

§91.301. Field of Membership.

(a) General. Membership in a credit union shall be limited to one or more groups, each of which (the Group) has its own community of interest and is within the credit union's **market local service** area. ~~In this section, local service area shall mean an area that is within reasonable proximity of a credit union's office, and allows members to be realistically served from that office.~~ For purposes of field of membership, the Group as a whole will be considered to be within the **credit union's market local service** area when:

(1) A majority of the persons in the Group live, work, or gather regularly within the **market local service** area;

(2) The Group's **corporate** headquarters is located within the **market local service** area; or

(3) The persons in the Group are "paid from" or "supervised from" an office or facility located within the **market local service** area.

The commissioner may impose a geographical limitation on any Group if the commissioner reasonably determines that the applicant credit union does not have the facilities and staffing to serve a larger group or there are other operational or management concerns.

(b) **Delineation of market area. A credit union shall delineate its market area in the bylaws. A credit union whose field of membership does not include any geographic communities of interest, may delineate its membership bylaw provisions as its market area.**

(1) Market area. The market area for a credit union shall consist generally of one or more MSA's or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities, or towns in which the credit union has its principal place of business, offices, and deposit-taking ATMs.

(2) Limitations on market area. Each credit union's market area(s):

(A) Must consist only of whole metropolitan areas or political subdivisions;

(B) Must be of reasonable geographic size, taking into account the credit union's size, financial condition, and location of its offices and deposit-taking ATMs; and

(C) May not reflect illegal discrimination ~~Other persons eligible for membership. A number of persons by virtue of their close relationship to a Group may be included in the field of membership at the option of the applicant credit union. These include:~~

~~(1) — members of the family or household of a member of the Group;~~

~~(2) — volunteers performing services for or on behalf of the Group;~~

~~(3) — organizations owned or controlled by a member or members of the Group, and any employees and members of those organizations;~~

~~(4) — spouses of persons who died while in the Group;~~

~~(5) — employees of the credit union;~~

~~(6) — subsidiaries of the credit union and their employees; and businesses and other organizations whose employees or members are within the Group.~~

(c) Multiple-groups.

(1) The commissioner may approve a credit union's original articles of incorporation and bylaws or a request for approval of an amendment to a credit union's bylaws to serve one or more communities of interest or a combination of types of communities of interest.

(2) In addition to general requirements, special requirements pertaining to multiple-Group applications may be required before the commissioner will grant such a certificate or approve such an amendment.

(A) Each Group to be included in the proposed field of membership of the credit union must have its own community of interest.

(B) Each associational or occupational Group must individually request inclusion in the proposed credit union's field of membership.

(d) **Direct marketing restriction. A credit union with a geographic community of interest may not direct marketing targeted primarily at the persons in an occupational or associational Group unless:**

(1) the Group was included in the bylaws of the credit union prior to October 31, 2015. An occupational or associational Group is "included" in the bylaws of a credit union if the underlying enterprise or organization, as applicable, is specifically named in the credit unions bylaws.

(2) a management official of the underlying enterprise or organization has provided the credit union with a written statement, signed by the official, that the Group desires service by the credit union. Overlap protection:

~~(1) The commissioner will only consider the financial effect of an overlap proposed by an application to expand a credit union's field of membership or when a charter application proposes an overlap for a Group of 3,000 members or more.~~

~~(2) The commissioner will weigh the information in support of the application and any information provided by a protesting or affected credit union. If the applicant has the financial capacity to serve the financial needs of the proposed members, demonstrates economic feasibility,~~

~~complies with the requirements of this rule, and no protestant reasonably establishes a basis for denying the request, it shall be approved.~~

~~(3) If a finding is made that overlap protection is warranted, the commissioner shall reject the application or require the applicant to limit or eliminate the overlap by adding exclusionary language to the text of the amendment, e.g., "excluding persons eligible for primary membership in any occupation or association based credit union that has an office within a specified proximity of the applicant credit union at the time membership is sought." Exclusionary clauses are rarely appropriate for inclusion on a geographic community of interest.~~

~~(4) Generally, if the overlapped credit union does not submit a notice of protest form, and the department determines that there is no safety and soundness problem, an overlap will be permitted. If, however, a notice of protest is filed, the commissioner will consider the following in performing an overlap analysis:~~

~~(A) whether the overlap is incidental in nature, i.e., the group(s) in question is so small as to have no material effect on the overlapped credit union;~~

~~(B) whether there is limited participation by members of the group(s) in the overlapped credit union after the expiration of a reasonable period of time;~~

~~(C) whether the overlapped credit union provides requested service;~~

~~(D) the financial effect on the overlapped credit union;~~

~~(E) the desires of the group(s); and~~

~~(F) the best interests of the affected group(s) and the credit union members involved.~~

~~(5) Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the community of interest described in the credit union's bylaws. Where~~

~~acquisitions are made which add a new subsidiary or affiliate, the group cannot be served until the entity is included in the field of membership through the application process.~~

~~(6) Credit unions affected by the organizational restructuring or merger of a group within its field of membership must apply for a modification of their fields of membership to reflect the group to be served.~~

(e) Underserved communities.

(1) The Department may waive any provision of this section as the commissioner deems appropriate to facilitate credit union service to low and moderate income persons

~~(1) All credit unions may include underserved areas in their fields of membership, without regard to location. More than one credit union can serve the same underserved area.~~

~~(2) Once an underserved area has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in the community. For the purposes of this subsection, service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loan proceeds are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, and an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM or a credit union's Internet website.~~

~~(3) A credit union desiring to add an underserved area must document that the community meets the definition. In addition, the credit union must develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The commissioner may require periodic service status reports from a credit union pertaining to the underserved area to ensure that of the area are being met, as well as requiring such reports before allowing a credit union to add an additional underserved area.~~

(2) A credit union may extend membership to persons and organizations in an underserved community where such area has been designated a credit union development district in accordance with Subchapter K (related to Credit Union Development Districts).

(f) Parity with Federal Credit Unions.

Credit unions will be allowed to have, at a minimum, at least as much flexibility as federal credit unions have in field of membership regulation. If a credit union proposes a type of Group that the National Credit Union Administration has previously determined meets the Federal requirements, the commissioner shall approve the application unless the commissioner finds that the credit union has not demonstrated sufficient managerial and financial capacity to safely and soundly serve such expanded membership.

(g) Application **to expand field of membership.**

(1) In order to request the approval of the commissioner to add a Group to its **field of membership bylaws**, a credit union must submit a written application to the Department. The applicant credit union shall have the burden to show to the Department such facts and data that support the requirements and considerations in this rule. In reviewing such application, the commissioner shall consider:

(A) **(1)** Whether the Group has adequate unifying characteristics or a mutual interest such that the safety and soundness of the credit union is maintained;

(B) **(2)** The ability of credit unions to maintain parity and to compete fairly with their counterparts;

(C) (3) Service by the credit union that is responsive to the convenience and needs of prospective members;

(D) (4) Protection for the interest of current and future members of the credit union; and

(E) (5) The encouragement of economic progress in this State by allowing opportunity to expand services and facilities.

(2) Notice published in accordance with Section 91.104 (relating to Public Notice and Comment on Certain Applications) is deemed sufficient notification to all credit unions that the applicant credit union has submitted a request to expand its field of membership and comments on the proposed expansion are being accepted.

(h) Plan to Serve Geographic Community of Interest.

(1) A credit union must develop a business plan specifying how it will serve a proposed geographic community of interest. The business plan, at a minimum, must identify the credit and depository needs of the geographic area and detail how the credit union plans to serve those needs. The board of directors should periodically evaluate the credit union's record of helping to meet the credit needs of a geographic area(s) included in its field of membership. The commissioner may require a service status report from a credit union before allowing the credit union to expand its field of membership to include another geographic community of interests or change its market area.

(2) A credit union has a continuing and affirmative obligation to help meet the financial needs of a geographic community of interest. This obligation, however, does not require a credit union to make loans or to provide services that are inconsistent with safe and sound operations.

(i) Applicability of this section.

(1) This section also applies to the conversion of a foreign or federal credit union to a credit union chartered and operating under Texas Finance Code, Title 3, Subtitle D.

(2) This section does not apply to mergers where the continuing credit union is organized and operating under Texas Finance Code, Title 3, Subtitle D. The continuing credit union may amend its bylaws to add the field of membership of the merging credit union.

(3) This section does not restrict Groups added to a credit union's bylaws prior to October 31, 2015.