



June 24, 2014

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Comments on Proposed Rule Regarding Associational Common Bond - 12 CFR Part 701 Appendix B

Dear Mr. Poliquin:

I am writing on behalf of Transportation Federal Credit Union, a multiple common bond credit union primarily serving employees of the US Department of Transportation, related groups and their families. We appreciate the opportunity to comment on the proposal to amend 12 CFR Part 701 Appendix B.

The Field of Membership (FOM) is a defining characteristic that sets credit unions apart from all other financial institutions. Section 109 of the Federal Credit Union Act clearly sets out the three FOM types [single common bond, multiple common bond or community], as well as the NCUA Board's authorities and responsibility regarding them. It is within this framework that the current proposal must be considered and, in this context, the proposal is deeply flawed.

The proposed rule regarding associational common bonds consists of three parts: the addition of a Threshold Requirement, changes to the Totality of Circumstances test, and the addition of a provision for Automatic Approval. In addition, the proposal discusses an "Associational Group Quality Assurance Review" that NCUA has undertaken. I have serious concerns with each part of this proposal:

Threshold Requirement (III.A.1.a)

" . . . NCUA will determine if the association has been formed primarily for the purpose of expanding credit union membership." The only way that NCUA can make such a determination is if the association's charter, corporate documents or bylaws include such a statement of purpose. Absent such a clear statement, any determination of organizational purpose by NCUA would be at best arbitrary and lack due process, and could easily lead to litigation. Besides, the requirement should not be needed: review of the FOM application by NCUA and the existing Totality of Circumstances test should be sufficient to enable the agency to handle attempts to circumvent the rules without denying due process to any applicant.

Totality of Circumstances Test (III.A.1.a)

The existing test should not need to be changed in order for NCUA to fulfill its responsibilities under the FCU Act. The addition of the proposed separateness test seems unnecessary and could, in fact, hinder efforts by credit unions that contribute support on many levels to associations for the benefit of their members. Credit unions have a strong tradition of helping their communities, including providing support to local organizations in the form of facilities, financial, technical and managerial assistance.

Pre-Approved Groups (III.A.1.b)

As written, this is perhaps the most troubling provision of the proposed rule:

- Section 109 of the Federal Credit Union Act gives the NCUA Board authority to establish certain rules regarding credit union fields of membership, but it also speaks of criteria that the Board must consider in determining whether to approve FOM requests. The proposal would seem to bypass the application and review process for pre-approved groups, and ignores the provisions of III.B and III.C.
- The proposal states that “. . . if NCUA finds that, for any reason, any such group does not satisfy the . . . provisions” then the group may be removed from relevant FOMs. Again, the existing application and review process is supposed to determine the legitimacy and qualifications of the group and avoid this type of situation.
- The proposed list of groups is open to immeasurable potential for abuse. For example, “religious organizations” without any qualifying definition could include any number of bizarre or extremist groups or cults. Similarly, “associations that have a mission based on preserving or furthering the culture of a particular national or ethnic origin” could include virtually any racist or ethnic hate group.

This section should be stricken from the rule altogether. NCUA may have developed risk-based procedures that it uses to review FOM applications, but should never publish a list of pre-approved groups.

The pre-approved groups section is especially puzzling in the context of the Associational Group Quality Assurance Review (AGQAR) discussed in the proposal. If NCUA deems it necessary to conduct an AGQAR now for associations that it has already approved through the existing FOM application process, then it is difficult to understand why the agency would add a new provision for automatic approvals.

Thank you for the opportunity to comment on this important proposal. In summary, we recommend that the proposal be withdrawn, and believe that it is flawed and will not accomplish the stated purpose.

- The addition of a Threshold Test and added separateness factor to the Totality of Circumstances Test are not needed: the existing regulations provide NCUA with the necessary tools to address Associational FOM concerns.
- The idea of automatic pre-approval for certain groups conflicts with NCUA’s authority and responsibility under the FCU Act and with other parts of the existing regulation, and it would open the door to a wide variety of problems and potential abuses.

Please feel free to contact me at rvellek@transfcu.org or 202-385-6065 if you have any questions regarding these comments.

Respectfully,



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Compliance Officer