NATIONAL CREDIT UNION ADMINISTRATION

Report to the NCUA Board from the Outreach Task Force (OTF)

Outreach Task Force

February 26, 2008

National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Foreword

February 26, 2008

The Honorable JoAnn M. Johnson
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

The Honorable Rodney E. Hood
Vice Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Chairman Johnson and Vice Chairman Hood:

I am pleased to transmit the NCUA Outreach Task Force's report.

The mission of the Task Force was threefold: (1) evaluate and determine the appropriateness of three recommendations from the agency's 2006 *Member Service Assessment Pilot Program: A Study of Federal Credit Union Service*; (2) assess the agency's current role and efforts with respect to credit union service to their members; and (3) assess the recommendations made by the Government Accountability Office in its 2006 report (GAO-07-29).

In preparing this report, the Task Force conducted research on internal agency practices and the collection of data regarding member income levels and executive compensation. The Task Force also analyzed the NCUA's low-income credit union designation formulas as well as its outreach efforts. In order to assure that a variety of perspectives informed the Task Force's process, six public Town Hall meetings were held in geographically diverse parts of the country. I also met with individuals representing state league governmental affairs committees, national trade associations, and other interested parties as I traveled around the country.

Today's financial services marketplace presents credit unions with the daunting task of differentiating themselves from their competitors while providing unparalleled value to consumers. Federal credit unions, in particular, have been challenged by Congress, the GAO, and others, to demonstrate with reliable data how they fulfill the public policy goals set forth by Congress.

The Task Force considered the shifting political forces that have focused attention on financial institution service to all segments of society. The Task Force also considered the goal of promoting transparency of credit union management to members. In addition, the Task Force addressed the status of NCUA's efforts to help credit unions achieve these goals. Finally, as the report notes, the Task Force identified some areas regarding the agency's outreach efforts that were beyond the scope of its inquiry. Specifically, questions remain regarding how the agency should expand its outreach efforts to include a broader spectrum of credit unions serving or having the ability to serve members of low to moderate income.

This report contains twelve recommendations for consideration by the NCUA Board. The recommendations are framed to provide NCUA and credit unions a thorough understanding of the information considered by the Task Force and the process by which it arrived at its recommendations. The report acknowledges that there are many competing and compelling arguments on all sides of the issues. The Task Force strove to balance the competing concerns of preserving individual privacy with the need for transparency. It also strove to avoid an unnecessary increase in regulatory burden, while acknowledging the reasons to collect information on credit unions' service to members. The recommendations balance all of these considerations and represent sound public policy, and I ask you to consider acting upon the recommendations in an expeditious manner.

I look forward to working with you to consider the recommendations in this report.

Sincerely,

Christiane G. Hyland

Christiane Gigi Hyland
Board Member
Chair, Outreach Task Force

Enclosure

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Abbreviations

Abbreviation	Term
AIRES	Automated Integrated Regulatory Examination Software (System)
CDFI	Community Development Financial Institution
CDRLF	Community Development Revolving Loan Fund
CRA	Community Reinvestment Act
CUMAA	Credit Union Membership Access Act
EDS	NCUA Economic Development Specialist
FCU	Federal Credit Union
FDIC	Federal Deposit Insurance Corporation
FOM	Field of Membership
FRB	Federal Reserve Board
GAO	U. S. Government Accountability Office
HUD	U. S. Department of Housing and Urban Development
IRPS	Interpretive Ruling and Policy Statement
IRS	Internal Revenue Service
MBL	Member Business Loan
MFI	Median Family Income
MHI	Median Household Income
MSAP	Member Service Assessment Pilot Program: A Study of Federal Credit Union Service Report
NCUA	National Credit Union Administration
OCC	U. S. Department of Treasury, Office of the Comptroller of the Currency
OSCUI	NCUA, Office of Small Credit Union Initiatives
OTF	Outreach Task Force
OTS	U. S. Department of Treasury, Office of Thrift Supervision
PALS	NCUA Initiative, Partnering and Leadership Success
RFSI	Retail Financial Services Initiative
ROO	Report of Officials
SCF	Survey of Consumer Finances
SEC	Securities and Exchange Commission
SEO	Senior Executive Officer
Treasury	U. S. Department of Treasury

Executive Summary

On November 3, 2006, the Member Service Assessment Pilot Program (MSAP) Report was presented to the National Credit Union Administration (NCUA) Board. MSAP responded to questions raised by Congress and the Government Accountability Office (GAO) regarding whether federal credit unions (FCU) continue to serve their mission and purpose. In addressing these questions, MSAP carefully reviewed and traced the history of FCUs, and developed statistically valid data allowing for an objective assessment of the membership profiles of FCUs. Also, MSAP collected and analyzed data on senior executive compensation and financial services offered by FCUs.

MSAP concluded FCUs are serving those they are chartered to serve. Since FCUs can only serve individuals and groups who meet certain defined statutory criteria, common bond (membership eligibility) is the overriding factor impacting an FCU's membership profile. MSAP demonstrated that given the opportunity, FCUs can improve the availability of financial services to those in underserved areas. While some opportunities exist within present statutory authority, additional flexibility is needed to significantly broaden outreach efforts. MSAP also made recommendations on senior executive compensation and NCUA's outreach initiatives.

The Outreach Task Force (OTF), created by NCUA Chairman JoAnn Johnson subsequent to receiving the MSAP, had the responsibility of critically assessing the rationale, findings, and recommendations made by MSAP and GAO, and reporting to the NCUA Board its conclusions. The OTF challenged the underlying findings and sought to understand the validity and feasibility of the recommendations. This process required extensive review of NCUA policies and procedures, a survey of all examiner staff, recent congressional actions and public policies to protect consumers and improve financial service to the underserved, comments offered at the six Town Hall meetings, and input from other interested sources.

Ultimately, the OTF made twelve recommendations in four areas – collection of membership profile and financial services data, senior executive compensation, low-income definition, and outreach. While not supporting all the recommendations made by MSAP and GAO, the OTF concluded the membership profile, financial services, and executive compensation data developed by MSAP was extremely valuable to NCUA and FCUs. The OTF also determined there is a need to modernize the formula for designating credit unions as low income. Additionally, the OTF determined outreach is integral to the mission and purpose of FCUs, and NCUA should continue to view its role as encouraging and enabling FCUs to reach out to all of their members, including low- and moderate-income individuals and groups.

Collection of Membership Profile and Financial Services Data: The OTF concluded the collection of membership profile data is important to NCUA and the FCU system and should be reported on an aggregated basis. Additionally, the OTF concurred with MSAP's rationale in support of collecting the information through the Automated

Integrated Regulatory Examination Software (AIRES). This method, using current geo-coding software, is accurate and not burdensome to FCUs. While the collected data of an FCU would not be individually reported, the OTF recommends that each FCU have access to its own report.

Importantly, membership profile data should be considered in the proper context. The OTF determined the collection of financial services data through the 5300 Call Report and its publication in an aggregate format would supplement membership profile information by providing meaningful facts regarding how FCUs are serving their members. Although the OTF recommends collecting financial services data, it does not recommend monitoring actual use by the members.

Senior Executive Officer Compensation: The OTF concluded NCUA and FCUs, both natural person and corporates, would benefit from the collection of senior executive compensation data. The data collection would occur during the normal examination and thus would not pose an undue burden on FCUs and would minimize privacy concerns. NCUA should make the data available only on an aggregate basis. In addition, the OTF determined NCUA's current policy guidance regarding transparency should be modified to require disclosure to all members annually. Since FCUs are cooperatives, the members/owners have a right to know the total compensation paid to senior officials. The OTF concurs with GAO that increased transparency will improve accountability and be more consistent with the prevailing public policy. The OTF did not agree the public is entitled to individual senior executive compensation information.

Low-Income Definition: Currently, NCUA uses median household income (MHI) as one of the qualifying standards for a low-income designation. However, median family income (MFI) is often used by federal government agencies and, in particular, the U. S. Department of Treasury in the administration of the Community Development Financial Institution (CDFI) Fund. Use of the different standards creates a burden for credit unions applying for assistance from both the CDFI Fund and the Community Development Revolving Loan Fund (CDRLF), administered by NCUA. Additionally, NCUA uses the MFI standard in determining if an area qualifies as underserved. The OTF recommends a revision of NCUA Rules and Regulations to replace MHI with MFI as a qualifying standard. To protect credit unions that may not qualify under the new standard, a five-year grandfather provision should also be adopted.

Outreach: NCUA has a long history of assisting the development and continued viability of small and low-income credit unions. This assistance has required NCUA to modify how it structures its outreach efforts based on the needs and demographics of federally-insured credit unions. With the decline in the number of small credit unions, primarily through mergers, and the increase in community charters and FCUs with underserved areas, the OTF recommends NCUA broaden its outreach efforts to include all federally-insured credit unions. The OTF also recommends NCUA emphasize increased regional involvement in the implementation of outreach policies.

Chapter I – Overview

A. Introduction

Federal credit unions (FCU) became an important part of the nation's financial system in 1934, with the enactment of the FCU Act.[1] Congress reaffirmed FCUs' role in the American economy in 1998, with the enactment of the Credit Union Membership Access Act (CUMAA).[2] Congress also reaffirmed the role of FCUs in meeting the financial services needs of persons of modest means, which includes low- and moderate-income individuals.[3]

In 2006, NCUA completed the *Member Service Assessment Pilot Program: A Study of Federal Credit Union Service* (MSAP) to respond to questions raised by Congress and the Government Accountability Office (GAO). NCUA Chairman JoAnn Johnson created the Outreach Task Force (OTF) to both review the findings and recommendations in MSAP and provide a better overall understanding and evaluation of NCUA's outreach efforts. NCUA Board Member Christiane Gigi Hyland chaired the OTF, comprised of NCUA staff members.

The OTF collected and assessed NCUA information regarding:

- all NCUA programs assisting FCUs serving low- and moderate-income individuals, including a survey to all field staff;
- the history and administration of the CDRLF program;
- the formula used to determine if a credit union qualifies for a low-income designation;
- issues related to the collection and transparency of executive compensation; and
- the agency's role and efforts regarding credit union service to members, including membership profiles and financial services.

While compiling NCUA-specific information, the OTF believed it was critical to receive external input. To solicit input and ideas from credit unions, trade associations, and other interested parties, the OTF hosted a series of six Town Hall meetings. The Town Hall meetings covered a geographic cross section of the United States and took place in: Cincinnati; Boston; New Orleans; Los Angeles; Denver; and, Washington, D.C. The OTF considered the input from participants at the Town Hall meetings, as well as comments from other interested parties, when developing its recommendations to the NCUA Board.

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[1] Pub. L. No. 467, c. 750, 48 Stat. 1216 (1934).
[2] Pub. L. 105-219, 112 Stat. 913 (1998).
[3] <u>Id.</u> at §§2, 203(b); <u>see</u> H. Rpt. 105-472 (1998); S. Rpt. 105-193 (1998).

This report discusses four main areas:

- Collection of Membership Profile and Financial Services Data
- Senior Executive Officer Compensation
- Low-Income Definition
- Outreach

Each section describes the OTF's conclusions and recommendations on each topic.

B. Collection of Membership Profile and Financial Services Data

The primary objective of MSAP was to collect and analyze membership profile data on FCUs to provide meaningful information to Congress, GAO, and FCUs. In analyzing the data collected, it was necessary to review the historical mission of FCUs and properly understand the statutory and regulatory parameters within which FCUs must operate. Most significantly, MSAP discussed the statutory limitations imposed on FCUs through defined fields of membership (FOM) in relation to the membership data. As emphasized in MSAP, any discussion and comparison of membership profile data outside the context of charter type, and in many cases the specific FOMs served, would not be useful to understanding whether FCUs are fulfilling their statutory duty. The question is whether FCUs, individually or as a group, in comparison to other types of financial institutions, are successfully meeting "the credit and savings needs of consumers, especially persons of modest means."[4]

In considering the overall purpose of FCUs, MSAP concluded the membership profile data provided valuable information not previously available in a statistically valid format. As a result, MSAP recommended the NCUA Board evaluate whether it is appropriate to "collect FCU member income distribution data as part of NCUA's normal examination program."[5]

In GAO's 2006 report, the following recommendation was made:

> To help ensure that credit unions are fulfilling their tax-exempt mission of providing financial services to their members, especially those of low or moderate incomes, we recommend that the Chairman of NCUA systematically obtain information on the income levels of federal credit union members . . . NCUA's recent pilot survey to measure the income of credit union members could serve as a starting point to obtain more detailed information on credit union member income. Ideally, NCUA should expand its survey to allow the agency to monitor member income characteristics by credit union charter type, obtain information on the

[4] The preamble to CUMAA describes whom credit unions should serve. Pub. L. No. 105-219, § 2(4), 112 Stat. 913, 914 (1998).
[5] NCUA, *Member Service Assessment Pilot Program: A Study of Federal Credit Union Service* (MSAP) (2006) at 55.

> financial services that low- and moderate-income members actually use, and monitor progress over time.[6]

On the issue of measuring the services actually used by low- and moderate-income members, GAO commented that, among other things, NCUA's data collection efforts could be strengthened by "obtaining data on the extent of services offered by credit unions (e.g., free checking accounts, no charge ATMs, low-cost wire transfers, etc.) are being used by income category."[7]

The OTF reviewed the recommendations from MSAP and GAO and concluded the collection of membership profile data is important to NCUA and the FCU system. Additionally, the OTF concurred with MSAP's rationale in support of collecting the information through the Automated Integrated Regulatory Examination Software (AIRES), and confirmed NCUA only requires member street addresses to develop a meaningful and statistically valid membership profile. This method creates no burden to FCUs.

The OTF recognized reporting FCUs may have an interest in knowing their membership profile as determined by NCUA, and concluded NCUA should explore the feasibility of developing a mechanism for FCUs to obtain proprietary membership profile data. At a minimum, if made available, the information may help FCUs identify opportunities to better serve their members and expand outreach efforts.

With the unique structure of FCUs and the statutory limitations on who can become members, membership profile data alone does not provide a meaningful assessment of an FCU's service to its members. FCU membership must be considered in the proper context. For example, if an FCU's authorized FOM does not include low- and moderate-income individuals and groups, its membership profile will most likely differ from an FCU having an underserved area. Since the FCU Act only permits multiple

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[6] GAO, *Credit Unions: Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements* (GAO-07-29) (2006) at 41. NCUA has consistently objected to the use of the language "low and moderate income" when referencing the mission of FCUs. NCUA, in its letter dated November 14, 2006, to GAO stated "NCUA also believes it is inaccurate and inappropriate to measure the success of FCUs in serving persons of modest means by reference only to the low- and moderate-income categories associated with the Community Reinvestment Act (CRA), as these categories only extend to families at or below 80 percent of the median income. There is ample legal and historical evidence that the term modest means, as used by Congress in the context of the FCU Act, is intended to include both below average wage earners and a broader class of working individuals generally…Using broad income categories and equating modest means to low- and moderate-income individuals precludes a valid assessment of the economic demographics of FCU membership." Letter from J. Leonard Skiles, Executive Director, NCUA, to Yvonne D. Jones, Director, GAO (November 14, 2006) as reprinted in GAO-07-29 app. at 81. GAO responded "we used the group consisting of low- and moderate-income households as a proxy for person of modest means…" GAO-07-29, at 43. Both the House and Senate Reports for CUMAA use the term modest means followed by "including those with low and moderate incomes." H. Rpt. 105-472 (1998); S. Rpt. 105-193 (1998). This reference is consistent with NCUA's position.

[7] GAO-07-29, at 42.

common bond FCUs to add underserved areas, it is important to assess aggregated membership profiles with other relevant data.

The OTF determined the collection of certain financial service information was equally important and would supplement membership profile data by providing meaningful facts regarding how FCUs are serving their members. Even though membership profiles provide important information, their use can be further enhanced with a better understanding of financial services offered. Collection of information on financial services offered by FCUs can reasonably and efficiently be accomplished through the 5300 Call Report. This approach will allow NCUA to respond to inquiries regarding the types of financial services FCUs offer, and assist in focusing outreach efforts.

With respect to reporting, the OTF determined individual FCU membership profile data should not be disclosed to other FCUs or the public, but should be reported on an aggregated basis segregated by charter type, as suggested by GAO,[8] asset size, or any other meaningful category. The aggregated data, including financial services, could be made available to FCUs and the general public through NCUA's Annual Report or other official publication(s). NCUA could use the data to optimize partnerships with other federal agencies, including the U. S. Department of the Treasury (Treasury), which administers the Community Development Financial Institution (CDFI) Fund.

The OTF, however, did not agree with GAO's recommendation for NCUA to monitor those financial services actually used by low- and moderate-income members. Such monitoring would require significant and costly NCUA and FCU operational changes, necessitate additional regulatory requirements, have minimal utility in light of the membership data and financial service data recommended for collection, and would be generally inconsistent with the requirements imposed by other federal regulators. Further, FCUs are democratically-structured and operated cooperatives. As such, members of FCUs, through the election of volunteer officials, have the ability to effect change if their needs are not being met.

The benefit of collecting data was weighed against the potential impact/burden on FCUs and NCUA. The OTF determined the impact/burden, if any, of collecting membership profile data and offered financial services would be minimal in comparison to the potential benefits. Additionally, the collection of data would improve NCUA's responsiveness to Congress and other requestors, such as GAO. Conversely, the OTF found the collection of data to determine how members actually used financial services, stratified by income, would create an undue burden on FCUs and NCUA.

The OTF recommends the NCUA Board take the following actions:

- collect membership profile data through the AIRES examination process;
- collect financial services data on the 5300 Call Report;

[8] Id. at 47.

- publish aggregate data on membership profile and financial services in the NCUA Annual Report or other publication(s); and
- develop a means for each FCU to obtain its proprietary membership profile data from NCUA.

C. Senior Executive Officer Compensation

The OTF evaluated whether NCUA should, as part of its regulatory responsibility, collect data reflecting the total compensation paid to the senior executive officers (SEO) of FCUs, both natural person and corporate. Generally, SEOs are the chief executive officer, chief operating officer, and the chief financial officer.[9] The OTF also considered whether FCUs should make SEO compensation data more transparent to their members/owners (members),[10] and if the increased level of transparency would strengthen FCU cooperative principles and accountability. The OTF carefully considered both SEOs' privacy interests and transparency to members. The OTF concluded NCUA and FCUs would benefit from the collection of SEO compensation data, and NCUA's current policy guidance on the disclosure of SEO compensation to members of FCUs should be modified to require improved transparency.

The OTF concurred with MSAP that collecting SEO compensation in FCUs is not based on existing material safety and soundness concerns. Rather, the justification for the collection of SEO compensation is based on two other important criteria. First, members as owners of FCUs should have the right to obtain SEO compensation data. This is consistent with prevalent public policy and should enhance accountability to the members. Second, the data will facilitate NCUA's proper regulatory role of understanding SEO compensation and, if appropriate, will assist in the development of guidance for all FCUs. The OTF determined the overall benefits of NCUA collecting SEO compensation data outweigh the minimal burden on FCUs, and will:

- improve NCUA's responsiveness to Congress and other requestors, such as GAO;
- provide a profile to FCU members of expenses allocated to SEOs charged with the responsibility of safeguarding members' funds; and
- provide comprehensive and stratified data on SEO compensation within the credit union system.

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[9] NCUA Rules and Regulations § 701.14 defines "senior executive officer" to mean "a credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller). The term 'senior executive officer' also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation." 12 C.F.R. § 701.14(b)(2) (2007).

[10] It is NCUA's longstanding position that there is no legal difference between members and owners when used in the context of the FCU cooperative structure. Since members of an FCU are vested with ownership rights, members and owners are synonymous. Use of the word "member" in this report also connotes "owner."

The OTF further determined if SEO compensation data is collected by NCUA, disclosure of the data should be on an aggregate basis by specific categories. For example, data could be stratified by FCU asset category, geographical area, position, FOM, and charter type. The aggregated data could be made available to FCUs and the general public through NCUA's Annual Report or other official NCUA publication(s).

As to the issue of transparency, the OTF concluded improved transparency of SEO compensation to FCU members is sound public policy and can be achieved without undue burden to FCUs. Additionally, it is consistent with an FCU's member-owned, democratically-controlled status. Transparency will provide FCU members with information to assist in the evaluation of a material expense, as well as officials responsible for establishing SEO compensation. Improved transparency should enhance the accountability of the boards of directors to their memberships.

Because NCUA has no existing rules or formal guidance to facilitate the disclosure of SEO compensation to members, the OTF recommends the NCUA Board adopt an amendment to the regulations requiring FCUs, both natural person and corporates, to annually disclose the total compensation of each SEO to their membership.[11] The OTF found no compelling reason to conclude the general public is entitled to similar disclosures, other than the aggregate data disclosed by NCUA.[12]

Overall, the OTF concluded NCUA's collection and aggregate reporting of SEO compensation, and FCUs' disclosure of SEO compensation data to members would: (1) strengthen accountability; (2) provide improved transparency to members; (3) allow FCUs to provide contextual information to members about compensation; and, (4) be consistent with sound governance policies. The collection and disclosure of SEO compensation as suggested will not impose an undue burden while addressing the privacy concerns of SEOs.

The OTF recommends the NCUA Board take the following actions:

- collect FCU and federal corporate credit union senior executive officer compensation during the examination, and then use AIRES and the Corporate Examination Database to capture the information;

[11] NCUA legal opinions had stated FCU members could inspect the FCU's books and records, including executive compensation, under the same terms and conditions of the state corporation law where the FCU is located permits shareholder inspection of corporate records because of the similarity of interests between credit union members and corporate shareholders. See, e.g., Office of General Counsel Opinions 92-0101 (February 21, 1992), 96-0541 (June 14, 1996), and 06-0127B (February 6, 2006). In September 2007, NCUA issued a new regulation giving members the right to inspect FCU books and records. 72 Fed. Reg. 56247 (October 3, 2007) (codified as 12 C.F.R. § 701.3 (2007)). These books and records do not include executive compensation data.

[12] The OTF understands disclosure to members may be tantamount, in many cases, to public disclosure. That is, disclosure to members, depending on the FCU and its FOM, may be viewed as placing the information in the public domain. However, the OTF determined there is a legal distinction between the public-at-large and members within a specified FOM.

- publish aggregate data on senior executive officer compensation in the NCUA Annual Report or other NCUA publication(s); and
- promulgate a regulation requiring FCUs and federal corporate credit unions to annually disclose individual senior executive officer compensation to their members.

D. Low-Income Definition

A critical component of NCUA's outreach program is the determination of a credit union's qualification for low-income designation. NCUA first established the criteria used to determine if a credit union qualified as low income in 1970. With this designation, credit unions are provided statutory and regulatory relief and are eligible for financial assistance from the CDRLF administered by NCUA. Additionally, consistent with NCUA's current strategic objectives, increased resources are allocated to provide assistance to federally-insured, low-income credit unions. These resources include training, special initiatives, and individualized assistance from NCUA staff.

Changing the standard for determining the low-income designation may provide increased outreach opportunities for both credit unions and NCUA. Currently, three standards are available to determine if a credit union qualifies for a low-income designation. The OTF focused its review on the standard most commonly used — members whose annual household income falls at or below 80 percent of the median household income (MHI) for the nation, as established by the U.S. Census Bureau.[13]

Generally, the MHI standard differs from the standards other federal agencies use to promote outreach programs.[14] Most agencies, and most importantly Treasury, in administering the CDFI Fund, use median family income (MFI)[15] as the qualifying standard. This has created confusion and, in many instances, placed additional and unnecessary burdens on those credit unions attempting to qualify for assistance from both the CDRLF and the CDFI Fund. Additionally, NCUA's use of MHI, as a standard to qualify credit unions as a low-income credit union, conflicts with one of the standards it uses to determine if an area is "underserved."[16]

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[13] 12 C.F.R. § 701.34(a)(2) (2007).

[14] NCUA established its standards for low income prior to other federal outreach programs and based the standard on the available data at that time.

[15] MFI is the amount which divides the income distribution into two equal groups, half having family incomes above the median, half having incomes below the median. The median is based on family members 15 years old and over with income. The Census Bureau defines a "family" as a group of two people or more (one of whom is the householder) related by birth, marriage, or adoption and residing together; all such people (including related subfamily members) are considered as members of one family. http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS&_submenuId=datasets_2&_lang=en (Follow "Glossary" hyperlink; then follow "F" hyperlink). MFI is available from the U.S. Census Bureau for both non-metropolitan and metropolitan areas, adjusted by geographical location.

[16] 12 U.S.C. § 1759(c)(2); Interpretive Ruling and Policy Statement (IRPS) 06-1, 71 Fed. Reg. 36667 (June 28, 2006).

The OTF recognized the potential impact of changing the standard from MHI to MFI, including initial conversion costs. Of greater concern is the possibility a low-income credit union may not maintain its low-income designation based on the MFI standard, thus losing the associated benefits. The OTF concluded the concerns related to this issue can be greatly reduced, if not eliminated, with the adoption of a five-year grandfather provision. This would provide the non-qualifying low-income credit union under the MFI standard the opportunity to re-qualify and/or transition to its new status.

Overall, the OTF determined using the MFI standard would outweigh any short-term issues encountered with the change.

The OTF recommends the NCUA Board take the following actions:

- revise NCUA Rules and Regulations to replace MHI with MFI as one of the standards for qualifying a credit union as low income; and
- include a grandfather provision of five years to allow adequate transition time for any low-income credit union failing to qualify under the MFI standard.

E. Outreach

MSAP recommended the NCUA Board evaluate the effectiveness of NCUA programs focused on assisting low- and moderate-income individuals, such as Access Across America, Office of Small Credit Union Initiatives workshops, and The Resource Connection. The OTF addressed this recommendation by reviewing current trends and analyzing feedback from both internal and external sources. The OTF concluded NCUA outreach: (1) is a critical regulatory responsibility; (2) should not be limited to small credit unions and/or low-income credit unions; and (3) would be more efficient and effective with greater regional involvement.

NCUA's most recent efforts to monitor the effectiveness of its outreach programs include reviewing how small credit unions and low-income credit unions have performed relative to all credit unions, gathering anecdotal success stories, and periodically conducting surveys of workshop participants. From these efforts, NCUA learned small credit unions and low-income credit unions provide valuable financial services, and there is strong support for continued allocation of resources to assist credit unions[17] serving and reaching out to low- and moderate-income individuals. However, the OTF's review indicated existing program evaluation methods do not specifically measure the overall impact outreach programs have on credit union operations and

[17] The Data Collection and Executive Compensation chapters of this report do not impact federally-insured state-chartered credit unions. However, the chapters on Low-Income Definition and Outreach are relevant. For example, since all credit unions are eligible for a low-income designation, how NCUA defines "low income" impacts their eligibility. Once designated, all credit unions, not just FCUs, are eligible for certain benefits, such as CDFI funding. Additionally, NCUA has historically included state-chartered credit unions, except those privately insured, at its workshops or training sessions. On occasion, in coordination with the state regulator, onsite training also has been provided.

member services, and it is unlikely the impact could be measured without considerable expense and effort.

The OTF recommends NCUA continue to view its role as encouraging and enabling FCUs to reach out to low- and moderate-income individuals as applicable to each FCU's field of membership. This is consistent with NCUA's Strategic Plan and appropriate because FCUs interact with their members, as opposed to NCUA. NCUA should continue its proactive role as an advocate for outreach initiatives, but should expand efforts to include all types of charters, not solely small credit unions and low-income credit unions.

NCUA's outreach programs to date have promoted both internal and external awareness of opportunities existing to serve low- and moderate-income individuals. Furthermore, recent internal efforts to devote resources toward addressing the unique needs of small credit unions and low-income credit unions have yielded tangible results in terms of the allocation of financial assistance and the establishment of forums for educational and networking opportunities. However, as the operating environment for all credit unions continues to evolve, NCUA should now address how all FCUs can advance outreach.

Historically, NCUA focused assistance outside of traditional supervision on small credit unions and low-income credit unions. As credit unions, especially those serving underserved areas and local communities, face greater competition in serving more diverse memberships, a broader spectrum of credit unions would benefit from NCUA's outreach efforts. An opportunity also exists for NCUA to advocate an environment allowing all types of credit unions to more readily serve low- and moderate-income individuals.

Internally, NCUA staff generally achieves goals related to outreach. This is especially true when considering the assistance NCUA's field staff[18] provides to small and developing credit unions. However, the OTF believes additional opportunities exist to educate staff at all levels regarding outreach. The OTF recommends NCUA expand the scope of its programs to ensure all federally-insured credit unions serving or having the ability to serve low- and moderate-income members be included. Also, NCUA should refocus its resources to ensure the agency efficiently delineates regional and national outreach responsibilities as a part of its process mapping. While the benefactor of this change is all credit unions, operationally, it primarily impacts FCUs. For example, while all federally-insured credit unions are welcome to request training and attend workshops, supervision and compliance oversight of state-chartered credit unions remains with state regulators.

With regard to the CDRLF, the OTF found the program functions well and in a manner consistent with its funding mandate. However, opportunities also exist to enhance the

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[18] Field staff includes NCUA examiners, supervisory examiners, problem case officers, regional capital market specialists, regional training specialists, regional information systems officers, and Economic Development Specialists (EDS).

monitoring of how credit unions have succeeded with their stated goals of using CDRLF funds to promote access to credit union services to low-income individuals.

The OTF recommends the NCUA Board take the following actions:

- expand its outreach program(s) to include a broader spectrum of credit unions serving, or having the ability to serve, members of low or moderate income;
- emphasize increased regional involvement in the implementation of outreach policies; and
- improve its oversight of Community Development Revolving Loan Fund programs.

Chapter II – Collection of Membership Profile and Financial Services Data

A. Background

In recent years, there has been considerable dialogue and debate on whether FCUs are serving those whom Congress intended. Although this has been a recurring issue since GAO's 1991 Report,[19] it gained prominence when GAO's 2003 Report recommended NCUA "use tangible indicators, other than 'potential membership,' to determine whether FCUs have provided greater access to credit union services in underserved areas."[20] In commenting on NCUA's objection to the recommendation, GAO stated:

> This type of information, collected uniformly by a federal agency like NCUA, could serve as [a] first step towards documenting the extent to which credit unions have reached for members outside of their traditional membership base**.** Finally, without this information, it will be difficult for NCUA or others that are interested to determine whether credit unions have extended services of any kind to underserved individuals[21] as authorized in CUMAA.[22]

Central to this discussion and GAO's recommendation was the partial reliance on the data collected by the Federal Reserve Board (FRB).[23] GAO stated:

> As credit unions have become larger and offer a wider variety of services, questions have been raised about whether credit unions are more likely to serve households with low and moderate incomes than banks. However, ***limited comprehensive data are available to evaluate income of credit union members. Our assessment of available data—the Federal Reserve's 2001 SCF,*** 2001 HMDA data, and other studies—provided some indication that credit unions served a slightly lower proportion of households with low and moderate incomes than banks. Industry experts suggested that credit union membership characteristics—occupationally based fields of membership and traditionally full-time employment status—could have contributed to this outcome. However, limitations in the available data preclude drawing

[19] GAO, *Credit Unions' Reforms for Ensuring Future Soundness* (GAO-91-85) (1991).
[20] GAO, *Financial Condition Has Improved, but Opportunities Exist to Enhance Oversight and Share Insurance Management* (GAO-04-91) (2003) at 83.
[21] Congress has not authorized single common bond or community credit unions to add underserved areas. This legislative restriction on FOMs limits the ability of FCUs to reach out to underserved groups.
[22] GAO-04-91, at 86 (footnote added).
[23] FRB, *Survey of Consumer Finances* (2001-2004). The Survey of Consumer Finances (SCF) is a triennial survey of the balance sheet, pension, income, and other demographic characteristics of U.S. families, conducted by the FRB. The survey also gathers information on the use of financial institutions.

> definite conclusions about the income characteristics of credit union members. Additional information, especially with respect to the income levels of credit unions' members receiving consumer loans, would be required to assess more completely whom credit unions serve.[24]

Although acknowledging the limitations in the available data, the overall manner in which GAO presented the data and the failure to fully address the different statutory structure of FCUs created an unwarranted impression of whom FCUs serve. Misinterpretation of the SCF results, relating to credit unions, was noted in Jinkook Lee and William Kelly's research paper *Who Uses Credit Unions?*, which based its findings on the SCF. In the Executive Summary of the research paper they note:

> We find that households using a bank and not a credit union have higher incomes and wealth than households that use only a credit union. Households that use both a bank and a credit union have higher income and wealth than households that use only a credit union or only a bank. This is consistent with our general finding that as households accumulate wealth, they often increase the number of institutions they use.[25]

After its 2003 Report, GAO continued to request NCUA provide empirical data allowing an objective analysis of the membership profile of FCUs. The available data provided GAO, which was primarily anecdotal, included potential membership and growth in FCUs with underserved areas. While somewhat helpful, the data was limited and did not provide the assurance sought by GAO.

GAO's most recent Report (published in 2006), again based its conclusions, in part, on the SCF data:

> As we reported in 2003, we analyzed the SCF because it is a respected source of publicly available data on financial institution and consumer demographics that is nationally representative and because it was the ***only comprehensive source of publicly available data*** that we could identify with information on financial institutions and consumer demographics.[26]

Further, in November 2005, the House Ways and Means Committee raised similar issues. In response to congressional and GAO inquiries, NCUA initiated MSAP in March 2006. The objective of MSAP was to provide statistical data better reflecting whom FCUs serve, which would create a basis for comparison with other studies, such as the SCF.

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[24] GAO-04-91, at 16 (emphasis added).
[25] Jinkook Lee & William A. Kelly, Jr., *Who Uses Credit Unions?* (3rd ed., 2004) at 1.
[26] GAO-07-29, at 43 (emphasis added).

As part of MSAP, NCUA analyzed 14 million member accounts in 448 randomly selected FCUs at considerable expense in time and resources.[27] The information gathered proved to be valuable since it provided statistically valid results for the entire FCU system and for two asset groups (less than $50 million in assets, and greater than or equal to $50 million in assets). The data also enabled descriptive analyses of different FCU charter types for a more in-depth understanding of the FCU system. Finally, through MSAP, NCUA obtained better information on the financial services offered by FCUs.

Until MSAP, the only available statistical data on the membership profile of FCUs was the SCF. However, as NCUA consistently argued, the SCF was not designed for reliable income analysis of FCU members or comparisons between FCU members and bank customers, and should not be used to support the conclusion FCUs are not serving their statutorily-authorized FOMs. This was a major point of contention in the discussions with GAO since 2003, and in NCUA's response to GAO's 2006 findings. In fact, comparisons between FCU charter types and differing FOMs are also problematic. MSAP data presented a more complete and accurate picture of the profile of FCU members and allowed for important descriptive analyses of the differing charter types, which is totally absent in the SCF data.

Although GAO was informally briefed on the potential findings of MSAP and was aware MSAP would most likely precede its report, it chose not to await the results of MSAP, which would have given GAO a greater ability to complete its analysis. Although referencing MSAP, GAO again cited the SCF data, but included additional significant qualifiers as it related to credit unions.[28] While the qualifying language was helpful and provided a better context to interpret the data, GAO, nonetheless, placed some reliance on the SCF findings. Overall, GAO's report focused more on the raw SCF data than warranted by its limitations in relation to FCUs. In the overview of its 2006 Report, GAO stated:

> Because limited data exist on the extent to which credit unions serve those of modest means, any assessment would be enhanced if NCUA were to move beyond its pilot and systematically collect income data.[29]

GAO also asked about the types of financial services FCUs offer, whether these services are conducive to helping persons of low and moderate income, and if the services offered are being used. GAO stated:

> Ideally, NCUA should expand its survey to allow the agency to monitor member income characteristics by credit union charter type, obtain

[27] MSAP at 79.
[28] GAO-07-29, at 50. GAO also qualified the data in its 2003 Report by stating the available data precludes drawing definite conclusions about the income characteristics of credit union members. GAO-04-91, at 99.
[29] GAO-07-29, at "What GAO Found."

> information on the financial services that low- and moderate-income members actually use, and monitor progress over time.[30]

The issues, and thus the objective of the OTF, are clearly framed by congressional inquiries, GAO's reports, and the discussions and recommendations set forth in MSAP. The OTF also expects GAO will follow up on the recommendations made in its 2006 Report. Accordingly, the OTF evaluated whether NCUA should collect:

- FCU membership profile data;
- information on financial products and services offered by FCUs; and
- the actual use of financial services by member income stratification.

The evaluation of whether membership profile and financial services data should be collected also required the OTF to determine the most efficient and least burdensome method to collect and disclose the data.

B. Collection of Data to Determine Membership Profile

The OTF reviewed the issues related to the collection of FCU member income data, which would allow for an assessment of the membership profile of FCUs in relation to charter type and asset size. The overall objective was to determine if legitimate reasons exist to obtain the membership profiles of FCUs. If valid reasons exist, will the collection of the data, considering any potential costs and burdens that may be incurred, particularly by reporting FCUs, outweigh the benefits that may be achieved with a better understanding of whom FCUs serve? The OTF's review of this issue included an analysis of MSAP, the concerns and issues raised by Congress and GAO, independent research on how similar issues are addressed by other federal agencies, and the views, concerns and recommendations of the participants at the Town Hall meetings and other commenters.

Town Hall Meetings – Comments on Collection of Data

At each of the Town Hall meetings, the OTF obtained comments from the participants on whether NCUA should collect member data on a regular basis. The participants were asked to consider and address the following two questions: (1) what are the pros and cons of data collection; and (2) what methods and processes should be used for the collection of member data?

The topic of collecting data to determine the membership profile of FCUs elicited considerable discussion and differing opinions. Much of the discussion related to what data would be gathered, how it would be collected, and how the data would be used by NCUA.

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[30] Id. at 41.

The participants voiced opposition to a potentially significant burden the collection of membership profile data may impose. Additionally, a common concern was the possibility if NCUA were to collect data, it would signal the beginning of new regulatory requirements. Finally, because FCUs are different from other financial institutions, relative to whom can become members, and thus be served, concerns were raised the data would be incorrectly interpreted outside the FCU system, much like the problems encountered with the SCF survey.

However, it was recognized collection of membership profile data could demonstrate FCUs are serving their membership as intended by Congress. The data would also allow NCUA to be responsive to congressional and GAO inquiries.

The OTF concurred with the Town Hall participants if the membership profile data is collected, a collection method posing the least burden on FCUs should be employed. Hence, review by the OTF concentrated on identifying a process which would either not create a burden or, if there is a burden, minimize the impact on FCUs. The OTF understands the concern some users may misrepresent or misinterpret the aggregated data. However, a similar concern could be raised for any type of published FCU data.

Participants at the Town Hall meetings were not specifically asked whether financial service information should be collected and monitored. However, participants did note, to have a full understanding of how FCUs are serving their FOMs, it would be necessary to gather information on the types of financial services FCUs offer.

Reasons to Determine Membership Profile

GAO recommended the MSAP data collection model "could be strengthened by (1) providing benchmark data, such as general population income statistics or other appropriate measures, to allow comparisons with the data collected on the income levels of credit union members; . . . (3) expanding the data collection effort to allow the results to be projectable by charter type; and (4) conducting the study on a systematic or periodic basis to assess the extent of progress over time."[31] The OTF concurs with these three GAO membership profile recommendations. In agreeing with GAO, the OTF determined an improved MSAP data collection model will provide benefits to NCUA and FCUs, including:

- a better understanding of whom FCUs serve;
- the ability to respond credibly on issues relating to FCUs meeting the mission of serving those of modest means within statutorily-authorized and defined FOMs;
- substantiated evidence on how the charter types differ in relation to the FOMs they serve;

[31] Id. at 42.

- an improved basis to structure outreach efforts; and
- assistance in analyzing the success of programs specifically designed to promote outreach.

Without membership profile data, NCUA has limited ability to effectively address some of the issues raised by Congress and GAO. Of equal concern, due to the lack of available data, Congress and GAO have placed a reliance on other data, most notably the SCF, to suggest FCUs may not compare favorably with banks in serving lower-income individuals. It should be noted the FRB issued a study in late 2006 raising concerns with its own SCF data.[32] To better address membership profile questions, the OTF concluded NCUA should collect data from the FCU system, which can be aggregated by charter type and asset size and allow for statistically valid analysis and comparisons.

The OTF determined NCUA is responsible for ensuring FCUs comply with their statutory mission of providing service to their members. FCUs are exempt from federal and most state taxes because they are member-owned, democratically operated, not-for-profit organizations with a mission of meeting the credit and savings needs of their members, especially those of modest means, and NCUA has supervisory authority to ensure this mission is fulfilled.[33] In carrying out this responsibility, it is recognized the membership profile will vary in each FCU depending upon both external and internal factors. External factors include the income characteristics of the groups within the approved FOM and the diversification opportunities NCUA chartering policy provides for each FCU charter type.[34] Internal factors include each FCU's marketing strategy and allocation of resources to support serving its entire FOM.

Generally, single occupational common bond FCUs serving employees of sponsors paying above-average wages have fewer opportunities to serve low- and moderate-income individuals than FCUs serving local communities with diverse income characteristics. In addition, the FCU Act restricts the inclusion of underserved areas to multiple common bond FCUs, thus limiting outreach opportunities. Federal single common bond and community credit unions are statutorily prohibited from adding underserved areas to their FOMs.[35] This limitation makes it more difficult for FCUs to expand outside their authorized FOM in an effort to reach underserved individuals and groups.

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[32] Arthur B. Kennickell & FRB, *How Do We Know if We Aren't Looking? An Investigation of Data Quality in the 2004 SCF* (2006). See Appendix 1 for further discussion of the FRB study.
[33] Supra note 2; 12 U.S.C. §§ 1756, 1766.
[34] NCUA chartering policy, as defined in IRPS 03-1, and amended in IRPS 06-1, allows federal multiple common bond charters to add underserved areas, i.e., local communities that meet certain economic distress requirements, to their fields of membership. Federal single common bond charters may only expand by adding segments, i.e., geographic locations or chapters, of their existing sponsors. Federal community charters may only expand their boundaries after submitting documentation that supports the new area is a local community in its entirety and the expansion is economically viable.
[35] Based on FOM and charter data collected and tracked for all FCUs by NCUA, as of November 28, 2007, 33.3 percent of all FCUs were single common bond charters, 23.2 percent were community charters, and 43.5 percent were multiple common bond charters.

Since the potential level of income diversity varies among different FCUs due to external constraints, NCUA cannot expect or require FCUs to have the same distribution of members among various income stratification levels. However, reliable membership profile data will allow NCUA to review trends for each type of FCU charter, in the aggregate, and develop initiatives to encourage FCU outreach efforts. Additionally, the data will be helpful in developing legislative proposals, e.g., requesting authority for all FCUs to add underserved areas and to provide expanded services to potential FOMs.

The OTF also considered potential consequences of gathering membership profile data. One potential enforcement consequence may be the loss of a low-income designation, if the data reflects a low-income FCU no longer serves predominantly low-income members. That is, if NCUA determines a low-income FCU no longer qualifies for the designation, it would be required, consistent with NCUA Rules and Regulations § 701.34(a), to mandate compliance or remove the designation.[36]

The data may also provide information indicating an FCU's conformance with its business plan submitted to obtain a charter expansion to serve an underserved area. While penetration rate alone cannot be the sole determinant of assessing whether an FCU is meeting the objectives delineated in its business plan, the OTF decided failure to achieve stated goals may, at a minimum, require additional NCUA review.

Another potential consequence of collecting membership profile data includes heightened scrutiny from Congress, GAO, the public, and others whose expectations differ relative to the mission of FCUs and whom they serve. In this regard, membership profile data may be subject to misrepresentation or misinterpretation, or the process may lead to FCUs being subjected to criticism and more stringent reporting requirements in the future. This issue was thoroughly addressed in MSAP, but it is again important to note FCUs are statutorily restricted to serving defined FOMs.

Data Collection Models

The OTF considered the MSAP project model and other governmental collection models to ascertain how to best obtain a statistically valid membership profile for FCUs.

MSAP Project Model[37]

MSAP assessed the share account information of all members within 448 randomly selected FCUs, which included more than 14 million member account records.

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36 12 C.F.R. § 701.34(a) (2007).

37 In Chapter III, MSAP initially used three methods to assess FCU member income distribution. By reviewing a random sample of loan files, associating member zip codes from AIRES download files with census data, and analyzing the AIRES data with third party geo-coding software, MSAP was able to compare the validity and reliability of each method. The labor intensive manual review of loan files was eliminated and the analysis of AIRES share and loan downloads was relied upon for the final data collection.

The MSAP project gathered member income data by:

- obtaining member addresses through AIRES;[38]
- using geo-coding software to identify the income characteristics of the census tract[39] where each member lived; and
- tallying the number of accounts within MFI stratification levels.

Income estimates were derived by matching member addresses with Census Bureau data. Rather than actual member income, MSAP used the Year 2000 MFI for each member's respective census tract to estimate the membership income.[40] Additionally, the data collection software compared the member's estimated income to the MFI of the local metropolitan statistical area (MSA).[41]

Other Governmental Collection Models

Several government agencies collect information pertaining to applicant or customer income as part of an assessment, benefit, or compliance program. The OTF reviewed collection models of federal government agencies including the CDFI Fund, U. S. Department of Housing and Urban Development (HUD), and other federal financial institution regulatory agencies.[42] Each of these collection models is discussed in Appendix 2.

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[38] AIRES is a computer program developed to assist both federal and state examiners in performing credit union examinations. AIRES is capable of accepting electronic share and loan trial balance information from a credit union's data processing system. AIRES loads this data directly into examination modules assisting the examiner in performing share and loan data analysis. The data is fully encrypted and destroyed automatically upon completion of the examination. This method does not pose a burden on the reporting FCU.

[39] A "census tract" is a small, relatively permanent statistical subdivision of a county delineated by a local committee of census data users for the purpose of presenting data. Census tract boundaries normally follow visible features, but may follow governmental unit boundaries and other non-visible features in some instances; they always nest within counties. Designed to be relatively homogeneous units with respect to population characteristics, economic status, and living conditions at the time of establishment, census tracts average about 4,000 inhabitants. They may be split by any sub-county geographic entity. U.S. Census Bureau, https://ask.census.gov/cgi-bin/askcensus.cfg/php/enduser/std_alp.php (Search by Keyword "census tract"; then follow "Definition: Census tract" hyperlink).

[40] The Census Bureau is revising its procedures to provide statistical data on a more timely basis through the American Community Survey process.

[41] The Woodstock Institute objected to the use of MFI in MSAP. It had advocated NCUA "collect data on a member-by-member basis and that NCUA should analyze the data by the well-established income categories established by HUD." Letter from Malcolm Bush, President & Marva Williams, Senior Vice President, Woodstock Institute, to Senator Christopher Dodd, Chairman, Senate Committee on Banking, Housing, & Urban Affairs, & Representative Barney Frank, Chairman, House Committee on Financial Services (January 4, 2007) (copies on file with NCUA).

[42] Other federal financial institution regulatory agencies include the FRB, Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and Office of the Comptroller of the Currency (OCC).

Based on the review, the OTF noted:

- the most common income measurement standard was the MFI;
- the most common record identifier of the customer is based on the address with the related census tract and census income for that census tract; and
- the other federal financial institution regulatory agencies collect aggregate totals by census tracts and require each financial institution to geo-code individual consumer records.

The OTF concluded using a method similar to MSAP to extrapolate member income distribution[43] from addresses and census tract data for member share accounts would meet NCUA's needs.

Membership Income Collection Methods

FCUs generally gather individual income data only when a member applies for credit. The data quickly becomes outdated, and is not easily searchable because it is typically stored in individual loan files. In addition, this data most likely will not be representative of the entire FOM, depending on the types of loans being made.[44] Of greater concern is the data inconsistency among FCUs. The methods of determining and capturing income information vary, making reasonable comparisons extremely difficult. Further, the loan file review process poses a significant burden on both FCUs and NCUA.[45]

With greater emphasis on privacy and with FCUs having no requirement or justification to collect member income as a condition of membership or maintaining an account, pursuit of income data for all FCU members would prove untenable. MSAP demonstrated the feasibility of obtaining member addresses from the share account data in the AIRES download and combining them with geo-coding software and census tract data to estimate member income. Similar to the most common method of measuring income used by the other governmental agencies, MSAP used the MFI as a measure of the member income distribution. The use of geo-coding and census tract matching was determined to be more precise than the use of zip code matching due to the narrower geographic area of the census tract.[46]

The AIRES download provided information necessary for statistically valid results without imposing a burden on reporting FCUs, and was a more precise method than alternatives to determine membership profile. Using the AIRES share data was superior to the loan data, as it included all member accounts instead of a smaller loan

[43] MSAP at 68.
[44] The OTF considered leveraging NCUA's review of Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) data to assess income characteristics of FCU members. Ultimately, the OTF concluded this data is insufficient for this purpose because it is only reported for institutions over $37 million in assets and have a branch office in an MSA, and only captures approvals/denials of mortgage related loan products.
[45] MSAP at 69.
[46] Id. at 75.

representation. For example, loan data was unavailable for nearly one-third of the MSAP sample.[47]

MSAP, however, had two serious limitations. First, due to the design of the sample, determined by the feasibility and cost of the project, statistically valid conclusions regarding FCU membership profile by charter type could not be made. Second, MSAP was a single study and did not provide for any second tier evaluations and comparisons.

MSAP recommended the NCUA Board evaluate whether it is appropriate to collect FCU member income distribution data as part of NCUA's normal examination program.[48] To evaluate if this option is appropriate, the OTF considered five alternatives to collect member data: (1) collecting data from all FCUs through AIRES; (2) collecting data on a sample of FCUs through AIRES; (3) collecting data at a specialized contact on FCUs through AIRES; (4) collecting data through the 5300 Call Report; and (5) conducting a survey of members.

Collecting Data from All FCUs through AIRES

Under this option, NCUA field staff would gather member address data collected through AIRES. An automated process would generate a member income profile using geo-coding software. Member address data is not currently retained after the completion of an examination. Similarly, member address data would not be retained after determining a membership income profile. A complete member-income profile for FCUs would be developed within an approximate twenty-four-month period, thus achieving a comprehensive and statistically valid database. The exam process lends itself to a systematic way of gathering membership profile data with minimal impact, if any, on NCUA and FCUs.

MSAP selected 481 FCUs for review. Of those selected, twenty-four did not provide an AIRES download.[49] Additionally, another nine FCUs merged prior to the completion of MSAP, resulting in usable data from 448 FCUs. Any future collection effort will reasonably have a small percentage of FCUs not providing an AIRES download. Those without a standard AIRES file, however, could provide an ASCII (American Standard Code for Information Interchange) or other file containing the same information. There are eighty-four small FCUs as of November 30, 2007, using manual systems for which the data could not be readily obtained. While these FCUs do not have a statistically significant impact on the aggregate numbers, it may be necessary to obtain the information manually depending on the breakpoint of the asset categories.

After an FCU provides NCUA with member address information, the agency could use geo-coding software to determine the census tract for each member account, compile information, and make relevant comparisons by extracting income information from the

[47] Id.
[48] Id. at 55.
[49] Id. at 66, 68.

Census Bureau.[50] With this information, NCUA will have the ability to determine how the MFI of each census tract served by the FCU compares to the MFI of the relevant statistical area. Once the number of member accounts in each census tract is obtained, the distribution of members at each income level within the relevant statistical area can be ascertained. This method is the recommended option for data collection because it provides for the most complete data and does not create a burden for reporting FCUs.

Collecting Data on a Sample of FCUs through AIRES

The method for this option is the same as collecting data for all FCUs through AIRES; however, only a sample of FCUs would be subject to data collection. MSAP used a sample of FCUs to extrapolate member income distribution data for all FCUs. The sample used by MSAP did not allow for a comprehensive study of FCUs by charter type, or provide for a method to assess the true extent of progress over time of FCUs serving their membership. These limitations could be eliminated by designing the sample based on charter types and periodically conducting the survey. In order to control costs and minimize the impact on NCUA resources, the sample method would have to be coordinated with the examination cycle. If the NCUA Board decides not to collect the information from all FCUs during the normal examination process, this method would be the next best option.

Collecting Data at a Specialized FCU Contact through AIRES

This option differs from the first two, as the contacts would occur outside of the normal examination. This option, using a relevant sample of FCUs, could provide the same information as gathered during an AIRES examination. Although there will be a complete database in a relatively short period of time, NCUA would incur significant costs in terms of increased resources and need additional regulatory approvals to conduct specific contacts. It would also be disruptive to FCUs. The higher cost and increased burden on FCUs to achieve the same result is not supportable; therefore, this method is not recommended.

Collecting Data through the 5300 Call Report

This method would use the 5300 Call Report to collect membership profile data. This would shift the burden to collecting and reporting the information to FCUs. For example, FCUs would have to determine a method to capture membership profile data and then report the aggregate results on the 5300 Call Report. Unless NCUA required a uniform method of collecting and reporting the data, it would have limited reliability for aggregate industry reporting purposes. Additionally, extensive revisions to the 5300 Call Report would be required. In the alternative, NCUA could provide the geo-coding software. This would address the uniformity issue, but would still place the burden of

[50] For each census tract, the Census Bureau compiles information available about a broad spectrum of economic and demographic characteristics, such as population, MFI, employment, and poverty. The Census Bureau also compiles the same economic and demographic statistics for other geographic levels, including nation, state, county, and MSA.

collecting and reporting the information on the FCU and complicate the administrative control by NCUA. Alternatively, NCUA could collect the information during the regular examination, but the responsibility and expense of gathering the data would again be on the FCU. This method and its alternatives are not recommended.

Conducting a Survey of Members

NCUA could conduct a survey of members, similar to the SCF. This would require NCUA to obtain regulatory approval and the addresses of FCU members to survey a sample of members regarding their household finances. This option would be intrusive on FCU members and, since responses would be voluntary, the results may be statistically invalid. In comparison to obtaining the necessary information using the AIRES download, this method, while potentially having some value, has significant deficiencies, and is not recommended.

C. Collection of Data Showing Financial Services Offered at FCUs

Participants at the Town Hall meetings and other commenters on this issue have consistently observed membership profile data only provides a partial representation of how well FCUs are serving their members. In other words, the data primarily reflects who, by virtue of the statutorily authorized FOM, has joined the FCU. This position is supported by MSAP's findings:

> Additionally, MSAP bolsters NCUA's long standing view that the FCU common bond limitation is the overriding factor that impacts membership demographics. Interpreting MSAP data or any other data developed purporting to define the membership of FCUs is best understood and applied within the context of whom FCUs can legally serve, i.e., those within a specified FOM.[51]

Because statistical data is subject to varying interpretations, the OTF considered how to best supplement the membership profile of FCUs to demonstrate how FCUs are serving their FOM. In this regard, GAO recommended both collecting and monitoring financial services actually used by the members.[52] The OTF determined the types of financial services offered by an FCU are important and demonstrates its strategic goals relative to its membership profile. For example, if an FCU offers no-surcharge ATMs or no-cost share drafts, it can be inferred all members, including lower-income individuals, will benefit. To that end, financial services offered are also important to understanding how well FCUs are serving their FOM.

As previously noted, a serious contextual problem exists with reliance on membership profile data without other explanatory information. Taken together, FCU membership profile and financial services offered would provide a more complete portrayal of how

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[51] MSAP at 2.
[52] GAO-07-29, at 41.

FCUs are serving their members. However, monitoring how those financial services are actually used would not provide any additional material benefit.

Accordingly, the OTF reviewed the issues related to the collection of the type of financial services provided by FCUs to their members. The OTF considered whether collecting financial service data is beneficial to understanding if FCUs are serving their members. Additionally, it considered the type of data best complementing membership profile data and the method of collection.

Collecting Data on Financial Services

NCUA does not routinely review or comment on how FCUs serve their members, provided the financial services offered are consistent with sound business practices. Although NCUA has encouraged FCUs to offer activities and programs that reach out to low-income members, regulatory involvement, for the most part, has been one of strategic direction and guidance. Earlier attempts by NCUA to, on a very limited basis, monitor progress of service to members were met with stiff resistance as an unwarranted regulatory intrusion.[53]

Notwithstanding the traditional view on NCUA's responsibility relative to determining if FCUs are reaching out and serving all segments of their FOM, the OTF identified reasons why a change in the position on collecting data on financial services is important. Collection of data on the financial services FCUs offer their members would help NCUA:

- assess whether products align with the efforts to reach all segments of the FOM;
- obtain a better understanding of financial services offered by various charter types to improve NCUA's ability to develop strategic objectives and programs to assist its outreach efforts;
- compare FCUs with other financial institutions, while considering the cooperative structure, in addition to providing a basis for interpreting membership profile data;
- align the method of collecting data on financial services offered by FCUs with the approach of other governmental agencies; and
- respond to Congress, GAO, and others, such as other federal agencies, pertaining to programs FCUs use to assist low- and moderate-income individuals.

Overall, the OTF concluded the financial services data collected for MSAP, while useful, should be expanded to include other important products and services to determine if the different market segments are being reached. The National Community Investment Fund's Retail Financial Services Initiative (RFSI) reviewed the

[53] E.g., in 2000, the NCUA Board required community FCUs to address in a marketing or business plan how they would serve an entire community. 65 Fed. Reg. 64512 (October 22, 2000). The marketing or business plan was commonly referred to as a community action plan. The Board repealed this requirement in 2001. 66 Fed. Reg. 65625 (December 20, 2001).

quantity and quality of financial services for unbanked and low- to moderate-income consumers.[54] The RFSI Report states:

> Of the many lessons learned through the Retail Financial Services Initiative, arguably the most important was the insight that low- and moderate-income consumers are not simply "regular" customers with less money. In reality, they constitute different market segments—rural residents, recent Latino immigrants, urban African Americans, for instance—each with distinctive cultural beliefs, behavior patterns, consumer preferences, and barriers to participation in the financial mainstream.[55]

The OTF understands different market segments may not be included in the various types of charters, particularly single common bond FCUs. Therefore, a standardized list may not capture all of the financial services offered by FCUs, and for some FCUs would not be applicable. However, it is possible, as demonstrated by MSAP, to collect financial services information targeting various member segments in FCUs.

Table 1 lists financial services, except common depository and credit products, generally offered to members. The OTF recommends any collection effort to determine financial services offered include all services listed below.

Table 1

Financial Services	Included in MSAP	Financial Services	Included in MSAP
Transactional:		**Credit:**	
Money Orders		Credit Builder	X
Check Cashing		Micro Business Lending	X
Electronic Cards*		Micro Consumer Loans	X
International Remittances	X	Share Secured Credit Cards	X
No Surcharge ATMs	X	Refund Anticipation Loans	
Low-cost wire transfers			
Depository:		**Financial Education:**	
Individual Development Accounts	X	Financial Education	X
Health Savings Accounts *		First Time Homebuyer Program	X
No Cost Share Drafts	X	Financial Counseling	X
Business Share Accounts	X	In-School Branches	X
Share Certificates with low minimum balance requirements	X	Financial Literacy Workshops	X
Other Member Services:			
Bilingual Services	X		
No Cost Bill Payer	X		
No Cost Tax Preparation Services (i.e., IRS Volunteer Income Tax Assistance Program)	X	** Listed on the September 30, 2007, 5300 Call Report*	
Student Scholarship			

[54] RFSI, *From the Margins to the Mainstream: A Guide to Building Products and Strategies for Underbanked Markets* (2005).
[55] Id. at 8.1.

Methods to Collect Financial Service Data

The OTF considered the benefits and costs of two methods to collect financial services data – the 5300 Call Report and the AIRES download obtained during the regular examination. The OTF's consideration of these two methods was based on the following strategies:

- minimizing the operational changes for FCUs and the NCUA;
- minimizing the regulatory burden associated with the collection of data;
- maintaining similarity with other regulatory agencies;
- allowing periodic collection of data; and
- applying existing technology.

NCUA's 5300 Call Report System

The OTF researched incorporating a schedule in the 5300 Call Report requesting the FCU identify the financial services it offers. Using the 5300 Call Report may increase the reporting burden of FCUs; however, the OTF concluded the use of a simple checklist will mitigate this burden.

The 5300 Call Report provides for a system similar to other government agencies reviewing financial services provided to consumers. Although collection of financial services data in the 5300 Call Report only partially addresses GAO's recommendation to "obtain information on the financial services that low- and moderate-income members actually use,"[56] the OTF views this approach as reasonable. Obtaining data on the specific financial services low- and moderate-income members actually use, however, would require NCUA and FCUs to make operational changes and necessitate additional regulatory requirements, while offering minimal benefit in light of the membership and financial service data recommended for collection.

AIRES Questionnaire

The OTF also considered collecting data on financial services offered at FCUs by developing a new AIRES questionnaire, which examiners would complete during examinations. This method would also involve the modification of NCUA's data infrastructure to capture the data and reprogramming the examination system to extract the questionnaire information. This process, unlike obtaining member address information, would require examiner and FCU involvement and add unnecessary steps to the current examination program since the information cannot be downloaded. Because of the required additional programming of NCUA's data systems and the increased resources necessary to collect the information, this method is not recommended.

[56] GAO-07-29, at 41.

<u>Determining Actual Use of Financial Services</u>[57]

The OTF agreed with GAO that the collection of information on financial services offered by FCUs is important, but disagreed procedures should be in place to monitor how those financial services are used. The data is difficult to accurately collect. To collect the data, NCUA and/or FCUs would incur significant costs. The success of an FCU is a more accurate barometer of how financial services are used. Each FCU must assess if they are meeting the needs of its members.

The OTF considered the cost of collecting data by member-specific usage. Neither NCUA nor most FCUs have a system in place to determine the use of financial services by member-income level.[58] Through AIRES, NCUA can determine which members have a share or loan account, but cannot determine specific financial services used because of the lack of standardized software. To accurately collect this information, NCUA would need to require all FCUs standardize their account coding system.[59] This would create a significant burden without meaningful benefit to NCUA or FCUs.

There are a number of ways NCUA and FCUs can demonstrate they have met their statutory mission. The collection of the actual use of financial services by income stratification does not achieve any additional material benefit to NCUA or FCUs. As appropriate, NCUA field staff review the marketing programs, membership expansion programs, and the suitability of financial services offered.

D. NCUA's Use of Data on Membership Profile and Financial Services Offered

In addition to responding to special requests, the OTF envisions NCUA issuing, in its Annual Report or other publication(s), information regarding how FCUs are serving their FOMs. The reporting, which would be done on an aggregate basis, would be similar to MSAP — listing the data by charter type, asset size, and those with a low-income designation or an underserved area. The report also would include observations regarding the financial services offered by FCUs.

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[57] In accordance with the Federal Deposit Insurance Reform Conforming Amendments Act of 2005, Pub. L. No. 109-173, 119 Stat. 3601 (2006), the FDIC is currently developing a biennial survey on efforts by insured depository institutions to serve the unbanked. The Reform Act defines "unbanked" as "those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution into the conventional finance system." <u>Id.</u> at § 7, 119 Stat. at 3609. The OTF believes a study of similar FCU efforts will be beneficial. The OTF is not convinced, however, that monitoring who uses the financial services offered at FCUs will provide benefits sufficient to outweigh the cost and burden of collecting the information.

[58] This is consistent with FDIC's plans to survey banks on their efforts to serve underbanked as well as unbanked populations. Its survey will consist of two components—a questionnaire survey of a sample and a limited number of case studies of banks. The survey does not measure actual usage of the underbanked populations. <u>See</u> 72 Fed. Reg. 73346 (December 27, 2007). <u>See also</u> Appendix 2 for more information.

[59] Credit unions identify each share and loan account type using an account code. There is no standardized system of account codes as each credit union develops their own account code system.

Although the membership profile and financial services data will be aggregated for use by NCUA, the OTF recommends exploring how FCUs could obtain their individualized proprietary information from NCUA. This information could assist an FCU in evaluating service to its members, including:

- evaluating status and progress in serving its entire FOM including those in areas with lower MFIs;
- analyzing the effectiveness of its marketing programs; and
- identifying areas for expansion opportunities.

The individual data, when reviewed in conjunction with the annual information reported by NCUA, may provide context to an FCU's service to its particular membership.

E. Conclusion: Collection of Membership Profile and Financial Services Data

The OTF concluded NCUA should collect membership profile data during the normal examination process using member addresses from the AIRES download. If collected in this manner, at a minimum, a database showing the membership profile of over 95 percent of all FCUs would be developed in an approximate eighteen-month period from commencement. Within approximately twenty-four months from commencement, the database would be fully populated. This database would provide the most comprehensive and supportable evidence on whom FCUs serve. As demonstrated by MSAP, a geo-coding program should be used to map the member account addresses to applicable census tracts for income level extrapolation.

With this data, NCUA could evaluate trends at FCUs based on characteristics such as charter type and asset size. This would assist in measuring the success of existing initiatives, such as the low-income designations and underserved area expansions and, therefore, be more responsive to Congress and the GAO regarding whom FCUs serve.

In addition, NCUA can use the membership profile data to further tailor the agency's outreach efforts. For example, during the MSAP data collection, thirty-one of the pilot credit unions appeared to be eligible for the low-income designation, but were not designated. Currently, it is not possible for NCUA to identify all credit unions eligible for special programs administered by the CDFI, U.S. Department of Health & Human Services - Assets for Independence, Community Reinvestment Fund, and the Corporation for National & Community Services. Collection of the membership profile data using geo-coding software would greatly increase NCUA's ability to correctly determine eligibility for governmental programs designed to assist low- and moderate-income individuals and groups. Moreover, the data will assist NCUA in encouraging other agencies to dedicate more resources to credit unions.

The OTF determined information on financial services offered by FCUs should be collected and then reported on an aggregate basis to supplement the membership profile data. This data would better demonstrate FCUs' performance in meeting their statutory mission, help NCUA respond to other governmental inquiries, and make NCUA consistent with other regulatory agencies who evaluate financial services provided to consumers. Collection of financial services data can best be accomplished through the 5300 Call Report. Although this approach requires additional action by FCUs, overall, it was the most efficient collection method.

The OTF did not agree with GAO's recommendation for NCUA to monitor those financial services actually used by low- and moderate-income members. Such monitoring would require significant and costly NCUA and FCU operational changes, necessitate additional regulatory requirements, have minimal utility in light of the membership data and financial service data recommended for collection, and would be generally inconsistent with the requirements imposed by other federal regulators.

Chapter III – Senior Executive Officer Compensation

A. Background

GAO's 2006 Report recommended NCUA "improve the transparency of credit union executive compensation to enhance accountability of credit unions to the public and to their members."[60] MSAP recommended: (1) an evaluation of alternatives to collect and aggregate executive compensation on an FCU system-wide basis; and (2) consideration of alternatives requiring the periodic disclosure of executive compensation to the membership.[61] FCUs are exempt from reporting information on executive compensation to the Internal Revenue Service (IRS).[62]

Except for the data collected pursuant to MSAP, NCUA has no consolidated data on SEO compensation. Generally, SEOs are the chief executive officer, chief operating officer, and the chief financial officer.[63] MSAP noted no global safety and soundness concerns associated with executive compensation requiring the collection of senior executive officer (SEO) compensation data. However, this issue required the OTF to consider NCUA's regulatory responsibility to collect SEO compensation.

GAO's recommendation relating to transparency of SEO compensation to members and the general public, however, is a broader issue. The OTF had difficulty in arriving at a final recommendation regarding transparency due to the cooperative structure of FCUs, statutory constraints on FOMs, evolving governance trends in other nonprofits and not-for-profits,[64] operational and privacy concerns, and the historical and sometimes inconsistent practices within the FCU system. Critical to the discussion was a determination of whether FCUs, as financial cooperatives serving statutorily-defined and limited FOMs, have any responsibility to disclose SEO compensation.[65] If they do, does that responsibility extend to the general public, or simply to the beneficiary membership or some defined representative segment of the membership? Finally, does increased transparency improve accountability, as GAO suggests?

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[60] GAO-07-29, at 7.
[61] MSAP at 56.
[62] FCUs must report wages and income to the IRS for individual employees on Form W-2, but the information therein is protected from public disclosure under federal privacy laws. FCUs are not required to file IRS Form 990, which is an informational filing that includes, among other things, executive compensation and benefits.
[63] Supra note 9.
[64] "Non-profit" status is a state law concept. Non-profit status may make an organization eligible for certain state benefits, such as sales, property, and income tax exemptions. "Not-for-profit" organizations are exempt from federal income taxes under the Internal Revenue Code. 26 U.S.C. § 501. Although most federal tax-exempt organizations are non-profit organizations, organizing as a non-profit organization at the state level does not automatically grant the organization exemption from federal income tax. To qualify as exempt from federal income taxes, an organization must meet requirements set forth in the Internal Revenue Code.
[65] See MSAP at 41-48.

Based on the recommendations and observations in MSAP and GAO's 2006 Report, the OTF evaluated whether NCUA should:

- collect compensation data on SEOs at FCUs for regulatory purposes; and
- require disclosure of SEO compensation.

The review of these two issues also required the OTF evaluate the most efficient and least burdensome method to collect and disclose the data to address regulatory issues, ensure accountability, provide transparency, and appropriately protect the privacy of affected SEOs.

Comments and discussions at the Town Hall meetings, as well as feedback from other interested parties, indicate the sensitivity and divided opinions on the collection and disclosure (transparency) of SEO compensation. Generally, participants at the Town Hall meetings expressed concern about violations of privacy and the burden of reporting and disclosing SEO compensation. However, a significant number of commenters acknowledged as member-owned, not-for-profit financial institutions, there are not only valid reasons for the collection of SEO compensation, but also members have a right to know the total compensation being paid to those executives to whom they have entrusted the care of their funds.

Recent media attention surrounding member requests for records resulting in contentious FCU meetings and lawsuits, as well as congressional inquiries, have highlighted the need for clearer policies in this area. Consequently, while approximately half of the Town Hall meeting participants opposed any type of collection or disclosure of SEO compensation, many recognized disclosing the information may be appropriate, and consistent with other executive compensation disclosure practices. Participants also pointed out many state-chartered credit unions have been reporting executive compensation for years without serious consequences. Some pointed out most other industries must report on their executives' compensation.

B. Collection of Senior Executive Officer Compensation Data for Regulatory Purposes

The OTF highlighted three regulatory and policy reasons to collect data on SEO compensation. First, current public policy requires executives in publicly-held companies to make certain financial disclosures, including compensation data, to protect investors/owners and improve the accuracy and reliability of corporate disclosures.[66] While FCUs are not subject to federal laws implementing this public policy, the OTF concluded there are compelling reasons for FCUs to follow a similar policy because they are member-owned, democratically-controlled financial institutions. NCUA's collection of SEO compensation data will help ensure the

[66] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002).

accuracy and reliability of the data, as well as allow the efficient evaluation of the total compensation paid to SEOs.

Second, collecting SEO compensation data will allow NCUA to respond to congressional and GAO inquiries. At present, FCUs report total compensation expenses to NCUA in their 5300 Call Reports. However, because they are federal instrumentalities, FCUs, unlike state-chartered credit unions, have not been required to provide more specific information regarding SEO compensation, such as that reported in IRS Form 990.[67] While NCUA does not currently have a method to collect SEO compensation, the OTF determined collecting the data will allow NCUA to provide accurate information on this issue, when requested.

Third, the collection of SEO compensation data will provide NCUA with a resource of readily available information. The information could be stratified to provide a picture of compensation expenses in specified FCU categories.

As part of its deliberations, the OTF also considered the three preceding regulatory and policy reasons for collecting and disclosing SEO compensation data as they apply to corporate FCUs. Corporate FCUs do not directly serve individual members. However, they do serve the natural person credit unions to which individual members belong. The natural person credit unions are the "owners/members" of the corporate credit unions. Many natural person credit unions invest a significant portion of their funds in corporate credit unions and receive important services from them. To ensure their members' funds are being used appropriately and to make sound investment decisions, member credit unions should have access to compensation information. The OTF determined all three of the regulatory and policy reasons noted for FCUs to collect and disclose SEO compensation data are also applicable to corporate FCUs.

<u>Town Hall Meetings – Comments on Collection of Senior Executive Officer Compensation Data</u>

Collection of executive compensation was discussed at each Town Hall meeting. Specifically, the participants were asked to discuss concerns related to regular NCUA collection of executive compensation data.

While most comments regarding executive compensation focused on transparency, the OTF received some comments relating to the propriety of NCUA collecting executive compensation and maintaining a database. Generally, participants questioned the need for NCUA to collect the data, noting NCUA already has access to the data through the examination process. However, participants mostly agreed if data were collected, NCUA could use it for statistical analysis. Participants recommended that if NCUA

[67] FCUs are not required to file IRS Form 990 because they are classified as "tax exempt organizations" by Section 501(c)(1) of the IRS Code. 26 U.S.C. § 501(c)(1). This classification derives from the fact FCUs are considered federal instrumentalities expressly exempt from taxation by an act of Congress. State chartered credit unions do not have the same classification, and thus, must file IRS Form 990, either individually or on a consolidated basis.

decided to collect the data, it should be disclosed in the aggregate, such as in relation to peer categories. Participants were opposed to NCUA collecting the data using the 5300 Call Report; however, their objection to this method related primarily to the concern the general public, as opposed to the FCU's membership, would have access to the 5300 Call Report data.

Data Subject to Collection

The OTF recommends NCUA collect compensation data for each SEO.[68] Collecting SEO compensation for every FCU will give NCUA the most detailed information to evaluate and respond to compensation issues.

MSAP collected executive compensation data from the IRS Forms W-2 and 1099. Data from Form W-2 includes wages, other compensation, nonqualified plans, and deferred compensation. Data from Form 1099 includes cancellation of debt and miscellaneous income, such as:

- rent amounts paid;
- other income (prizes, awards, and other taxable income);
- medical and health care payments;
- non-employee compensation;
- golden parachute payments;
- legal fees paid on the recipient's behalf; and
- deferred non-employee income under 26 U.S.C. § 409A.

The sum of incomes reported on IRS Forms W-2 and 1099 was considered the total compensation. The OTF recommends the source of data collected be the same as MSAP.

Methods to Collect Senior Executive Officer Compensation Data

The OTF evaluated three methods to collect SEO compensation data. These included collection through the examination process, the 5300 Call Report, and the Report of Officials (ROO). In considering these methods, the OTF evaluated privacy issues, the level of detail required, and the burden to FCUs and NCUA. A brief discussion of each method is provided below.

Examination Process

NCUA examiners could collect SEO compensation data during examinations and input that data into the AIRES program. Collection through the examination process should address the privacy concerns of SEOs, primarily related to the inappropriate use of the information. Since the OTF recommends NCUA aggregate the data by specific categories, individual FCU comparisons by the public would not be possible.

[68] Supra note 9.

Additionally, NCUA could retrieve the data when necessary and would have a full data set within approximately twenty-four months. Collecting SEO compensation data during the examination process provides consistency of the data and reduces the burden to FCUs. SEO compensation data for corporate FCUs could also be gathered during the examination process and input into the Corporate Examination Database in a similar manner as AIRES is used for natural person FCUs. NCUA would need to make minor software modifications to capture the information in AIRES and the Corporate Examination Database.

The OTF recommends this method.

<u>5300 or 5310 Call Report</u>

FCUs submit financial information to NCUA on the 5300 (5310 for Corporate FCUs) Call Report quarterly (monthly for Corporate FCUs), so this method would ensure the most current data. Since these are publicly available, privacy concerns exist. The public availability must be balanced with the financial privacy of SEOs, who generally oppose the disclosure of their compensation. Further, the quarterly reporting of annual SEO compensation data may result in inconsistencies in data reported. The 5300 and 5310 Call Reports would require modifications to accommodate the additional data entries. As a result of the privacy concerns and the possible inconsistencies, this method is not recommended.

<u>Report of Officials</u>

The ROO is another method NCUA could use to collect SEO compensation. However, the ROO is not an efficient collection tool. On the current ROO, the information provided to NCUA includes data on FCU and Corporate FCU volunteers and CEOs only. Before NCUA could use the ROO to collect compensation data, the report would require significant modifications to ensure timeliness and accuracy, and NCUA would incur substantial costs. Like the 5300 or 5310 Call Report, the potential use of the ROO increases privacy concerns of SEOs and shifts the burden to the FCUs to provide the information. For these reasons, this method is not recommended.

<u>NCUA Responsibility to Disclose Senior Executive Officer Compensation</u>

Having determined the collection of SEO compensation serves appropriate and important regulatory and policy purposes, the OTF evaluated the level and methods of disclosure. One of the key reasons for collecting SEO compensation is to respond to Congress and other requestors on public policy issues involving SEO compensation. Specifically, Congress and GAO raised questions about the current lack of transparency of SEO compensation to members. Therefore, it is reasonable to assume some level of disclosure will follow the collection of SEO compensation.

The OTF recommends SEO compensation data should be disclosed in the aggregate, which could be reported through the NCUA Annual Report or other official publication(s). The Annual Report, for example, is posted to the NCUA website for public viewing. It would be cost effective and have a wide distribution. The OTF anticipates the Annual Report will include average SEO compensation. For comparison purposes, data could be reported by specific categories. For example, data could be stratified by FCU asset category, geographical area, position, FOM, and charter type.[69]

Disclosure of aggregate data could have a variety of uses. FCU directors may refer to the aggregated data as a means of comparing the level of SEO compensation in similar FCUs. In addition to public policy relevance, FCU directors would have an additional resource to consider when determining SEO compensation.

C. Improved Transparency of Senior Executive Officer Compensation

Another important issue considered by the OTF is the GAO and MSAP recommendation to evaluate how to make executive compensation more transparent. Underlying the recommendation by GAO, and as set forth in the MSAP, was the recognition, at a minimum, increased transparency to the members of FCUs would enhance management accountability.

The OTF evaluated to what extent, if any, increased levels of transparency would affect the operations of FCUs. The OTF also considered the interests of members, the general public, and affected SEOs, while also addressing concerns posed by Congress and GAO. Critical to this discussion was whether FCUs have the responsibility to disclose executive compensation. If they do, does that responsibility extend to the general public, to the beneficiary membership, or some defined representative segment of the membership?

NCUA's current regulations and the FCU Bylaws do not facilitate access to executive compensation. Historically, this issue has been addressed primarily through legal opinions, stating FCU members may inspect the FCU's books and records under the same terms and conditions state corporation law (where the FCU headquarters is located) permits shareholder inspection of corporate records.[70] This interpretation does not provide a consistent standard for all FCUs, and in some instances, state courts have been reluctant to apply state law to federal institutions.

[69] Other FFIEC agencies do not disclose executive compensation data on regulated institutions in annual reports; however, the information for each stock issuing institution is available from the Securities and Exchange Commission (SEC).
[70] Supra note 11.

Town Hall Meetings – Comments on Transparency of Senior Executive Officer Compensation

Transparency of executive compensation was discussed at each Town Hall meeting. The participants were asked: "What concerns, if any, do you have related to NCUA's collection of senior executive compensation data on a regular basis?" A subset question was: "What issues do you anticipate in the collection and reporting of data regarding senior executive compensation, and what impact, if any, will it have on you?"

The major concern relative to collecting executive compensation data involved increased transparency. The participants set forth a number of reasons questioning the need to have improved transparency; however, many concluded improved transparency may serve a useful purpose. In this regard, participants indicated:

- it was difficult to respond to the question without a clear understanding of the definition of compensation;
- the surveys conducted by credit union trade organizations provided sufficient transparency;
- since members rarely requested executive compensation data, they must not be interested;
- context is everything – how the information is presented is critical to members' understanding the information;
- members or others may misuse the information; and
- significant privacy concerns exist relative to disclosing executive compensation data to members, employees, and the public.

Although these concerns were cited, there was some agreement a legitimate basis existed for members to know whether their funds were managed appropriately. Additionally, a general theme in addressing transparency was the belief FCUs should affirmatively demonstrate consistency with the trend of "for-profit" and "not-for-profit" institutions and disclose executive compensation data to members. However, approximately half of the Town Hall meeting participants did not believe disclosure of SEO compensation data was necessary in view of the effectiveness of existing controls and the absence of safety and soundness issues.

Transparency to the Public and Membership

GAO's 2006 Report recommended "the Chairman of NCUA take action to ensure that information on federal credit union executive compensation is available to credit union members and the public for review and inspection."[71] GAO indicated making information on executive compensation available to the public would provide greater accountability and improve oversight for credit unions, similar to other publicly-held companies. GAO's recommendation identifies two different issues – transparency to the public and transparency to members.

[71] GAO-07-29, at 41.

In addressing transparency to the public, MSAP discussed the unique structural features setting FCUs apart from other financial institutions in support of the reason to restrict public disclosure. Unlike banks, savings institutions, or other publicly-held companies, FCUs cannot issue stock, and with the exception of low-income credit unions, CDFI-certified credit unions, and corporate FCUs, cannot solicit additional capital from outside sources. Additionally, FCUs' unique structure makes them accountable to their member-owners, not the general public. Therefore, members should be able to readily obtain SEO compensation data. The OTF agreed with MSAP's assessment and concluded the general public does not have a compelling interest in the operations of an FCU, including SEO compensation.

In addressing transparency to the members, the OTF concluded, consistent with GAO's determination, improved transparency is important in providing greater accountability of SEOs and elected officials. Members have a compelling interest in the strategic operational decisions and direction of FCUs, which includes access to SEO compensation data. SEOs are directly accountable to the directors, and ultimately, to the members. Unless total compensation data is readily available to the members for review, the ability to evaluate one of the most important decisions the board of directors must make, the employment and compensation of SEOs, is undermined.

The OTF determined improved transparency would provide members information on the compensation paid to SEOs. With the disclosure of this information, there should be improved accountability for SEOs and the elected officials entrusted to determine appropriate compensation packages. Transparency, by its very nature, places certain limitations on individual privacy. Although sensitive to these privacy concerns, the OTF concluded because SEOs are accountable to the members, greater weight should be given in favor of member access to SEO compensation. In this regard, the burden of improved transparency, such as through the petition process in § 701.3 of NCUA's regulations,[72] should not be placed on members. Finally, the OTF concluded improved transparency is a responsibility of management and is sound public policy.

Transparency of Executive Compensation in Publicly-Held Companies and Non-Profits

In arriving at its conclusions regarding the level of transparency appropriate for FCUs, the OTF reviewed the level of transparency required of other financial institutions, such as publicly-held companies, and other not-for-profit companies. The following discussion summarizes the different statutory and regulatory approaches to transparency of executive compensation.

[72] 12 C.F.R. § 701.3 (2007).

Securities and Exchange Commission Requirements for Disclosure of Executive Compensation

The Securities and Exchange Commission (SEC) has determined financial disclosure is in the best interest of investors and the financial system and is a major component in achieving strong public confidence in publicly-traded companies. To that end, the SEC developed disclosure requirements intended to provide a clear and complete picture of the compensation paid to executives and directors.[73]

The SEC's disclosure requirements include stock awards, option awards, and non-equity incentive plan compensation. In many public companies, these types of transactions are the more significant portion of the compensation paid to executives and directors. The investor would not have a clear and complete picture of the true cost of executive compensation if these items were not disclosed. The SEC requires a specific disclosure format to allow for ease of understanding and comparability with other entities.

A summary of the key SEC requirements include:

- disclosure of covered officials, such as the principal executive officer, the principal financial officer, and the three other highest paid officers and directors;
- discussion and analysis of compensation that addresses the objectives and implementation of the company's executive compensation programs;
- disclosure of compensation information in tabular format as well as in narrative format written in "plain English;" and
- disclosure of three categories of executive compensation: (1) salary, bonuses, stock awards, option awards, non-equity incentive plan compensation, changes in pension value and non-qualified deferred compensation earnings, all other compensation, and a total amount; (2) holdings of outstanding equity-related interests received as compensation that are the source of future gains; and (3) retirement plans and other post-employment payments and benefits. All perquisites in excess of $10,000 in the aggregate must be disclosed as "all other compensation." [74]

Internal Revenue Service Executive Compensation Filing Requirements

To qualify for tax exemption under the IRS Code, an entity must be organized for one or more of the purposes specifically designated in the Code.[75] Generally, tax-exempt organizations must file an annual information return commonly known as Form 990, Return of Organization Exempt from Income Tax.

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[73] 71 Fed. Reg. 53158 (September 8, 2006) (proposed rule).
[74] Press Release, SEC, *SEC Votes to Propose Changes to Disclosure Requirements Concerning Executive Compensation and Related Matters*, (January 17, 2006).
[75] 26 U.S.C. § 501.

FCUs are specifically identified by the IRS as Section 501(c)(1) tax-exempt organizations, and are not required to file Form 990.[76] State-chartered credit unions are tax-exempt under a different provision of the IRS Code,[77] and are required to file a Form 990. In some states, a consolidated Form 990 may be filed.[78]

Relevant information required on Form 990 includes: (1) compensation of officers, directors and key employees; (2) other salaries and wages paid to employees; (3) pension plan contributions; (4) other employee benefits (insurance, health, and welfare programs); (5) travel expenses; (6) conference and meeting expenses; and (7) receivables from officers, directors and key employees (secured and unsecured loans). With respect to the officers, directors and other key employees, Form 990 further requires a separate schedule specifically listing each individual's name, title, average hours worked, compensation, contributions to employees' benefits plans, expense accounts, and other allowances. Form 990 is available to the public, and may be obtained by request from the filing organization or the IRS.

Recently, the IRS released for public comment a draft instruction on a redesigned Form 990 proposed for use in the 2008 tax year.[79] The IRS indicated the redesigned Form 990 is based on three guiding principles: [80]

- enhancing transparency to provide the IRS and the public with a realistic picture of the organization, along with the basis for comparison to other organizations;
- promoting compliance by accurately reflecting the organization's operations so the IRS may efficiently assess the risk of noncompliance; and
- minimizing the burden on filing organizations.

The IRS adopted a revised Form 990 in December 2007.[81] The redesigned Form 990 changes the executive compensation disclosure requirements. The major change requires the institution to disclose the compensation of their five highest paid executives if their individual compensation exceeds $100,000. The prior Form 990 required compensation information for all directors, officers, and key employees. According to MSAP, 80 percent of the reporting FCUs paid their SEOs compensation in an amount

[76] See supra note 67. Another example of tax-exempt organizations is rural electric utilities. These cooperatives are also exempted from filing Form 990 under 501(c)(1). They file RUS Form 7 with the United States Department of Agriculture. This form does not capture specific information on executive compensation.
[77] 26 U.S.C. § 501(c)(14).
[78] As of January 25, 2008, NASCUS indicated only eight states file IRS Form 990 on a consolidated basis, filed either by the State Supervisory Authority or the State Credit Union League. The recently adopted Form 990 does not allow for consolidated filings starting tax year 2008.
[79] Press Release, IRS, *IRS Releases Discussion Draft of Redesigned Form 990 for Tax-Exempt Organizations* (June 14, 2007).
[80] IRS, *Highlights of Redesigned Form 990*, available at http://www/irs.gov/pub/irs-tege/highlightsform990redesign_061307.pdf (November 6, 2007).
[81] Press Release, IRS, *IRS Releases Final 2008 Form 990 for Tax-Exempt Organizations, Adjusts Filing Threshold to Provide Transition Relief*, (December 20, 2007).

less than this threshold, thereby precluding their members from access to this information.[82]

FCU Responsibility to Disclose Senior Executive Officer Compensation

The OTF viewed transparency as an affirmative requirement of the board of directors. The burden should not be on the members to discover this important information. For this reason, the OTF proposes requiring the disclosure, at least annually, of the individual compensation of natural person and corporate FCUs' SEOs. For example, disclosing SEO compensation at the annual meeting in conjunction with a broader dissemination to the membership, such as in an annual report or via member statements, would provide the necessary level of transparency to members. Such disclosure also allows FCUs the flexibility to provide necessary contextual information about compensation to help members understand the information.

FCUs may object to the disclosure as a regulatory burden, but the avenues for disclosure are readily available and are not overly burdensome. The examples provided above are based on processes or publications already used by FCUs in communicating with members. Inclusion of this information in already established communications should not create an undue burden.

Comments were received by the OTF concerning misinterpretation of income data and the possibility the information may be taken out of context by members. The board of directors should have the opportunity to put the information in context. For example, an FCU could use information from salary surveys, relate compensation to other expenses, or obtain salary information from similarly sized FCUs and other financial institutions.

In April 2007, the NCUA Board initially proposed including executive compensation as a type of record members could inspect or copy.[83] The proposed rule suggested members of an FCU have a financial interest in how their FCU is managed, which extends to knowledge about whom the SEOs are, their qualifications, and their compensation. The proposal further stated the members' interest in the information outweighed any privacy interests the SEOs may have in the information. Accordingly, the proposed rule provided that members may inspect information about the qualifications, compensation and benefits of SEOs.

A number of those commenting on the proposed rule expressed concern members would access executive compensation information for frivolous or vexatious purposes. Similar views were expressed at the Town Hall meetings. Some commenters also suggested the NCUA Board wait for the OTF report before making a decision regarding the disclosure of executive compensation. For these reasons, the NCUA Board

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[82] MSAP at 42.
[83] 72 Fed. Reg. 20061 (April 23, 2007) (proposed rule).

approved a modified regulation excluding the provisions regarding executive compensation.[84]

The OTF supported the intent of the member access rule as originally proposed, but asserts SEO compensation should not be subject to the petition requirement. SEOs are ultimately paid by the members. Therefore, members should have access to the information without having to meet petition requirements to ensure the accountability of senior management. The OTF maintains disclosure of SEO compensation is an affirmative requirement of management.

Access to SEOs' compensation data corresponds with other rights generally afforded members. FCU members have the right to vote on strategic FCU decisions including the directors, mergers, and conversions. Oftentimes, SEO compensation is directly influenced by the members' vote on these matters. Therefore, the OTF concluded members should know or have access to SEO compensation information when deliberating on how to cast their vote regarding matters that will affect the operation or existence of their FCU.

To accomplish disclosure of SEO compensation to the membership, the OTF recommends amending NCUA Rules and Regulations to ensure annual disclosure of individual SEO compensation to all members. Town Hall meeting participants emphasized "context is everything" when it comes to executive compensation. The OTF's recommendation to require such disclosure would leave FCUs the flexibility to provide necessary contextual reference about compensation to help members understand the information.

D. Conclusion: Senior Executive Officer Compensation

The collection and disclosure of SEO compensation data can provide NCUA, Congress, GAO, and the public with relevant information concerning compensation within the credit union system. NCUA has the ability to efficiently collect the data without any significant regulatory burden on FCUs. Once gathered, NCUA can aggregate the data to respond to specific questions posed by Congress and other requestors about compensation practices in FCUs.

The collection of SEO compensation data during the examination process and use of AIRES or the Corporate Examination Database to capture the information would provide verified data captured in the examination system and accessible for reporting internally in NCUA. While the data collection is dependent on the examination schedule, the potential two-year timeframe will not materially affect the confidence level in the data. The data set will be complete after approximately twenty-four months, and will be updated on a flow basis thereafter. This method is the least burdensome to FCUs, will provide the most accurate information, and allows for the data to be aggregated by NCUA.

[84] 72 Fed. Reg. 56247 (October 3, 2007).

NCUA can sort and provide information on SEO compensation in FCUs based on any number of criteria, including asset size, geographical area, position, FOM, and charter type. The OTF recommends the aggregate data be reported through the NCUA Annual Report, which is posted to NCUA's website for public viewing, or other official NCUA publication(s).

Publicly-traded companies, state-chartered credit unions, and other not-for-profits have different requirements relative to transparency of executive compensation. Publicly-traded companies have the most stringent requirements. All of these institutions, however, have a method to disclose executive compensation information in a form available to interested parties, which enhances overall accountability. In terms of ownership, FCUs and state-chartered credit unions are equivalent, but the disclosure requirements on executive compensation are not the same.

Publicly-traded companies do not have the same corporate structure as FCUs. While these differences may be highlighted when considering the issue of transparency, it is more important to focus on a crucial commonality between FCUs and publicly-traded companies, i.e., the need to maintain investor/member confidence. FCUs have combined assets totaling more than $414 billion, accounting for 3 percent of the assets of all federally-insured financial institutions.[85] Confidence in this segment of the financial market is as critical as in publicly-traded companies. FCU members have the same vested interest in corporate governance as stockholders.

The OTF recognized the reporting requirements for SEO compensation will differ between FCUs and state-chartered credit unions. Members of some state-chartered credit unions would not have the opportunity to obtain executive compensation data since there is now a $100,000 threshold for reporting on the IRS Form 990. From a public policy perspective, the OTF believes members of all FCUs should have the same rights relative to this issue. Consequently, the OTF concluded transparency to members of both natural person and corporate FCUs should not be limited based on the amount of total compensation paid.

The OTF concluded transparency of SEOs' compensation to the membership outweighs the privacy issues raised by SEOs. While there have been no overriding safety and soundness issues related to SEO compensation to date, the OTF recommends this reason alone should not undermine what has proven to be sound public policy for publicly-traded companies and, where applicable, state-chartered credit unions. FCUs should be more consistent with overall public policy on this issue and make the data available to its most interested party – the members.

[85] NCUA 5300 Call Report data and FDIC Statistics on Depository Institutions, as of September 30, 2007.

Chapter IV – Low-Income Definition

A. Background

MSAP provided data within the statutory context of whom FCUs serve. The data also identified potential regulatory deficiencies related to NCUA's formula for determining if an FCU qualifies for low-income designation. How NCUA determines eligibility for low-income designation is critical to its overall outreach policy. In this regard, MSAP recognized the current method of determining how a credit union qualifies for a low-income designation should be reassessed. MSAP recommended:

> [t]he NCUA Board consider reassessment of NCUA's formula for determining if an FCU qualifies for low-income designation. At present, the regulatory formula makes reference to the national median household income, with adjustments reflecting the cost of living in eleven different, static geographic areas. Using median family income, as a percentage of the median family income for specific metropolitan statistical areas, would be more reflective of the regional economic diversity of the United States as it evolves and of the circumstances in which FCUs [sic] members actually live. Also, in this regard, the NCUA Board should consider working more closely with the Treasury Department's Community Development Financial Institutions Fund to determine whether revised low-income criteria could help low-income designated credit unions automatically qualify as community development financial institutions.[86]

In 1970, NCUA was empowered to define those credit unions predominantly serving the low-income population. This authority predates many of the federal programs currently available to assist low-and moderate-income individuals. While MSAP made reference to FCU members, how NCUA defines "low income" has broader application. By statute, all credit unions, including privately-insured credit unions, can qualify for a low-income designation which then makes them eligible for certain benefits.[87] However, with very limited exceptions, NCUA's regulatory authority only applies to federally-insured credit unions.[88] Thus, relative to how "low income" is defined, reference is most often made to federally-insured credit unions as opposed to FCUs.

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[86] MSAP at 57.

[87] The authority for including non-federally insured credit unions is § 623 of the Community Economic Development Act of 1981. Pub. L. No. 97-35, § 623, 95 Stat. 489, 494 (1981).

[88] Low-income credit unions may accept nonmember shares (12 U.S.C. § 1752(1); 12 C.F.R. § 701.32 (2007)) and secondary capital (12 C.F.R. § 701.34 (2007)); are excepted from the aggregate member business loan limit (12 C.F.R. § 723.17 (2007)); may exclude secondary capital accounts from net worth calculations (17 U.S.C. § 1757a(c)(2)(B); 12 C.F.R. Part 702 (2007)); and, are eligible to apply for financial assistance from the CDRLF (12 C.F.R. Part 705 (2007)).

Low-income credit unions designated by NCUA should not be confused with institutions, including credit unions, certified as Community Development Financial Institutions (CDFI). The primary income standard for determining eligibility for low-income credit union status by NCUA in administering the Community Development Revolving Loan Fund (CDRLF) and the income standard for certifying an institution as a CDFI by Treasury differ. Specifically, NCUA uses median household income (MHI) and Treasury uses median family income (MFI).

Section 701.34 of NCUA's Rules and Regulations sets forth the standards to determine if an FCU qualifies for a low-income designation.[89] The standards are:

- members who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics; or
- members whose annual household income falls at or below 80 percent of the MHI for the nation as established by the Census Bureau; or
- members otherwise defined as low-income as determined by order of the NCUA Board, such as full-time or part-time students in a college, university, high school, or vocational school.[90]

NCUA has used the MHI standard as a basis for a low-income designation for more than thirty-five years. To qualify, a credit union must be serving predominantly[91] low-income members. While any of the above standards can be used to qualify a credit union for a low-income designation, the standard using MHI as a base is used most frequently, often resulting in inconsistency and confusion. Accordingly, the OTF focused its review on determining if an alternate standard would be more appropriate for determining if a credit union qualifies as low-income.

Median Household Income Standard

MHI is the amount which divides the income distribution into two equal groups, half having household incomes above the median, half having incomes below the median. The Census Bureau defines "household" as all the people who occupy a housing unit, such as a house, an apartment or other group of rooms established as separate living quarters. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household. The count of households excludes group quarters.[92]

[89] 12 C.F.R. § 701.34 (2007). This definition is also used in § 705.3(a)(1), which applies to all credit unions.
[90] 12 C.F.R. § 701.34(a)(2) (2007).
[91] Predominantly is a statutory requirement. NCUA defines predominantly as a simple majority. 12 C.F.R. § 701.34 (a)(3) (2007).
[92] Available at http://www.census.gov/dmd/www/glossary.html (December 21, 2007).

In determining MHI, NCUA applies allowances to its standard for those geographical areas with higher costs of living.[93] The geographical differentials noted in the current regulation are based on data from the Employment and Training Administration of the U.S. Department of Labor; however, the differentials can only be changed through an amendment to NCUA's Rules and Regulations. At present, the noted differentials are not consistent with the lower living standard income level differentials posted in the Federal Register.[94] Consequently, some credit unions may not be eligible for low-income designation due to the outdated geographical area differentials set forth in the regulation. For example, the existing regulatory differential for Hawaii is 40 percent; whereas, the current differential based on Employment and Training Administration data is 96 percent. In addition, the NCUA regulation lists eleven differentials instead of the twenty-three identified by lower living standard income level.

NCUA's low-income definition, which includes the MHI standard, preceded amendments to membership provisions in the FCU Act under CUMAA. In 1998, CUMAA amended Section 109(c)(2) of the FCU Act to allow FCUs with a multiple common bond membership to add underserved areas to their FOM.[95] The MFI standard for chartering purposes in the FCU Act incorporates by reference the Community Development Banking and Financial Institutions Act of 1994.[96] NCUA's reliance on MHI as a standard to determine if a credit union qualifies for a low-income designation, however, did not change, causing inconsistency and creating confusion between the benchmarks used for determining low-income designation and one basis for determining if an area is underserved.

A number of concerns have been raised related to using MHI as a standard to determine low-income eligibility. First, the geographical differentials are outdated and do not account for all national high-cost areas, potentially limiting credit unions in those areas from qualifying. Second, using MHI is inconsistent with the statutory standard used to assess whether an area qualifies as underserved. Third, at Town Hall meetings, based on comments from participants, the OTF identified a need to clarify the difference between the definitions of "low income" and "underserved." Fourth, NCUA's use of the MHI standard is not consistent with the qualification standard used by other federal agencies with policies to foster low-income initiatives.

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[93] 12 C.F.R. § 701.34(a)(2)(i) (2007).

[94] 71 Fed. Reg. 31215 (June 1, 2006).

[95] Pub. L. No. 105-219, § 101, 112 Stat. 913, 915 (1998) (codified at 12 U.S.C. § 1759(c)(2)).

[96] Under § 109(c)(2) of the FCU Act, the NCUA Board can permit a multiple-common bond FCU to add an underserved area to its FOM if the area is an "investment area", as defined in § 103(16) of the Community Development Banking and Financial Institutions Act of 1994. 12 U.S.C. § 1759(c)(2)(A)(9)(i). An "investment area" is a geographic area meeting objective criteria of economic distress. One supporting factor is having a MFI at or below 80 percent of the appropriate MFI standard. Pub. L. No. 103-325, § 103(16), 108 Stat. 2163 (1994); 12 C.F.R. §§ 1805.201(b)(3)(ii)(D)(2)(i)-(ii) (2007).

B. Standards Used for Determining Low-Income Definition

In assessing the appropriateness of using MHI as the standard for determining if a federally-insured credit union qualifies for a low-income designation, the OTF compared NCUA's standard with other federal agencies' standards. While there are several formulas agencies use to assess economic distress, the OTF considered the predominant standards applied based on income characteristics, as shown in Table 2.

Table 2

Government Agency	Program Name	Low-Income Standard
National Credit Union Administration	Low-income Designation; Technical Assistance Grants and CDRLF Loans	MHI
National Credit Union Administration	Underserved Area defined in FCU Act § 109(c)(2)	MFI
U.S. Department of the Treasury	Community Development Financial Institution Fund; Financial and Technical Assistance	MFI
Office of the Comptroller of the Currency	Community Reinvestment Act	MFI
Federal Deposit Insurance Corporation	Community Reinvestment Act	MFI
Federal Reserve Board	Community Reinvestment Act	MFI
Office of Thrift Supervision	Community Reinvestment Act	MFI
U.S. Department of Health and Human Services	Public Health	Federal Poverty Guidelines
U.S. Department of Housing and Urban Development	Public Housing and Section 8 Program	MFI
U.S. Department of Agriculture	Food Stamp Act of 1977	Federal Poverty Guidelines
U.S. Department of Agriculture	Rural Development Housing & Community Facilities Programs	Federal Poverty Line and MHI
U.S. Department of Agriculture	Community Facilities Grant Program	MHI
U.S. Department of Energy	Weatherization Assistance for Low-Income Persons	Federal Poverty Guidelines

The eligibility standards vary for determining low-income status. The OTF noted MFI is the standard used most often by federal government agencies reviewed. Of particular importance is how Treasury defines "low income" in administering the CDFI Fund and how NCUA determines if an area qualifies as underserved.

Advantages of Using MFI to Determine Low-Income Designation

Revising the low-income definition to use MFI as a standard in lieu of MHI provides advantages to credit unions and NCUA. Importantly, using MFI for the low-income designation would be consistent with the standard used by the CDFI Fund and how NCUA determines those areas qualifying as underserved.

Community Development Financial Institutions Fund

The CDFI Fund is a financial resource for qualifying institutions. Through monetary awards and the allocation of tax credits, the CDFI Fund helps promote access to capital and local economic growth in urban and rural low-income communities across the nation. Through its various programs, the CDFI Fund enables local organizations to further goals, such as:

- economic development, including job creation, business development, and commercial real estate development;
- affordable housing, including housing development and home ownership; and
- community development financial services, including basic banking services provided to underserved communities and financial literacy training.

The CDFI Fund defines "low income" as an income, adjusted for family size, of not more than: (1) 80 percent of the Metropolitan Area MFI for areas in Metropolitan Areas; or (2) the greater of 80 percent of the non-Metropolitan Area MFI, or 80 percent of the statewide non-Metropolitan Area MFI for non-Metropolitan Areas.[97]

Because the CDFI Fund uses MFI as a qualifier to receive financial assistance, and because it is the most significant provider of financial assistance to federally-insured credit unions,[98] it would be beneficial if NCUA aligned its qualification standard with the CDFI Fund standard. This would eliminate confusion and additional resource demands on federally-insured credit unions attempting to qualify for available grants and loans or other assistance offered by the CDFI Fund and CDRLF.

[97] 12 C.F.R. § 1805.104(ee) (2007).
[98] For example, on December 26, 2007, $94 million was appropriated to the CDFI and $975,000 was appropriated to the CDRLF. The CDRLF also manages a revolving loan fund of $13.4 million.

Federally-insured credit unions certified as CDFIs primarily receive funds from the CDFI Fund. To become designated as a CDFI, an institution must meet each of the following requirements:

- be a legal entity at the time of certification application;
- have a primary mission of promoting community development;[99]
- be a financing entity;
- primarily serve one or more target markets (income standards);
- provide development services in conjunction with its financing activities;
- maintain accountability to its defined target market; and
- be a non-government entity and not be under control of any government entity (Tribal governments excluded).[100]

NCUA has worked with the CDFI Fund in an attempt to streamline the application process for low-income credit unions to become CDFIs. Ideally, if NCUA designates credit unions as low income by using MFI as its standard, the designation would demonstrate they meet the target market criteria of the CDFI application process. Using MFI rather than MHI might provide more credit unions with an opportunity to be designated as a CDFI, and thus eliminate a major submission requirement. Although not a major topic at the Town Hall meetings, some participants indicated support for revisiting the low-income designation formula.

<u>Consistency with Underserved Area Definition</u>

NCUA uses MFI as one factor to consider when evaluating whether an area qualifies as "underserved." Multiple common bond FCUs may include in their FOMs communities satisfying the definition of underserved areas in the FCU Act, without regard to location.[101] The FCU Act defines an underserved area as a local community, neighborhood, or rural district that is an "investment area," as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.[102]

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[99] The CDFI Fund recognizes low-income credit unions meet the primary mission criteria.

[100] 12 C.F.R. § 1805.201 (2007).

[101] Although NCUA initially developed policies based on its interpretation of the CUMAA allowing the expansion into underserved areas by all charter types, a recent legal challenge from the American Bankers Association and others resulted in a regulation change, significantly curtailing this authority. The new policy permits underserved areas to be added only to multiple common bond FCUs. 12 C.F.R. § 701.1 (2007) (as amended); IRPS 03-1, at 3-4 (as amended by IRPS 06-1). This action results in single occupation, single association, and community common bond charters being restricted to offering service only to people within their respective membership base. Thus, the increased flexibility applied following CUMAA was curtailed considerably, which lessened the ability of FCUs to expand into underserved areas and provide service to lower-income individuals. Effectively, this action thwarts congressional intent to increase FCU service to lower-income individuals and groups, and can only be reinstated through legislation.

[102] <u>Supra</u> note 96.

Two of the criteria used for determining whether the area qualifies as an investment area include:

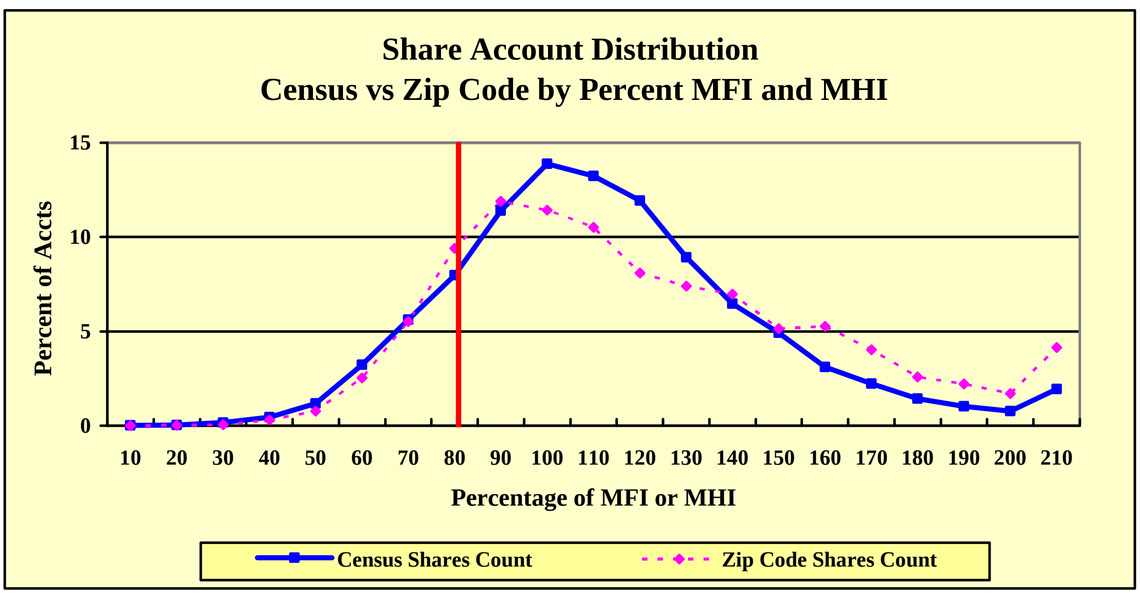
- an area in a Metropolitan Area where the MFI is at or below 80 percent of the Metropolitan Area MFI or the national Metropolitan MFI, whichever is greater; or
- an area outside of a Metropolitan Area, where the MFI is at or below 80 percent of the statewide non-Metropolitan Area MFI or the national non-Metropolitan Area MFI, whichever is greater.[103]

The use of MFI as a standard to determine low-income status will bring uniformity and consistency to the regulations, and should eliminate industry confusion regarding the low-income designation and application for an underserved area.

Impact on the Number of Credit Unions Qualifying as Low Income

The OTF cannot determine whether changing from MHI to MFI will have an impact on the number of credit unions qualifying for low-income designation. However, based on an analysis conducted during MSAP, a material impact is not anticipated. MSAP attempted to quantify the difference between analyzing member income distribution using MHI versus MFI. While there were some differences in the dollar distribution, there generally was little difference in the percentage of the members who fell into the category of having less than 80 percent of the either MHI or MFI, as shown in Chart 1.

Chart 1[104]



[103] IRPS 03-1, at 3-4 (as amended by IRPS 06-1).
[104] Recreated from data in support of MSAP at 75 (Chart 34). This chart was created in MSAP to assess the difference between Zip Code Matching and Geo-coding/Census Tract Matching.

To offset any potential adverse impact from the recommended change to the MFI standard, current low-income credit unions not meeting the new standard should be able to retain the low-income benefits they currently have for a five-year period. This can be accomplished through the use of a grandfather provision.

Grandfather Provision

The OTF recognized some low-income credit unions may not continue to qualify using a new MFI standard.[105] Accordingly, the OTF recommends the NCUA Board grandfather any low-income credit union failing to qualify using the new standard for a period of five years from the effective date of the rule. After five years, low-income credit unions not able to qualify under the MFI standard would lose their low-income designation. The five-year grandfather provision period is critical for low-income credit unions no longer qualifying under the MFI standard, if they took advantage of the benefits of the low-income designation. This would allow them adequate time to come into compliance with regulatory requirements for secondary capital, MBL restrictions, non-member deposit limitation, and CDRLF financial assistance. During the five-year period, these credit unions would still have access to the CDRLF. The grandfather provision could also apply to other occasions, such as a merger when the continuing credit union does not qualify.

Table 3 reflects the aggregate number of low-income credit unions which, as of September 30, 2007, may be financially impacted by a change in the low-income standard from MHI to MFI if they do not re-qualify.

Table 3[106]

Low-Income Credit Unions With:	Number Impacted	Amount ($)	Total Assets of Impacted Low-Income Credit Union ($)
Secondary Capital	46	28,032,589	1,357,400,158
MBLs over the Regulatory Limit	46	1,207,337,365	4,338,758,003
Nonmember Deposits over Regulatory Limit	11	58,419,357	202,264,872
CDRLF Loans[107]	84	13,372,800	1,032,436,435

As noted in the discussion comparing MHI and MFI, the OTF cannot be certain of the number of credit unions impacted by a potential change to the rule. However, since MHI and MFI track closely, it is unlikely the impact will be significant. If a low-income credit union is not able to re-qualify and must pay off secondary capital, the

[105] This may also be true for some credit unions using the current MHI standard.
[106] Source is the 5300 Call Report data as of September 30, 2007, and the NCUA Management Information System. The amounts are in aggregate of all low-income credit unions reporting data for each category.
[107] As of December 11, 2007, from the NCUA SAP accounting system.

CDRLF loan, non-member deposits, or bring its MBL cap into compliance, the five-year grandfather provision should provide the non-compliant credit union with adequate time to make the necessary adjustments.

<u>Disadvantages of MFI as a Standard for Determining Low-Income Formula</u>

Changing the methodology for defining "low income" would require NCUA and the credit union community to make minimal operational adjustments, initially having some associated costs. The following operational adjustments and costs would be necessary:

- NCUA has provided educational materials and training to staff and credit unions about the current methodology for determining low-income designation. NCUA would incur costs to train staff and credit unions officials;
- NCUA would have to make parallel changes to the *NCUA Chartering and Field of Membership Manual* to ensure the language is consistent with any changes to the regulation governing low-income designation;[108]
- while negligible, NCUA would need to notify multiple common bond FCUs serving low-income associations of the new criteria before accepting new members into the association;[109] and
- some currently designated low-income credit unions may not retain their designation under the proposed methodology. NCUA would need to determine how to address the implications these credit unions would face from losing their low-income designation.

The Office of Management and Budget conducted a review of NCUA's CDRLF in 2004, using the Program Assessment Rating Tool.[110] The review reported the CDRLF is duplicative of certain aspects of the CDFI Fund, which also seeks to promote community development through assisting financial institutions in underserved communities. By more closely aligning the definition of low income with the CDFI, the Office of Management and Budget may continue to view the purposes of both funds as duplicative. However, both funds have coexisted since 1994, and continue to receive funding.

C. Conclusion: Low-Income Definition

The OTF recommends changing the standard relying on MHI to MFI to determine if a credit union qualifies for a low-income designation. With this change, NCUA would have greater consistency with other federal agencies, especially Treasury, and would achieve conformity with its chartering policy for underserved areas. Additionally, the change could streamline the CDFI application process for low-income credit unions. The OTF concluded the advantages outweigh the initial difficulties encountered with a

[108] IRPS 03-1, at 3-1.
[109] <u>Id.</u> at 3-3.
[110] Available at http://www.whitehouse.gov/omb/expectmore/about.html (December 13, 2007).

change. The OTF also recommends a grandfather provision of five years be adopted to allow any credit union not qualifying under the MFI standard a reasonable period to qualify or make necessary adjustments to come into regulatory compliance.

Chapter V – Outreach

A. Background

Outreach Programs

MSAP collected information on financial services offered by FCUs, particularly those to low- and moderate-income members. With the collection of this information, NCUA was better able to analyze its outreach efforts, which are primarily targeted to increasing the number of low- and moderate-income individuals availing themselves of financial services offered by FCUs. MSAP discussed numerous initiatives in support of outreach, but no determination was made as to whether these outreach efforts were successful. MSAP recommended:

> [t]he NCUA Board evaluate the effectiveness of NCUA programs focused on assisting low-and moderate-income individuals, such as Access Across America, OSCUI workshops, and The Resource Connection. If deemed appropriate, the NCUA Board should consider ways to improve how these programs are monitored, evaluated and best practices shared.[111]

NCUA has a long history supportive of programs designed to reach low- and moderate-income individuals and groups. In the 1960s, NCUA's predecessor agency, the Bureau of Federal Credit Unions, in concert with the Office of Economic Opportunity, chartered over 700 FCUs to bring financial services to low-income members. The Bureau of Federal Credit Unions also provided consumer education programs, such as Project Moneywise, to support these new credit unions. Although approximately twelve of these credit unions exist today, the initiative provided a valuable lesson demonstrating the difficulty in sustaining a credit union whose membership was solely comprised of low-income individuals.[112] This initiative preceded an amendment to the FCU Act in 1970, authorizing the NCUA Board to define "low income" and designate credit unions meeting the definition.[113]

Congress created the CDRLF in 1972, to provide low-interest loans and grants to community development corporations, cooperatives, and non-profit entities assisting

[111] MSAP at 57.
[112] MSAP reported less than twenty remained. Id. at 17 (note 37). Since MSAP, additional research has been conducted, and it is believed approximately twelve remain active.
[113] Pub. L. No. 91-468, 84 Stat. 994 (1970).

low-income areas.[114] Since 1986, NCUA has been responsible for administering this program, which provides financial assistance to low-income credit unions.[115]

In the 1990s, NCUA increased its efforts to encourage credit unions to reach out to low-income individuals, including the underserved. In 1993, the NCUA Board emphasized the need to encourage the chartering and growth of credit unions serving low-income members and communities. To that end, NCUA formed the Office of Community Development Credit Unions, which encouraged eligible credit unions to become low-income designated and apply for loans and technical assistance grants from CDRLF.

In addition to efforts to serve the underserved, each NCUA region instituted a Small Credit Union Assistance Program in 1994. This effort was expanded in 1996, to encourage the partnering of large and small credit unions, whereby large credit unions provided assistance to help small credit unions serve their members.

NCUA sponsored a "Serving the Underserved" conference in August 1996. This conference was a networking opportunity and focused on providing credit unions with ways to make personal financial services available to their entire FOM. NCUA also encouraged credit unions to work together and assist with the development of credit unions in underserved communities.

In 1998, the NCUA Board approved the new position of an EDS.[116] Six EDSs, one per NCUA region, were authorized to provide assistance to small credit unions defined as having assets of $5 million or less.[117] During 1998 and 1999, NCUA sponsored six national Empowerment 2000 conferences. At these conferences small credit union officials received two days of training and networking opportunities.

In March 1999, the NCUA Board approved a National Small Credit Union Program to:

- promote credit union service to people of modest means;
- increase access to credit unions for individuals in underserved communities where newly-chartered credit unions or low-income credit unions can provide service to members;
- promote successful, financially-healthy, small credit unions through appropriate technical and financial assistance; and
- facilitate a regulatory environment to empower small credit unions.

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[114] Economic Opportunity Amendments of 1972, Pub. L. No. 92-424, 86 Stat. 688 (1972). See Appendix 3 for a CDRLF timeline.

[115] Community Development Credit Union Revolving Loan Fund Transfer Act, Pub. L. No. 99-609, 100 Stat. 3475 (1986).

[116] The Economic Development Specialists, formerly known as Educational Development Specialists, are experienced examiners who are specially trained to provide a variety of assistance to small credit unions in need of additional guidance.

[117] Letter to Credit Unions 99-CU-07 (April 1999). The current asset size for "small credit unions" is $10 million or less. IRPS 03-2, 68 Fed. Reg. 31949 (May 29, 2003).

Additionally, the NCUA Board authorized twelve EDSs and sixty-one small credit union program specialists.[118] The EDSs remained regionally based and were responsible for training and assisting officials, primarily at small credit unions. The small credit union program specialists were available to assist small credit unions not assigned to an EDS. In 2000, each region conducted local training workshops for small credit unions. The Office of Community Development Credit Unions also began partnering with other federal agencies to provide credit unions with additional resources to reach out to the underserved.

Throughout the 1990s and into 2000, NCUA concentrated its outreach efforts on small credit unions and low-income credit unions. CUMAA provided FCUs the opportunity to add geographically based underserved areas to their FOM.[119] Prior to 2001, only forty FCUs had used this provision. In 2001, NCUA increased efforts to promote the addition of underserved areas. As a result, from January 1, 2001 to September 30, 2007, 707 FCUs added 1,528 underserved areas to their FOMs.[120]

In 2001, the NCUA Board changed the name of the Office of Community Development Credit Unions to the Office of Credit Union Development to more accurately portray the office's focus to:

- foster the business of financial services;
- facilitate the expansion of credit union services by chartering new credit unions and enabling FOM expansions; and
- coordinate efforts with third parties to improve the viability and success of credit unions.

In November 2004, the Office of Credit Union Development was restructured to the Office of Small Credit Union Initiatives (OSCUI). While OSCUI has a similar mission, emphasis shifted to providing individualized assistance to small credit unions and low-income credit unions, and hosting workshops. The EDSs were also reassigned from the regions to OSCUI as part of the restructuring. OSCUI continues to administer the CDRLF.

While NCUA's outreach efforts are available to all eligible credit unions, except those privately insured, its primary focus is small and low-income credit unions. For example, federally-insured, state-chartered credit unions can request training assistance, on-site individualized assistance, or attend workshops.

[118] Small Credit Union Program Specialists were field examiners with collateral responsibilities to assist small credit unions.
[119] Supra note 95.
[120] Initially, all FCUs regardless of charter type were allowed to add underserved areas to their FOM. In 2005, litigation filed by the American Bankers Association, the Utah Bankers Association, and three Utah banks challenged NCUA's interpretation of CUMAA allowing all FCU charter types to add underserved areas. In response to this litigation, the NCUA Board, in June 2006, amended the chartering policy to limit underserved area expansions to only multiple common bond FCUs and issued IRPS 06-1. 71 Fed. Reg. 36667 (June 28, 2006).

CDRLF

The CDRLF provides assistance to low-income credit unions through loan and technical assistance grant programs.[121] When applying for a loan or grant, a low-income credit union must state the purpose for which the funds will be used. After a grant or loan is approved, NCUA requests the credit union send a summary explaining how it used the funding and the benefit to the membership and/or the community. Low-income credit unions failing to submit the requested summary are ineligible for future assistance from the CDRLF. MSAP recommended:

> [t]he NCUA Board consider the enhancement and full utilization implementation of the system to monitor FCUs receiving benefits under the CDRLF program. Specific points to monitor include whether funds approved for disbursement were actually disbursed, whether they were used as intended, and, most importantly, whether the benefits anticipated were actually achieved. [122]

Accordingly, the OTF reviewed NCUA's outreach programs, including how they could be measured, and the monitoring of CDRLF activities.

B. NCUA Outreach Programs

The OTF recognizes the value of outreach provided by NCUA Board members serving in their capacity on other financial initiatives, such as the MyMoney.gov initiative, Financial Literacy and Education Commission, and NeighborWorks® America. However, the primary focus for the OTF was the review of NCUA's outreach programs identified in MSAP.

Training and Workshops

Access Across America began in 2002, with the purpose to "build on efforts by credit unions to create and by NCUA to facilitate economic empowerment for people from [all] walks of life."[123] Access Across America reflects NCUA's commitment to assist "Americans who need access to financial empowerment through credit union membership eligibility and the resulting access to low-cost financial services."[124] Access Across America conferences focused on topics such as MBLs, homeownership, financial literacy, and alternatives to predatory lending. The conferences provided an opportunity for credit union officials to interact with each other, topic experts, and senior NCUA staff.

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[121] NCUA does not receive appropriated funds for the administrative expenses associated with the CDRLF.
[122] MSAP at 57.
[123] http://www.accessacrossamerica.gov/ (January 11, 2008).
[124] Id.

A related initiative of Access Across America was the Partnering and Leadership Successes (PALS) workshops. PALS workshops provided credit unions with a forum to network with other credit unions and develop mentoring relationships. NCUA's website provided information presented at PALS workshops.

Other NCUA training initiatives were developed and delivered primarily through OSCUI. During 2007, for example, NCUA planned and conducted twenty workshops, twenty-four 5300 Call Report clinics, and nine credit union roundtables. These training events were attended by 1,956 credit union officials, representing 1,106 credit unions. While primarily geared towards small credit unions, all federally-insured credit unions could attend. To evaluate the effectiveness of training and workshops, NCUA provided evaluation forms to participants at the conclusion of each event to comment on the educational value of the training.

The Resource Connection

The Resource Connection[125] was launched on NCUA's website in mid-2007, to centralize information about credit union business practices, partnership resources, funding, and training opportunities. The Resource Connection has the following three sections:

- The Credit Union Connection features examples of programs and services offered by credit unions;
- The Partnership Connection contains profiles of partnerships NCUA and credit unions have with other federal agencies and foundations; and
- The Training Connection lists NCUA training events and opportunities offered by NCUA and groups with similar objectives.[126]

NCUA does not currently measure the effectiveness of The Resource Connection, other than monitoring the number of visits to the site.

Small Credit Union Program

The Small Credit Union Program provides resources to small, newly-chartered, and low-income credit unions through the use of national EDSs and regional Small Credit Union Subject Matter Examiners. Assistance to credit unions is classified under two categories: operational management and strategic management. These subject matter examiners provide operational assistance in areas such as record keeping and collections. EDSs address strategic management issues, such as long-term business planning, product development, and management succession. OSCUI evaluates the effectiveness of EDS contacts by sending a survey after an EDS contact. The survey asks whether the contact was results-oriented, relevant, and beneficial.

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[125] http://www.ncua.gov/ResourceConnection/Index.html (January 17, 2008).
[126] E.g., Corporation for National and Community Service, Health and Human Services, Federal Housing Administration, CDFI Fund, and NeighborWorks.

Regional Programs

The OTF recognized field staff provided, and continues to provide, significant outreach assistance to many federally-insured credit unions during the examination and supervision process. This assistance, while part of the examination, was not being captured as part of NCUA's outreach efforts. To determine the scope of contributions to outreach, the OTF surveyed NCUA field staff to identify the types of assistance provided in 2006. As disclosed by the survey results, field staff provided a wide variety of assistance, including, but not limited to, FOM issues, resources, services, operations, and training.[127]

Overall, field staff assisted most often in operational areas, such as record keeping, budgeting, policies, succession planning, strategic planning, and regulatory compliance. Assistance with FOM issues was another significant outreach service provided. The FOM category included assistance with strategies to attract potential low-income members, underserved area expansions, and community charter expansion/conversions. Field staff was less involved in providing training, such as presentations at local trade association meetings.

The results were consistent with the OTF expectations. Field staff normally review operational areas as part of the examination program. Assistance with FOM issues is also more common since field staff review strategic plans and have opportunities to discuss FOM expansion. Additionally, fewer opportunities exist to provide training assistance, as reflected by lower responses in the training category. The survey confirmed field staff assists federally-insured credit unions most often during the regular examination, not through a formal assistance program. As a result, the OTF concluded outreach opportunities exist at the regional field level.

The OTF also identified regional efforts supporting outreach, including:

- establishing partnerships with trade associations to provide training;
- approving community charter and underserved area applications; and
- offering workshops and clinics.

Although the regions have no formal programs that specifically assist federally-insured credit unions with low- and moderate-income members, the Small Credit Union Program activities and field staff contacts provide important information and direction, which can assist in providing improved financial service to those of low- and moderate-income. As is the case with most national outreach activities, however, it is extremely difficult to measure the effectiveness of the resources allocated to regional outreach. While some feedback is obtained from the national programs, it is lacking in the less formal regional activities.

[127] See Appendix 4 for the survey questions, its methodology, and expanded analysis.

Measuring the Effectiveness of NCUA Outreach Programs

NCUA's program evaluation methods did not measure the impact of outreach efforts on FCU operations and member services. The evaluations completed by participants do not measure the effectiveness of credit unions putting the agenda topics into practice or the extent a credit union's membership benefits from the workshops. Likewise, monitoring visits to The Resource Connection website does not provide data regarding the effectiveness of credit unions' use of the information in providing service to its low- and moderate-income members. Additionally, the evaluation form sent after an EDS contact does not measure whether the membership benefited from the contact.

The OTF considered other methods to measure the effectiveness of existing outreach efforts, including more extensive feedback following training and workshops, and establishing follow-up contacts with participants. The OTF also deliberated whether the success of the training or workshops could be interpreted as NCUA's success in assisting credit unions to serve their low-and moderate-income members. Although more comprehensive feedback and on-site visits at an FCU may indicate programs were successfully initiated, NCUA still would not have information regarding the low- and moderate-income members' use of the programs. Further, the OTF determined a credit union's decision to implement or not implement a service or strategy presented at NCUA training or workshops should not be the sole determinant of success or failure. For example, the specific service or strategy may not fit into an FCU's strategic plan or might not reflect membership demand.

The OTF was not able to identify a means to enhance existing methods of evaluating the effectiveness of NCUA's outreach programs, without potential unintended consequences. For example, additional credit union reporting on the use of new services would place an increased burden on limited staff and resources, which could be detrimental to member services. Additionally, evaluation options requiring on-site contacts to measure effectiveness would increase NCUA supervision efforts – possibly shifting focus from high-risk areas and safety and soundness. The OTF recognized the value of NCUA's efforts to assist credit unions in reaching out to low- and moderate-income individuals as a matter of public policy, but determined an aggressive program to measure whether the assistance provided was effective would be counterproductive.

The OTF's survey documented regional, particularly field staff, contributions to NCUA's outreach efforts through their activities and on-site operational assistance. From the survey information, it is clear considerable resources are routinely dedicated to NCUA's outreach efforts, but are not always recognized as "outreach." Rather, they are often part of the routine work performed by NCUA staff. Because these regional efforts are separate and distinct from the national office charged with most NCUA outreach programs, they often go unnoticed.

Public Policy Considerations

Credit unions remain true to their original not-for-profit, member-owned, cooperative structure, even though their demographics have changed.[128] CUMAA recognized business conditions had changed since 1934, and provided greater opportunities for FCUs to diversify their FOMs. These changing FCU demographics also contributed to the continued scrutiny by banking trade associations, as well as Congress and GAO. Questions have been raised regarding whether FCUs are still meeting their mission of serving their members, especially those of modest means, and whether FCUs should remain tax exempt.

Congress has taken steps to assist financial institutions to reach out to consumers. The Financial Services Regulatory Relief Act of 2006 was intended to lessen the regulatory burden so credit unions, as well as banks and thrifts, can better serve their members and communities.[129] Governmental entities are continuously reviewing financial institutions' activities serving consumers. For example, the FDIC is undertaking a series of analyses in this area, including the proposed *National Survey of Banks' Efforts to Serve the Unbanked and Underbanked*.[130]

The rules adopted by the NCUA Board to implement the Financial Services Regulatory Relief Act of 2006 permit FCUs to provide certain services to individuals within their FOM regardless of their membership status. The OTF views this as a new avenue for FCUs to provide access to affordable financial services in that, to a limited degree, it allows FCUs to provide service to nonmembers, highlighting this important public policy.

Credit union service to consumers, especially to underserved consumers, has been scrutinized by congressional committees.[131] As noted in MSAP, FCUs are limited by their FOM as to the individuals they can serve.[132] To encourage and assist the provision of financial services to members at all economic levels within their FOMs, NCUA should expand its outreach efforts to include helping any FCU with lower-income

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[128] See MSAP; National Association of State Credit Union Supervisors, *NASCUS Survey of the State Credit Union System* (2007).
[129] Pub. L. No. 109-351, 120 Stat. 1966 (2006).
[130] Supra notes 57-58. See Appendix 2 for more information on this program, and Appendix 5 for information regarding other federal government agencies outreach programs.
[131] Subcommittee on Financial Institutions and Consumer Credit of the U.S. House of Representatives, "Subprime and Predatory Lending: New Regulatory Guidance, Current Market Conditions, and Effects on Regulated Institutions" (March 27, 2007), available at: http://www.house.gov/apps/list/hearing/financialsvcs_dem/ht032707.shtml; Subcommittee on Financial Institutions and Consumer Credit Hearing of the U.S. House of Representatives, "Improving Credit Card Consumer Protection: Recent Industry and Regulatory Initiatives" (June 7, 2007), available at: http://www.house.gov/apps/list/hearing/financialsvcs_dem/htjohnson060707.pdf; Committee on Financial Services, "Legislative Proposals on Reforming Mortgage Practices" (October 24, 2007), available at: http://www.house.gov/apps/list/hearing/financialsvcs_dem/ht0718073.shtml.
[132] MSAP at 2-4. It should be noted state-chartered credit unions serve defined FOMs based on state statutory provisions.

populations within their authorized FOM, not just FCUs predominantly serving those groups.

Federal Credit Union Charter Trends

Since the financial services industry has undergone changes relating to policies designed to improve service to low-and moderate-income individuals, the OTF researched the most recent FCU trends. The research focused on FCUs with: a community-charter; a low-income designation; an underserved area; and, small FCUs.[133]

Based on data gathered in MSAP, and the current NCUA 5300 Call Report, the OTF observed the products and services in Table 4 are typically offered by FCUs serving lower-income members. They include:

- MBLs, Small Business Administration loans, and agricultural MBLs;
- risk-based products to establish credit histories, debit cards when not qualifying for credit cards, and indirect loans to purchase an automobile at an affordable rate;
- health savings accounts to establish reserves for emergencies and overdraft protection services to help compensate for losses stemming from fees associated with misusing share draft accounts;
- non-member deposits to provide liquidity used to support service to lower-income members, such as funding for loans; and
- shared-branching agreements.[134]

Table 4

Reported Products and Services from 5300 Call Report (as of September 30, 2007)	**% of All FCUs**	**% of FCUs with Underserved Area**	**% of Community FCUs**	**% of Low-Income FCUs**	**% of Small FCUs**
MBLs	20.3	44.0	40.3	17.5	3.7
Small Business Administration Loans	1.6	6.7	3.6	1.3	0.0
Agricultural MBLs	1.2	3.4	3.7	2.5	0.1
Indirect Loans	18.0	44.3	41.1	11.0	1.3
Health Savings Accounts	3.6	9.4	7.6	2.3	0.2
Non-Member Deposits	13.3	23.8	23.1	25.7	9.7
Risk-Based Loans	45.9	71.6	69.6	38.1	25.2
Overdraft Protection	40.7	72.5	64.6	26.0	14.2
Shared Branching	15.9	33.3	21.2	6.4	2.6
ATM/Debit Card	61.4	89.6	85.9	47.8	29.8

[133] Supra note 117.
[134] "Shared branching" is a working relationship where multiple credit unions provide services to their members, including, loan processing, loan servicing, deposit services, check cashing, and share disbursements.

FCUs with Underserved Areas

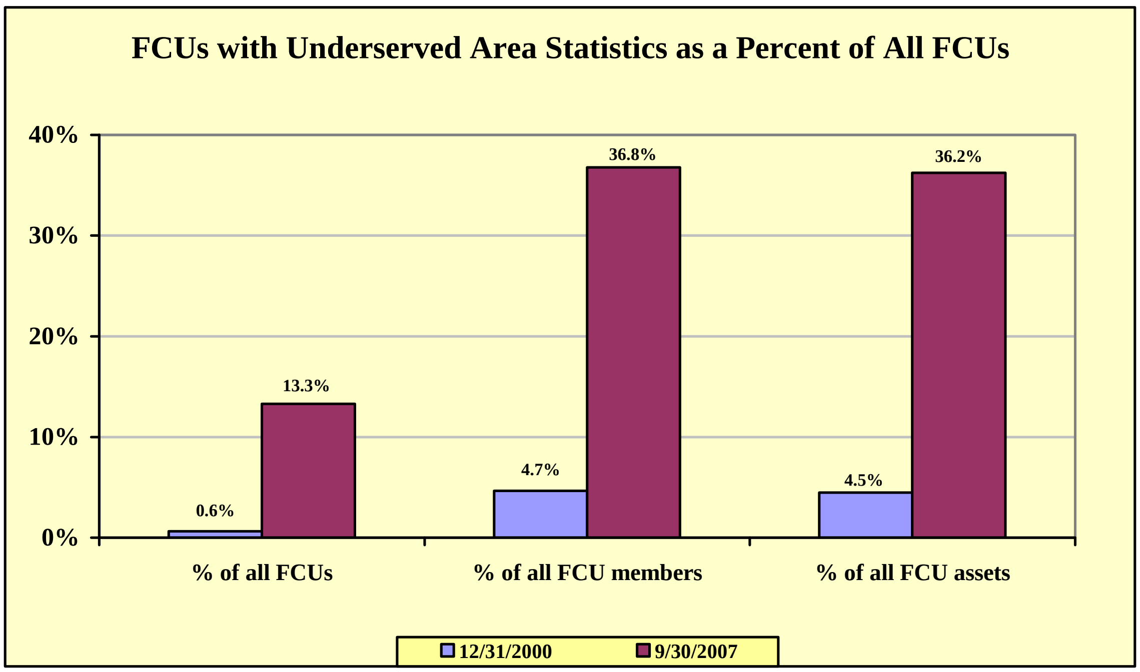
As noted in Table 5, since 2000, the number of individuals in underserved areas with access to FCU services has increased.

Table 5

Date	# of FCUs with Underserved Areas	# of Members	Assets
12/31/2000	40	2,042,382	$10,842,053,545
9/30/2007	673	17,906,271	$149,993,267,929

As demonstrated in Table 4, FCUs serving an underserved area reported the selected products and services at a higher rate than all FCUs. As FCUs have added underserved areas to their FOMs, the ability to serve individuals of low- and moderate-income increased significantly, as shown in Chart 2.

Chart 2



Community FCUs

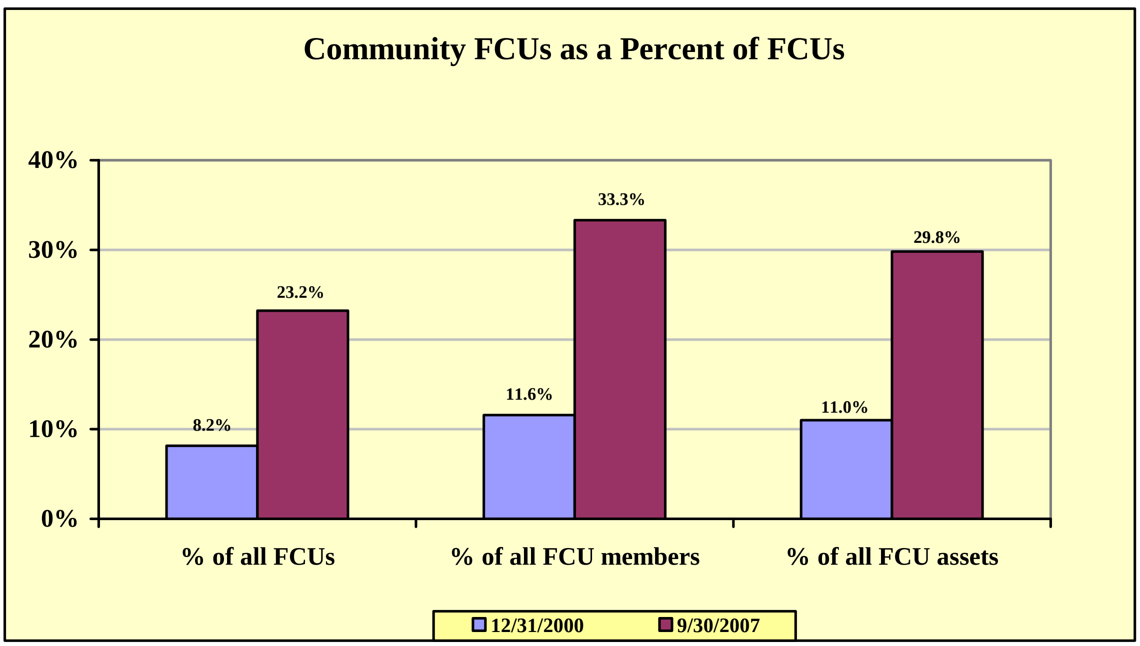
While a community charter has always been an option for FCUs, the percentage of FCUs with a community charter remained below ten percent prior to 2001. Community FCUs serve a defined geographical area, and are more likely to include individuals of all income levels. Community FCUs report similar participation in the reported products and services as those with an underserved area.[135]

Table 6

Date	# of Community FCUs	# of Members	Assets
12/31/2000	517	5,078,873	$26,720,406,099
9/30/2007	1,177	16,220,516	$123,435,757,213

As the number of community FCUs has increased, as seen in Table 6, the ability to provide financial services to individuals of low- and moderate-income has also increased significantly, as shown in Chart 3.

Chart 3



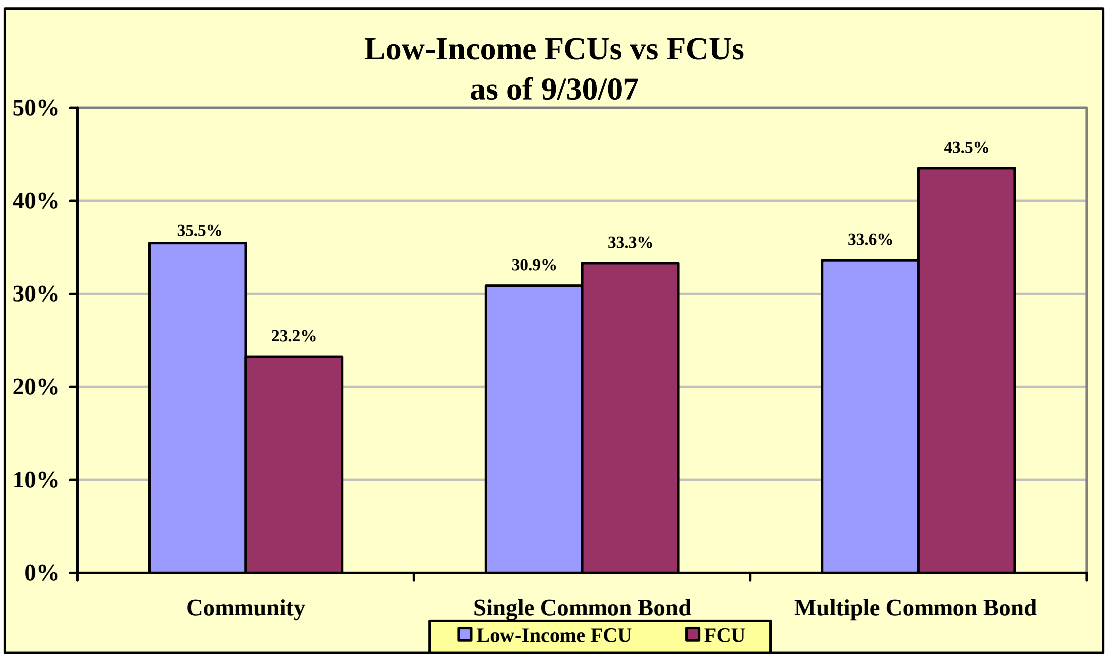
[135] See Table 4.

Low-Income FCUs

Of the 1,075 low-income credit unions, 919 are FCUs. Since all low-income FCUs are eligible for inclusion in the Small Credit Union Program, a natural assumption would be all low-income FCUs are small credit unions. This is not correct; approximately one-third of low-income FCUs are not small credit unions.[136] The largest low-income FCU has assets of $333 million, and the smallest one has assets just over $13,000. Small credit unions are determined solely by asset size, whereas the low-income designation is based on the income level of the members served.

An analysis of low-income FCUs shows 35.5 percent have a community charter, as compared to 23.2 percent of all FCUs. A comparison between low-income FCUs and all FCUs by charter type is shown in Chart 4.

Chart 4



Low-income FCUs are evenly distributed by charter type. Their assets and membership reflect a different profile, as shown in Chart 5. Community-chartered, low-income FCUs have the majority of members and assets of all low-income FCUs. Single common bond FCUs represent 31 percent of all low-income FCUs, but only have a small portion of assets and members.

[136] Supra note 117.

Chart 5

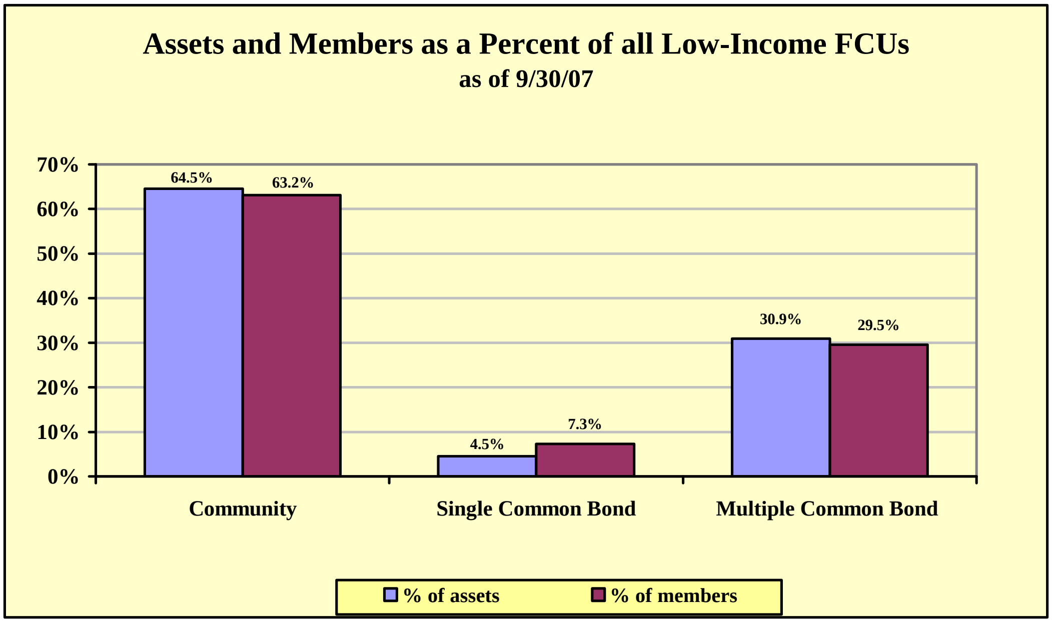
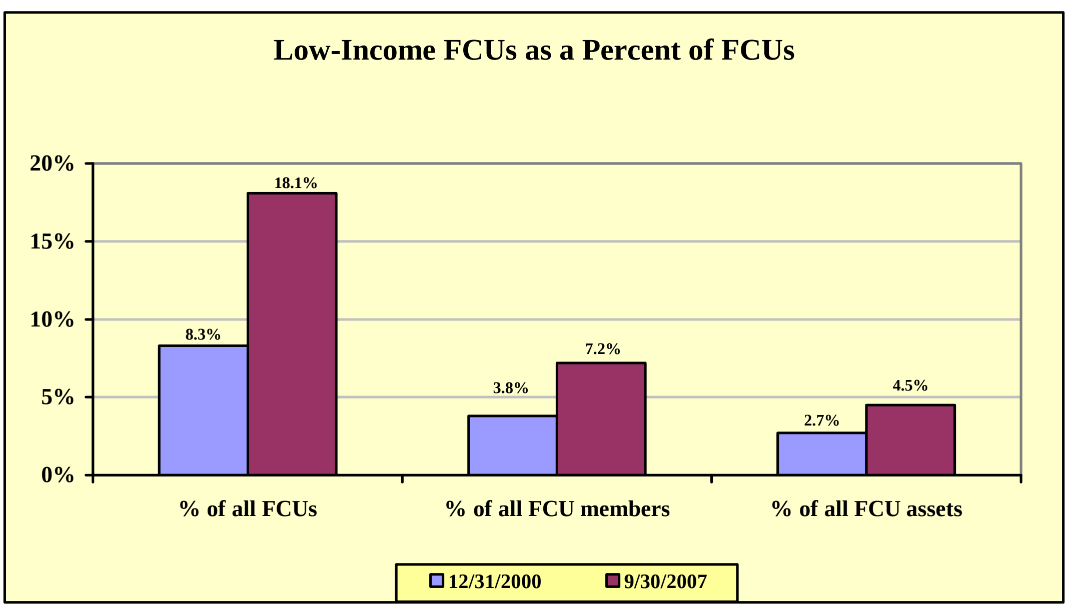


Table 4 shows low-income FCUs provide similar products and services, such as MBLs, Small Business Administration loans, and health savings accounts as all FCUs; however, they offer these products and services less frequently.

As a result of CUMAA and NCUA's strategic initiatives, low-income FCUs now comprise a higher percentage of FCUs, as seen in Chart 6. However, while low-income FCUs currently comprise 18.1 percent of all FCUs, they only represent 7.2 percent of total FCU members and 4.5 percent of total FCU assets.

Chart 6



Small FCUs

Over the years, the definition of a small credit union has changed. Initially, when the regions developed the Small Credit Union Program, a credit union with assets of $5 million or less was considered a small credit union and eligible for the program. In 2003, the definition of a small credit union changed to federally-insured credit unions with assets of $10 million or less.[137] As demonstrated in Chart 7, the number of small credit unions has declined despite the change in definition. The decreasing number of small credit unions is due primarily to mergers. Of the 109 small FCUs merging in 2007, fifty-two reported the reason was to expand services offered to their members.

Chart 7

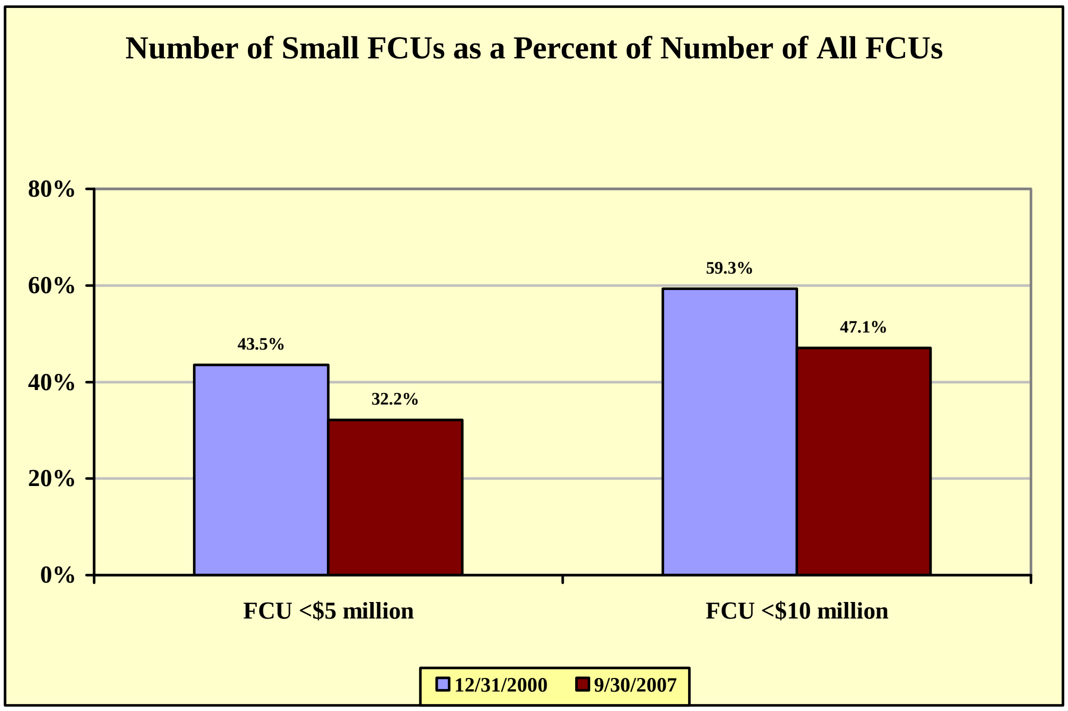
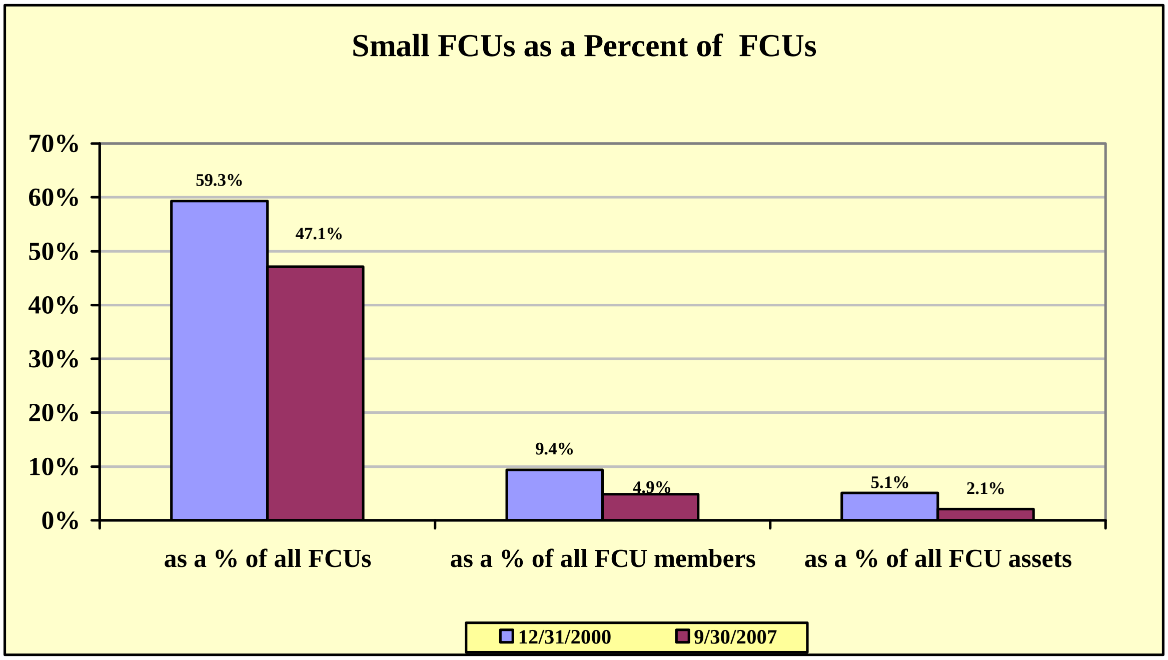


Chart 8 further demonstrates the decline in small FCUs (i.e. number, membership, and assets) from December 31, 2000 to September 30, 2007.

[137] Id.

Chart 8



The OTF observed the mix of FCU charter types has changed since 2000. Community FCUs and those with underserved areas now comprise a larger percentage of all FCUs, members, and assets. Accordingly, they have a greater likelihood of serving individuals of low- and moderate-income. These trends indicate more FCUs[138] could benefit from NCUA outreach efforts, which should inure to the benefit of more individuals of low- and moderate-income.

Town Hall Meetings – Comments on Outreach

Town Hall participants were asked, "To what extent should NCUA be proactive in encouraging/enabling credit unions to provide service to low- and moderate-income people?" In general, the participants indicated NCUA should encourage and enable credit unions to reach out to low- and moderate-income individuals, but should not enforce that activity through regulations. It was further suggested NCUA should be proactive in making regulatory changes to provide more flexibility in serving low- and moderate-income individuals.

Many participants indicated NCUA should better educate examiners on the unique issues facing FCUs serving members of low and moderate incomes. They opined, almost uniformly, NCUA policies and examination practices need to be better aligned. It was also suggested NCUA should enhance its efforts to educate credit unions about the programs, resources, and best practices available to assist in reaching out to low- and moderate-income members. For example, not all participants were fully informed about how to obtain a low-income designation or underserved area, and used the

[138] While not always applicable to federally-insured, state-chartered credit unions, the OTF recognized all federally-insured credit unions can benefit from expanded outreach efforts.

different terminology interchangeably. The OTF agreed training is imperative to the success of any outreach program. The OTF further agreed NCUA needs to exert more effort to align the practices of NCUA field staff with its policies.

C. Community Development Revolving Loan Fund

MSAP recommended NCUA consider a monitoring system to verify credit unions used CDRLF funding as intended and, most importantly, benefits were achieved. For example, while the receipt(s) for a grant may show payment to a vendor, it may not sufficiently prove grant money was used for the intended purpose.

The OTF considered the difference between grant funds provided without expectation of repayment and loan funds to be repaid with interest. It may be argued, if a credit union meets the loan application requirements, NCUA should not be overly concerned if funds are not used for the intended purpose. Low-income credit unions may find the original purpose is not feasible once the funds are received. In those instances, the officials may decide to use the funds for another purpose, which could be of equal benefit to low-income members. However, as administrator of the CDRLF, NCUA has an affirmative responsibility to ensure and document the borrowers use funds for the intended purpose.

NCUA field staff review funding provisions for compliance during the examination process,[139] but they may not be in the best position to review the use of funds during a risk-focused examination. Therefore, the OTF concurred with MSAP that improved monitoring of the use of CDRLF funding is warranted.

MSAP recommended the NCUA Board consider measuring whether benefits were achieved from the CDRLF. The OTF recognized this presented a similar dilemma as the measurement of any NCUA outreach effort. It is difficult to quantify the benefit to the membership and/or community. It is also difficult to determine to what extent funding contributed to the overall success of a credit union program.

D. Conclusion: Outreach

MSAP's recommendation to measure the effectiveness of NCUA's outreach programs, while valid in theory, is impractical to implement. The OTF viewed NCUA's role as encouraging and enabling FCUs to reach low- and moderate-income individuals, not managing individual federally-insured credit unions' outreach programs. Unless safety and soundness concerns exist, it is not practical, and perhaps beyond NCUA's authority, to become more involved in what management has determined to be in the best interests of its members.

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[139] NCUA, *Examiner's Guide* (2002) at 23-11, available at: http://www.ncua.gov/GuidesManuals/examiners_guide/chapters/chapter23.pdf.

Congress provided FCUs with outreach opportunities and challenges to serve the underserved through CUMAA and the Financial Services Regulatory Relief Act of 2006. With these legislative enactments, financial regulators are coming under increased scrutiny to initiate new policies pertaining to outreach and consumer protection, and to measure the success of such policies.

As the number of small credit unions has declined, NCUA has not materially adjusted its outreach efforts. The OTF concluded NCUA's policies should be modified to reflect the changing profile of credit unions serving low- and moderate-income members. Education to inform all FCUs about the role they can play in serving low- and moderate-income members will aid these efforts.

Finally, the OTF's review of the CDRLF indicated the program overall functions well and in a manner consistent with its funding mandate; however, NCUA should improve its monitoring of the use of CDRLF funding.

Chapter VI – Recommendations

A. Membership Profile and Financial Services

The OTF recommends the NCUA Board take the following actions:

- collect membership profile data through the AIRES examination process;
- collect financial services data on the 5300 Call Report;
- publish aggregate data on membership profile and financial services in the NCUA Annual Report or other publication(s); and
- develop a means for each FCU to obtain its proprietary membership profile data from NCUA.

B. Senior Executive Officer Compensation

The OTF recommends the NCUA Board take the following actions:

- collect FCU and federal corporate credit union senior executive officer compensation during the examination, and then use AIRES and the Corporate Examination Database to capture the information;
- publish aggregate data on senior executive officer compensation in the Annual Report or other NCUA publication(s); and
- promulgate a regulation requiring FCUs and federal corporate credit unions to annually disclose individual senior executive officer compensation to their members.

C. Low-Income Definition

The OTF recommends the NCUA Board take the following actions:

- revise NCUA Rules and Regulations to replace MHI with MFI as one of the standards for qualifying a credit union as low income; and
- include a grandfather provision of five years to allow adequate transition time for any low-income credit union failing to qualify under the MFI standard.

D. Outreach

The OTF recommends the NCUA Board take the following actions:

- expand its outreach program(s) to include a broader spectrum of credit unions serving, or having the ability to serve, members of low or moderate income;
- emphasize increased regional involvement in the implementation of outreach policies; and
- improve its oversight of Community Development Revolving Loan Fund programs.

Appendix 1 - Survey of Consumer Finances

NCUA's response to the 2006 GAO Report raised concerns with the reliance on the Survey of Consumer Finances (SCF) data for analytical purposes related to FCU member income distribution.[140] Both GAO and NCUA noted the lack of reliable data to serve as a basis for valid conclusions in this regard. As such, the OTF reviewed the SCF once again to determine its reliability as a source of information related to FCU member income distribution.

The OTF recognized the same primary limitation noted in NCUA's earlier review of the SCF, "…the SCF does not provide [a] proportional representation of credit union members and bank customers necessary to develop valid conclusions pertaining to income distribution."[141]

Prior to GAO's 2006 report and MSAP, the FRB performed its own study of the SCF data.[142] The FRB's paper raised numerous concerns with the SCF data. The OTF considered the findings of the FRB's report in its review of the applicability of SCF data in determining FCU member income distribution.

The FRB report states, "Despite years of evolution of the SCF questionnaire to avoid confusion and accommodate changes in the financial marketplace, and despite care in hiring and training interviewers, data errors of various sorts remain a pressing problem in the SCF."[143]

Participation in the SCF is voluntary. According to the report, "unit nonresponse rates in the survey are high relative to those in most other U.S. government surveys."[144] Of a sample size of approximately 10,000 in 2004, there were 4,522 completed surveys. The OTF questions the reliability and validity of extrapolating this data to evaluate the income distribution of FCU members.

The FRB relied heavily on the knowledge and ability of the survey interviewers to ensure the quality and consistency of the data collection.

> The Survey of Consumer Finances…expects interviewers to be actively engaged with the respondents to ensure, to the extent possible, that the questions are understood, the respondents are well-motivated, answers are probed as necessary for content and clarity, and that the answers are recorded correctly. It is not generally possible for survey designers to have more than indirect influence over the decisions and actions of

[140] Letter from J. Leonard Skiles, Executive Director, NCUA, to Yvonne D. Jones, Director, GAO (November 14, 2006) as reprinted in GAO-07-29 app. at 81.
[141] Id. at 85.
[142] Kennickell & FRB, supra note 32.
[143] Id. at 9.
[144] Id. at 4.

> respondents, but interviewers are effectively agents of the designers and, thus, assumed to be more controllable.[145]

In reviewing the role of the interviewer in the SCF data collection process, the FRB paper states,

> because the survey is largely focused on the collection of factual information on technical topics that some respondents may find unclear or confusing, interviewers have routinely been asked to go beyond the basic tasks of reading and recording. A key role of an SCF interviewer is in ensuring that the intended meaning of the questions reaches the respondents and that the answers recorded are truly responsive.[146]

The FRB had concerns with the lack of a monitoring and feedback system to assist interviewers in collecting quality data. "To counter a decline in data quality detected in earlier SCFs, the 2004 survey introduced a new system of monitoring and feedback to interviewers."[147]

Despite the introduction of a monitoring and feedback system, the FRB still had concerns with the 2004 survey interviewers. The number of trained interviewers fell from 186 to 128 during the interview period. The decline was attributed to several factors: interviewers who did not want to travel; those who were terminated for not completing interviews in a timely manner; and, in some rare cases, those terminated for violating part of the survey protocol. The productivity of the interviewers varied significantly, and interviewers were not assigned to cases on a random basis, but rather assignments were driven by geography.[148]

> [T]he survey relies on interviewers to document problems they observe during the interview—either in the main instrument as they detect them or in the debriefing they are required to complete for every interview. But interviewers vary in their abilities to make and record observations as well as in their commitment to doing so.[149]

The OTF concurred with the NCUA's response to GAO questioning the applicability of the SCF data to determining FCU member income distributions. As indicated, the FRB itself has concerns with the survey results and the process by which the data is collected. Additionally, the SCF is only conducted every three years. The OTF recommends FCU member income distribution be determined by use of data collected through the AIRES examination process and analyzed through geo-coding software.

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[145] Id. at 2.
[146] Id. at 17.
[147] Id. at 3.
[148] Id. at 8.
[149] Id. at 9.

Appendix 2 - Collection Models

Federal Government Agencies Providing Benefits Based on Income

CDFI Fund

The CDFI Fund collects institutional and transactional data from its awardees in order to measure performance. The CDFI Fund designed and developed its own web-based system, the Community Investment Impact System, which has been operational since 2004. Institutional data collected includes:

- financial activity and position;
- ownership characteristics;
- staffing levels and composition;
- technical assistance and training services; and
- loan sales and purchases.

The transactional data collected includes details on each loan or investment, as demonstrated by the borrower, project addresses, borrower socioeconomic characteristics, loan or investment terms, repayment status, and community development outcomes. The CDFI Fund uses the transactional data to determine if the financial institution provided services to the targeted population at market rates. The CDFI Fund does not issue a formal report of transactional activity. Also, there is no requirement for each institution to geo-code the data.

Housing and Urban Development Programs

The U.S. Department of Housing and Urban Development (HUD) is required by law to set income limits determining the eligibility of applicants for HUD's assisted housing programs. Income limits are calculated for metropolitan areas and non-metropolitan counties in the United States and its territories based on HUD estimates of MFI, with adjustments for family size. Adjustments are also made for areas having unusually high or low income to housing cost relationships. For example, low-income families are defined as families whose incomes do not exceed 80 percent of the MFI for the area. Very low-income families are defined as families whose incomes do not exceed 50 percent of the MFI for the area.

HUD developed a system of records called the Enterprise Income Verification.[150] It contains personal identifier information such as name, date of birth, social security number, housing unit number (address), program information and income details as reported by the resident and by the state and federal agencies. The Enterprise Income Verification is not available for public disclosure.

[150] 71 Fed. Reg. 45066 (August 8, 2006).

Federal Law Requiring Data Collection by Financial Institutions

Community Reinvestment Act

In 1977, Congress enacted the Community Reinvestment Act (CRA) to encourage federally insured banks and thrifts to help meet the credit needs of their entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operations.[151] The four federal bank regulatory agencies responsible for enforcing CRA are the FDIC, the FRB, the OCC, and the OTS.

An institution may use the free software for CRA data collection purposes, or develop its own program (within approved guidelines). A review of the software[152] indicates institutions report, at a minimum:

- a transmittal sheet;
- a definition of its assessment area;
- a record of its community development loans; and
- information on small-business and small-farm loans.

CRA data are aggregated on the census tract level, and each tract represents one record in an entire data submission. For example, six different small-business loans made in the same census tract would count as one composite record. There are no data reporting requirements for consumer loans. Institutions may, however, elect to collect and maintain data (gross annual income) on consumer loans.[153] Streamlined procedures were adopted for smaller institution[154] reviews, while larger institutions are evaluated under a multipart test.[155]

In addition to the above evaluations, CRA has another set of examination procedures for institutions with only strategic plans. The examiner reviews the approved plan and determines if the institution achieved its performance goals for each assessment area examined.

The public may request an institution's CRA disclosure statement directly from the institution. CRA data are also made available to the public via the following website: http://www.ffiec.gov/craadweb/DisRptMain.aspx.

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[151] The Community Reinvestment Act of 1977, Pub. L. No. 95-128, 91 Stat. 1147 (1977) (as codified at 12 U.S.C. §§ 2901 et seq.).
[152] Federal Financial Institutions Examination Council, available at http://www.ffiec.gov/software/default.aspx (November 14, 2006).
[153] 12 C.F.R. § 345.42 (c)(1)(iv) (2007).
[154] Data Collection, Reporting and Disclosure: All institutions except small institutions are subject to data collection and reporting requirements. An adjustment was made to the regulations (December 27, 2006) that states that a "small bank" has assets of less than \$1.033 billion and an "intermediate small bank" has assets of at least \$258 million and less than \$1.033 billion. 12 C.F.R. § 345.42 (2007).
[155] FDIC, *Approved Limited Purpose Strategic Plan, and Wholesale Institutions Report* (October 2007), available at http://www.fdic.gov/regulations/community/community/apprlp.html.

The Federal Deposit Insurance Reform Conforming Amendments Act of 2005

On February 8, 2006, the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 was enacted which contains necessary technical and conforming changes to implement deposit insurance reform, as well as a number of study and survey requirements.[156] On December 27, 2007, the FDIC announced its plan to survey 895 FDIC insured banks to complete a questionnaire, and to 25-30 FDIC insured banks for in-depth case studies.[157] The general public is not included in this survey. The following is from the Federal Register that sought comments by January 28, 2008, on FDIC's planned data collection.

> *General Description of Collection:* The FDIC has a number of initiatives underway to encourage practical solutions to ensure that all consumers have reasonable access to full service banking and other financial services. The FDIC believes that insured depositories can provide a path into the financial mainstream for those who need these financial services, and that depository institutions can create an array of affordable lending services to meet the needs of all their customers. Currently a large segment of the population relies on a mix of non-bank financial service providers for their needs. The FDIC is undertaking a series of analyses in this area, including the proposed National Survey of Banks' Efforts to Serve the Unbanked and Underbanked. The survey is mandated by section 7 of the Reform Act, which calls for the FDIC to conduct ongoing surveys "on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the 'unbanked') into the conventional finance system."
>
> In this initial survey effort, the FDIC plans to survey FDIC-insured depository institutions on their efforts to serve underbanked as well as unbanked populations. The survey will consist of two components—a questionnaire survey of a sample of FDIC-insured depository institutions and a limited number of case studies of FDIC-insured depository institutions that are employing innovative methods to serve unbanked and underbanked populations.
>
> The Reform Act mandates that the FDIC consider the following factors and questions in conducting the survey:
>
>> "(A) To what extent do insured depository institutions promote financial education and financial literacy outreach? [sic]

[156] Supra note 57.
[157] 72 Fed. Reg. 73346 (December 27, 2007).

"(B) Which financial education efforts appear to be the most effective in bringing 'unbanked' individuals and families into the conventional finance system? [sic]

"(C) What efforts are insured institutions making at converting 'unbanked' money order, wire transfer, and international remittance customers into conventional account holders? [sic]

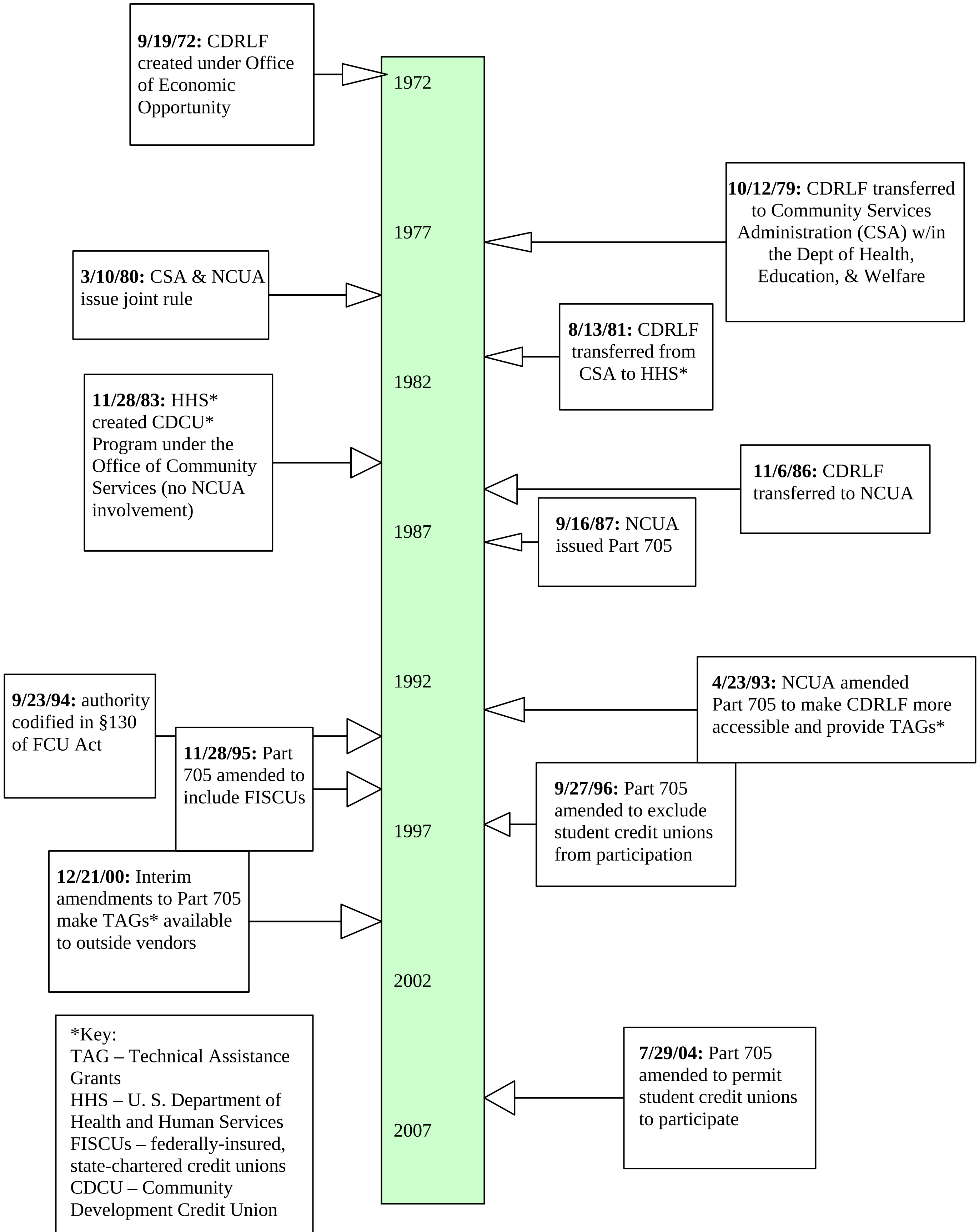
"(D) What cultural, language and identification issues as well as transaction costs appear to most prevent 'unbanked' individuals from establishing conventional accounts? [sic]

"(E) What is a fair estimate of the size and worth of the 'unbanked' market in the United States?"

In addition to these mandated objectives, in its questionnaire survey of a sample of FDIC-insured depository institutions, the FDIC seeks to identify and quantify the extent to which institutions serve the needs of the unbanked and underbanked; identify the characteristics of institutions that are reaching out to and serving the unbanked and underbanked; identify efforts (for example, practices, programs, alliances) of institutions to serve the unbanked and underbanked; and identify potential barriers that affect the ability of institutions to serve the unbanked and underbanked. The objectives of the case studies are to identify and share ''best practice'' programs and practices that appear to be the most effective in bringing unbanked and underbanked populations into the financial mainstream, particularly the federally-insured financial institutions. The case studies will be designed to collect information on the size and scope of programs, the nature of service offerings, program budgets, and results.[158]

[158] Id.

Appendix 3 - CDRLF History



Appendix 4 - Field Staff Outreach Survey

Methodology

The OTF surveyed NCUA field staff to determine their efforts in assisting credit unions. All field staff working for NCUA as of the survey date who had worked for the agency in 2006 completed the survey. The OTF confirmed completion of the survey by 558 employees.

The survey asked 44 questions grouped into five different categories:

- Field of Membership
- Resources
- Services
- Operations
- Training

Field staff was asked the frequency of on-site and off-site contacts for the purpose of providing credit unions assistance. The survey used the following ranges:

- N/A
- 1
- 2
- 3
- 4
- 5
- 6 or more

The survey also included a comment box for field staff to provide details of their activities or assistance provided to credit unions not covered by the survey questions.

The survey asked for identifying information (name and region) so the OTF could analyze the data. By providing these identifiers, the OTF was able to determine the position held by field staff. It also assisted the OTF in analyzing NCUA outreach efforts within each examiner district,[159] such as the number of low-income credit unions in the district, the average asset size, and number of federally-insured, state-chartered credit unions in the district. Analytics included the use of mean, median, and standard deviation.

[159] A district is composed of federally-insured credit unions assigned to a specific examiner for examination, supervision and administrative purposes.

Survey Questions

The survey sent to field staff contained the following questions:

CATEGORY	QUESTION
Field of Membership	How often did you assist potential new credit union charter groups?
Field of Membership	How often did you assist a credit union(s) with an underserved area expansion?
Field of Membership	How often did you assist a credit union(s) with a community charter expansion/conversion?
Field of Membership	How often did you assist a credit union(s) to obtain a low-income designation?
Field of Membership	How often did you assist a credit union(s) with strategies to attract potential low-income members?
Field of Membership	How often did you assist a credit union(s) to merge to continue service to low-income members?
Field of Membership	How often did you assist a credit union(s) avoid merger or a liquidation that would eliminate service to low-income members?
Resources	How often did you assist credit union(s) obtain a Community Development Financial Institution designation (CDFI)?
Resources	How often did you assist a credit union(s) obtain Community Development Revolving Loan Fund (CDRLF) technical assistance grant or loan?
Resources	How often did you assist a credit union(s) obtain grant or financial assistance other than through the CDRLF?
Resources	How often did you assist a credit union(s) obtain secondary capital?
Resources	How often did you assist a credit union(s) obtain non-member deposit(s)?
Resources	How often did you assist a credit union(s) establish a relationship with a local, state, or federal guaranteed lending program (ex: SBA, VA, USDA, HUD, Sallie Mae, etc.)?
Resources	How often did you assist a credit union(s) establish a partnering relationship to share resources?
Resources	How often did you assist a credit union(s) establish a mentoring relationship with another credit union?
Resources	How often did you assist a credit union(s) share best practices for products, services or other operational issues?
Services	How often did you assist a credit union(s) offer a Share Draft program?

CATEGORY	QUESTION
Services	How often did you assist a credit union(s) offer an ATM/Debit card program?
Services	How often did you assist a credit union(s) offer a share secured credit card program?
Services	How often did you assist a credit union(s) offer Health Savings Accounts?
Services	How often did you assist a credit union(s) offer an on-line banking program?
Services	How often did you assist a credit union(s) offer service center/shared branching arrangements?
Services	How often did you assist a credit union(s) offer financial literacy education?
Services	How often did you assist a credit union(s) with a risk based lending program?
Services	How often did you assist a credit union(s) offer a Volunteer Income Tax Assistance (VITA) program?
Services	How often did you assist a credit union(s) with Automatic Clearing House capabilities?
Services	How often did you assist a credit union(s) with wire transfer capabilities?
Services	How often did you assist a credit union(s) offer Micro Member Business Loans (<$50,000 business purpose loans)?
Services	How often did you assist a credit union(s) offer a credit builder loan program (bill consolidation, small loans with no credit history, emergency loans)?
Services	How often did you assist a credit union(s) offer Micro Consumer Loans (<$500)?
Services	How often did you assist a credit union(s) offer financial counseling (debt and/or investment) services?
Services	How often did you assist a credit union(s) offer student run branches?
Services	How often did you assist a credit union(s) offer remittance services?
Services	How often did you assist a credit union(s) offer check cashing services?
Operations	How often did you assist a credit union(s) with recordkeeping?
Operations	How often did you assist a credit union(s) with budgeting?
Operations	How often did you assist a credit union(s) with policies?
Operations	How often did you assist a credit union(s) with succession planning?
Operations	How often did you assist a credit union(s) with strategic planning?

CATEGORY	QUESTION
Operations	How often did you assist a credit union(s) with regulatory compliance?
Training	How often did you make presentations at chapter meetings, leagues, workshops, etc., regarding outreach to potential low-income members?
Training	How often did you make presentations at chapter meetings, leagues, workshops, etc., regarding outreach to underserved areas?
Training	How often did you make presentations at chapter meetings, leagues, workshops, etc., regarding alternatives to predatory lending?
Training	How often did you make presentations at chapter meetings, leagues, workshops, etc., regarding financial literacy?

Survey Analysis

The OTF analyzed the survey data taking into consideration various factors.

Regional Analysis

The OTF considered regional differences affecting the level of assistance reported. Generally, there were no clear regional distinctions. One region's field staff responded more favorably regarding offering resource assistance, such as establishing mentor or partnership relationships and obtaining non-member deposits. Conversely, this region responded less favorably to the questions regarding assistance with services and operations. The OTF attributes both of these issues to the number of large credit unions in the region.[160] Large credit unions would more likely be a mentor or enter into a partnering relationship. Consequently, large credit unions most likely offered the services in the survey prior to 2006, and would be less likely to need field staff assistance with operational issues.

Asset Size Analysis

The OTF also reviewed how the average asset size of the FCU in a field staff's district impacted the responses to the survey. In general, the OTF noted field staff with a district having FCU asset sizes below average responded they provided assistance more frequently for most of the questions.[161] However, responses to two questions (assistance with micro MBLs and assistance with remittance services) were provided more

[160] The OTF defined a large credit union as one with assets greater than $250 million. When the OTF analyzed the survey results, there were 579 large credit unions in the nation that comprise 7 percent of the total number of federally-insured credit unions, and hold 68 percent of total federally-insured credit union assets.
[161] The average asset size of an FCU district was $81,970,114.

frequently in above average asset-sized districts. The OTF did not consider this to be extraordinary, since these two services are primarily offered in larger credit unions.

Position Analysis

The OTF was particularly interested in the survey responses from the EDSs and the small credit union subject matter examiners. Both positions are designed to provide assistance to credit unions meeting the Small Credit Union Program criteria: chartered less than ten years; less than $10 million in assets; or low-income designated.

The OTF noted nine of the fifteen EDSs responded affirmatively they assisted credit unions with strategies to attract potential low-income members more than six times in 2006. The OTF anticipated the EDSs would respond more affirmatively in the areas of training, resources, and services due to their mission and position description; however, similar to field staff, they responded highly to the operations section of the survey.

Small credit union subject matter examiners answered more affirmatively than field staff when responding to operations questions. In addition, every small credit union subject matter examiner responded they assisted a credit union with policies. Both of these areas correspond to the duties of a small credit union subject matter examiner. The OTF noted small credit union subject matter examiners did not respond affirmatively to questions regarding assistance with secondary capital, guaranteed lending programs, health savings accounts, share-secured credit cards, remittance services, and check-cashing services. The OTF believes this may be due to less knowledge or training of those areas, or fewer small credit unions engaging in those programs. These areas are also more representative of assistance provided by EDSs.

Low-Income Credit Union Analysis

Field staff with an above-average[162] level of low-income credit unions in their district answered affirmatively and at a higher frequency regarding the operational assistance questions. In particular, assistance with record keeping, regulatory compliance, and policies garnered high responses. The resource assistance questions also received high responses, especially with questions relating to partnering, mentoring, and sharing best practices.

[162] The average number of low-income credit unions in an examiner's district was three. The statistical outlier (two standard deviations from the mean) is nine low-income credit unions.

Appendix 5 - Other Agencies' Outreach Programs[163]

Agency/Mission/Structure	Activities/Programs
Office of Thrift Supervision – Community Affairs Program **Mission**: Provides: • fair access to financial services to low- and moderate-income individuals and communities, and other areas of greatest need; • fair treatment of thrift customers; • support for Community Reinvestment Act; and • support for safety and soundness activities. **Structure**: Staff is located in the headquarters and five other offices located in the regions.	• **Outreach** – Community affairs staff works with financial institutions, government agencies, community organizations and others to identify needs, opportunities, financial assistance to assist underserved communities, best practices, and strategies for addressing regulatory barriers. • **Training and Forums** – Staff sponsors or cosponsors training for the industry and OTS staff. Staff promotes forums for the industry and community organizations to discuss local community needs and ways in which financial institutions can meet those needs. • **Individualized Assistance to Institutions** – Staff provides one-on-one assistance to thrifts to help identify community development opportunities, CRA eligible loans, investments and services and new business opportunities in underserved or undervalued markets; and provide training, technical, or regulatory policy assistance in the areas of community development and CRA. • **Publications** – Staff issues a quarterly newsletter featuring community development issues and innovative programs
Office of the Comptroller of the Currency – Community Affairs Program and External Outreach & Minority Affairs Program **Mission**: Ensures a safe and sound banking system by helping national banks in providing community development financing and retail services to underserved communities and consumers. The External Outreach and Minority Affairs Unit broadens awareness of the current minority	• **Training and Technical Assistance** – Staff provides strategies for community development, formation of community development entities, or investing in community development projects. • **Individualized Assistance to Institutions** – Staff assists with identifying opportunities and resources to support community development finance. • **Training and Forums** – Staff sponsors conferences, roundtables, and workshops for lenders, community groups, and government officials. • **Publications** – Staff develops publications and web-based resources on innovative approaches banks have used to provide community development financing and services to underserved rural, urban, and Native American communities

[163] The information in this appendix is available at each agency's website: http://www.ots.treas.gov; http://www.occ.gov; http://www.fdic.gov.

Agency/Mission/Structure	Activities/Programs
banking issues and the role the agency plays in ensuring fair and equal access to banking services for all Americans. **Structure**: Staff is located in the headquarters and four regions.	
Federal Deposit Insurance Corporation – Community Affairs Program and Alliance for Economic Inclusion Initiative **Mission**: The Division of Supervision and Consumer Protection Community Affairs Program function is to: • support the FDIC's mission; • encourage financial institutions to invest in and meet the credit needs of the communities they serve; and • promote laws, regulations, policies and programs that protect and inform consumers. The program establishes broad based coalitions of financial institutions, community based organizations and other partners in nine markets to bring all unbanked and underserved populations into the financial mainstream. **Structure**: Staff is located in eight regional offices.	• **Training –** Staff develops training programs pertaining to financial education. • **Relationships –** Staff creates positive banking relationships between consumers and financial institutions. • **Partnerships –** Staff promotes community development partnerships in historically underserved markets. • **Subject Matter Experts –** Staff serves as experts at industry and community meetings. • **Technical Assistance –** Staff provides assistance, as necessary, to institutions and staff. • **Publications –** Staff creates articles and publications pertaining to current and emerging issues.