

BOARD ACTION MEMORANDUM

TO: NCUA Board

DATE: October 8, 2015

FROM: Mark Treichel
Executive Director

SUBJ: Revisions to Delegations of
Authority

ACTION REQUESTED: NCUA Board approval of proposed revisions to Delegations of Authority.

DATE ACTION REQUESTED: October 15, 2015.

OTHER OFFICES CONSULTED: Office of Consumer Protection and Office of General Counsel.

VIEWS OF OTHER OFFICES CONSULTED: Concur.

BUDGET IMPACT, IF ANY: None.

SUBMITTED TO INSPECTOR GENERAL FOR REVIEW: Yes.

RESPONSIBLE STAFF MEMBERS: John Kutchev, Deputy Executive Director; Matthew Biliouris, Deputy Director, Office of Consumer Protection; Ross Kendall, Special Counsel to the General Counsel.

SUMMARY. Since its creation in 2010, the Office of Consumer Protection (OCP) has acquired plenary authority over chartering decisions affecting Federal credit unions, including issuance of new charters as well as approval of charter amendments. The Board has retained authority, however, for decisions that involve community charter actions which would result in an FCU serving a community with a population in excess of one million people. At present, therefore, decisions involving new community charters, amendments to existing community charters, and conversions from another charter type to community charter all require Board review and approval where the population to be served by the FCU exceeds one million.

OCP's five-year track record is evidence that this level of review and involvement by the Board is no longer necessary. During the past five years, OCP has developed and implemented comprehensive systems and procedures for the review and evaluation of all chartering decisions, including specifically those affecting community charters. These procedures include an analysis of the credit union's intent and capacity to meet the needs of the proposed community to be served. The evaluation is done in accordance with the guidelines and policies contained in NCUA's Chartering Manual. 12 C.F.R. Part 701, Appendix B.

Once a community charter conversion or expansion approval occurs and the area has a population above one million people, OCP will continue to follow up with the FCU every year for three years to monitor its progress and to ensure its continued service to and support for the entire community to which it is devoted.

With these procedural and substantive guidelines in place, the Board can be confident that chartering decisions in this area will continue to conform to established policies. In this respect, the Board has adopted each of the 15 recommended chartering determinations involving large population community charters proposed by OCP over the past five years.

Going forward, OCP will continue to provide the Board with notification of chartering determinations involving large population community charters.

The current delegations also call for OCP to request review and comment by the Office of Examination and Insurance (E&I) on all matters that involve large population community charters. This requirement would remain in place.

The proposed amendments to the delegations would authorize the Director of OCP to approve all community charter actions. This will enable the agency to take action at the most efficient level consistent with supervisory control. Doing so is also consistent with the Board's policy of providing such regulatory relief to credit unions as may be accomplished without sacrificing safety and soundness.

In this respect, it should be noted that the proposed changes to the delegations specifically limit the authority of the Director to redelegate. Action on any matter involving a large population community credit union that currently requires Board approval may not be redelegated by the OCP Director, but instead must remain at the Director level.

As noted above, moreover, all such matters will continue to require review and comment from E&I before they may be approved.¹ Importantly, the Board will continue to review all appeals of disapprovals.

Consistent with the foregoing, the Office of Executive Director (OED) recommends a change to CHA 5A(1), dealing with mergers involving a community charter in which, post-merger, the community to be served exceeds one million in population. The change would require the Regional Director or Office of National Examinations and Supervision (ONES) Director, as appropriate, to obtain prior review and comment from OCP and E&I to ensure that the resulting credit union conforms to chartering policy and presents no safety and soundness concerns.

If the merger requires a simultaneous community charter action, OCP will process the action consistent with the delegations applying to community charter actions unrelated to potential mergers. At present, a merger requiring a community charter action in which the resulting

¹ OED also recommends deleting the redelegation language from current CHA 1C. Although this delegation does not deal with community charters with over a million in population, in practice the OCP Director does not redelegate the authority that is conferred by this delegation, which deals with new charters based on the common bond of Trade, Industry or Profession (TIP).

community has a population in excess of one million people first requires Board approval of the community charter action.

OED also recommends a new CHA 5A(2) to clarify that authority to approve mergers in which a federally insured credit union proposes to merge into a non-federally insured institution is delegated to the Director of OCP, and not to the Regional Director or ONES Director. OCP also recommends adding language to the renumbered CHA 5A(4) [presently 5A(3)] to clarify that the Regional Director or ONES Director has the authority to approve mergers in which an insured credit union proposes to acquire an uninsured credit union through merger when the assets of the merging credit union are below \$100 million.

OED also recommends adding language to CHA 6C and 6D to clarify that the OCP Director must obtain the review and advice of the Office of General Counsel as to the legal sufficiency of transactions by which an FCU proposes to convert to a non-federally insured state charter (CHA 6C) or a federally insured credit union proposes to convert to a mutual savings bank (CHA 6D). This is not a new requirement but rather simply conforms the language of the delegation to current practice.

Finally, OED recommends four additional housekeeping changes. Current delegation CHA 2A is duplicative of the authority set out in CHA 1A and should be deleted. Current delegation 3A contains a reference to conversions by other charter types to community charter that is duplicative of authority already conferred by current CHA 1B and 2B. Current delegation CHA 5B authorizes the Regional Directors to waive membership vote requirements for mergers. Since ONES has supervisory oversight for credit unions with more than \$10 billion in assets, the same authority should be delegated to the Director of that office as well. Current delegation CHA 6B contains a reference to “conversion through merger,” which should be deleted insofar as approval authority involving mergers of federally insured credit unions rests with the Regions and ONES, not OCP.

RECOMMENDED ACTION: NCUA Board approval of the proposed changes to the Delegations of Authority, as reflected in the attached red-lined document showing each change.

ATTACHMENT: Proposed delegations with red-line changes depicted.