for an increase of 40 burden hours.

Title of Information Collection: Chartering and Field of Membership Manual, Appendix B to part 701.

OMB Control Number: 3133–0015.

Estimated number of respondents: 8,155.

Estimated number of responses per respondent: 1.

Estimated total annual responses: 8,155.

Estimated total annual burden: 16,182.

Affected Public: Private Sector: Not-for-profit institutions.

The Board invites comment on (a) whether the collections of information

[84] Appendix B, Ch. 1, Section I.

[85] 12 U.S.C. 1751 note.

[86] Serving a large and densely populated core area may often require establishing a significant geographic footprint throughout the core, with significant expenditures for rent, overhead, and other expenses, which a nascent FCU may not have the resources to cover. But by the same token, densely populated cores will often be an attractive option for FCUs who have the required resources and seek to serve a large and diverse field of membership.

[87] In addition, the Board is not proposing to re-visit any of the non-community FOM changes that it made in the 2016 Final Rule.

[88] 5 U.S.C. 603(a).

[89] 80 FR 57512 (Sept. 24, 2015).

are necessary for the proper performance of the agency's function, including whether the information has practical utility; (b) the accuracy of estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information being collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Comments regarding the information collection requirements of this rule should be sent to (1) Dawn Wolfgang, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314, or Fax No. 703–519–8572, or Email at *PRAcomments@ncua.gov* and the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov*.

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 proposed rule would apply to FCUs exclusively, it would 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 proposed rule would 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 proposed rule would not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[90]

[90] Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 24, 2019.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, the Board proposes to amend 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. Section V.A.2 of Chapter 2 of Appendix B to part 701 is revised to read as follows:

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

* * * * *

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, as well as the business plan requirements set forth in this Chapter. An applicant must meet all of these requirements to obtain NCUA approval.

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. The applicant also has the burden of demonstrating that with respect to the proposed community, it has the capacity to provide financial services to low- and moderate-income areas of the community. The agency will reject any application that fails to establish the criteria set forth above.

For an applicant seeking a community charter for a Statistical 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: (1) 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 Combined Statistical Area (CSA) or 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 CSA or 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.

An area of any geographic size qualifies as a Rural District if:

- The proposed district has well-defined, contiguous geographic boundaries;
- The total population of the proposed district does not exceed 1,000,000.
- Either more than 50% of the proposed district's population resides in census blocks or other geographic units that are designated as rural by either the Consumer Financial Protection Bureau or the United States Census Bureau, OR the district has a population density of 100 persons or fewer per square mile; and
- The boundaries of the well-defined rural district do not exceed the outer boundaries of the states that are *immediately contiguous* to the state in which the credit union maintains its headquarters (*i.e.,* not to exceed the outer perimeter of the layer of states immediately surrounding the headquarters state).

The common bond affinity groups that apply to well-defined local communities also apply to Rural Districts.

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

■ 3. Amend Chapter 2 of Appendix B to part 701 by adding Section V.A.8 to read as follows:

V.A.8 Community Selection Requirements and Review

The NCUA will not approve an application for a community charter consisting of all or a portion of a CSA or a CBSA, including an initial application, amendment, or expansion, unless the applicant demonstrates in its business and marketing plan that (1) the credit union will serve a community that is contiguous and (2) the credit union will provide financial services to low- and moderate-income and underserved people, and that the credit union has not selected its service area in order to exclude low- and moderate-income and underserved people. Upon receipt of this material, the NCUA will evaluate the business and marketing plan to ensure that low- and moderate-income and underserved people will be served and that the credit union has not selected the service area in order to exclude such people. This requirement is in addition to the requirement to document in the business and marketing plan the realistic assumptions that support the credit union's viability and its plan to serve its entire FOM.

The NCUA may conduct such further inquiry or evaluation as it deems appropriate, as authorized by 12 U.S.C. 1754 and consistent with the principles of this Manual, other federal laws, and public policy. If the NCUA determines that the credit union's submission is inaccurate or unsupported, it may deny that application on those grounds, regardless of whether the application satisfies the other criteria for initial chartering, amendment, or expansion.

■ 4. Section V.B of Chapter 2 of Appendix B to part 701 is revised to read as follows:

V.B Field of Membership Amendments

A community credit union may amend its field of membership by adding additional affinities or removing exclusionary clauses. This can be accomplished with a housekeeping amendment.

A community credit union also may expand its geographic boundaries. Persons who live, work, worship, or attend school within the proposed well-defined local community, neighborhood or rural district must have common interests and/or interact. The credit union must follow the requirements of Section V.A.4 and Section V.A.8 of this chapter.

A community credit union that is based on a Single Political Jurisdiction, a Statistical Area (*e.g.,* Core Based Statistical Area or Combined Statistical Area) or a rural district may expand its geographic boundaries to add a bordering area, provided the area is well defined and the credit union demonstrates that persons who live, work, worship, or attend school within the proposed expanded community (*i.e.,* on both sides of the boundary separating the existing community and the bordering area) have common interests and/or interact. Such a credit union applying to expand its geographic boundaries to add a bordering area must follow a streamlined version of the business plan requirements of Section V.A.4 of this chapter and the expanded community would be subject to the corresponding population limit—2.5 million in the case of a Single Political Jurisdiction, or a Statistical Area and 1 million in the case of a rural district. The streamlined business plan requirements for adding a bordering area are:

- Anticipated marginal financial impact on the credit union of adding the proposed bordering area, including the need for additional employees and fixed assets, and the associated costs;
- A description of the current and, if applicable, proposed office/branch structure specific to serving the proposed bordering area;
- A marketing plan addressing how the new community will be served for the 24-month period after the proposed expansion of a community charter, including detailing how the credit union will address the unique needs of any demographic groups in the proposed bordering community not presently served by the credit union and how the credit union will market to any new groups; and
- Details, terms and conditions of any new financial products, programs, and services to be introduced as part of this expansion.

[FR Doc. 2019–23680 Filed 11–6–19; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0863; Product Identifier 2019–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, A320–233, A320–251N, and A320–271N airplanes. This proposed AD was prompted by a report of marginal clearance between certain fuel sensor covers on both left-hand (LH) and right-hand (RH) wings. This proposed AD would require the replacement of certain fuel level sensor brackets, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 23, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0863.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0863; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or