

Highlights of OCP’s Staff Guidance on Implementing the New Associational Common Bond Rule

Why did the Office of Consumer Protection (OCP) Director issue an internal instruction to staff?

The OCP Director issued the instruction to inform OCP staff about the changes to the Chartering and Field of Membership Manual (Chartering Manual) to implement the new Associational Common Bond Rule (the Rule). In addition, the instruction promotes greater consistency among staff when processing applications related to associational groups.

What are the general requirements for associational groups?

A single associational common bond federal credit union (FCU) may serve an association provided the members of the association participate in activities developing common loyalties, mutual benefits, and mutual interests. This principle applies for both new FCUs and existing FCUs seeking to serve associations.

A single associational common bond FCU may serve an association nationwide, may establish its own limited geographic area to serve, or may have one limited by NCUA due to intent and ability to serve or safety and soundness considerations. A multiple common bond FCU may serve any combination of occupational or associational groups. Each group in a multiple common bond FCU’s charter must have its own common bond and the groups must be within reasonable geographic proximity to the FCU or one of its service facilities.¹

What are the key provisions of the Rule?

On April 30, 2015, the NCUA Board adopted the Rule, which is effective on **July 6, 2015**. The Rule more clearly defines which associational groups qualify for membership in an FCU and provides regulatory relief by “automatically” qualifying certain associations without adding any new documentation requirements.²

¹ A service facility is defined for multiple common bond group expansions as a place where shares are accepted for members’ accounts, loan applications are accepted, or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union electronic facility that meets, at a minimum, these requirements. A service facility may also include a shared branch or a shared branch network if either: (1) the credit union has an ownership interest in the service facility either directly or through a credit union service organization or similar organization, or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition, however, does not include the credit union’s website.

² The Rule does not affect the requirements for occupational common bonds.

Associations already within an FCU’s field of membership as of July 6, 2015, as a result of NCUA’s prior approval are grandfathered and not subject to the new requirements of the Rule.³ Expansion applications received before July 6, 2015, will be processed under the Chartering Manual’s requirements in effect before July 6, 2015.

The Rule establishes a threshold requirement that an association not be formed primarily for the purpose of increasing credit union membership. It also adds a new criterion of corporate separateness under the totality of the circumstances test and provides automatic approval of certain categories of associations. The Rule’s key provisions are as follows:

A. Threshold Requirement

As an initial matter, in order for an association to qualify to be a part of an FCU’s field of membership, the association must not have been formed primarily for the purpose of increasing credit union membership. Any associations that an FCU is seeking to add to its field of membership, including those groups that automatically qualify under the Rule, must meet this threshold requirement. **In practice, of all the associational applications received by OCP during the past three years, more than 99 percent would have met this threshold requirement.**

B. Expanded Totality of the Circumstances Test Factors

Historically NCUA has used the totality of the circumstances test to evaluate whether groups satisfied the associational common bond requirement. The Rule, in addition to clarifying the previous totality of the circumstances factors, adds an eighth criterion – corporate separateness. This factor considers whether the business transactions, accounts, and corporate records of the FCU and the group are intermingled. **Associations that satisfy this new criterion and the first four of the other seven criteria will pass the totality of the circumstances test.**

C. Automatic Qualification of Certain Groups

After applying the totality of the circumstances test, NCUA has historically approved certain associations almost without exception due to their structure, practices, and functions.⁴ In response to the agency’s experience, the NCUA Board provided regulatory

³ As in the past, any time an association’s membership requirements change (including the association’s geographic definition), the FCU is responsible for submitting the association’s revised charter or bylaws for OCP’s consideration and approval prior to serving members of the association added as a result of the change.

⁴ However, NCUA only approves regular members of an approved group. Honorary, affiliate, or non-regular members do not qualify.

relief by indicating, through the Rule, **the following 12 groups automatically satisfy the totality of the circumstances for an associational common bond.**⁵

1. **Alumni associations;**
2. **Religious organizations, including churches or groups of related churches;**
3. **Electric cooperatives;**
4. **Homeowner associations;**
5. **Labor unions;**
6. **Scouting groups;**
7. **Parent-teacher associations organized at the local level to serve a single school district;**
8. **Chamber of Commerce groups (members only and not employees of members);**
9. **Athletic booster clubs whose members have voting rights;**
10. **Fraternal organizations or civic groups with a mission of community service whose members have voting rights;**
11. **Organizations having a mission based on preserving or furthering the culture of a particular national or ethnic origin; and**
12. **Organizations promoting social interaction or educational initiatives among persons sharing a common occupational profession.**

Past experience indicates the majority of the associations FCUs request to serve will fall within one of these 12 categories of automatically qualifying groups. While the groups themselves automatically qualify as valid associations, FCUs are still responsible for:

- Performing the necessary due diligence **before** requesting to add an association to its field of membership to ensure the association is valid, and appropriately fits the FCU's long-term strategic interests;
- Applying to OCP to add any association, even one that automatically qualifies under the Rule;
- Refraining from serving an association until **after** the FCU's board of directors adopts the required resolution to expand the FCU's field of membership; and,
- Obtaining and retaining the necessary documentation from the association and providing such documentation to OCP upon request.

⁵ A group submitted by a multiple common bond FCU that qualifies within one of these 12 associational categories will not be reviewed under the totality of the circumstances test. However, the threshold requirement and other regulatory prerequisites for a multiple common bond FCU's charter expansion still apply. These include an FCU's capitalization level and safety and soundness record.

How will OCP process requests to add an association to an FCU's field of membership?

OCP staff receives and processes applications either electronically as part of the Field of Membership Internet Application (FOMIA) system or manually.⁶ Both of these processes are described below.

A. What are the requirements of the FOMIA System?

FOMIA will continue to allow multiple common bond FCUs to electronically submit a request to add an associational group of 2,999 or fewer primary potential members, as well as the non-natural person corporate account generally associated with the group.⁷ The system allows FCUs to receive an immediate electronic confirmation of approved applications. Such requests will be approved based on the FCU's representation that it meets the associational common bond requirements. This includes the threshold requirement, totality of the circumstances test (if applicable), and other regulatory requirements.

NCUA will continue to require each FCU to obtain and retain the following documentation when seeking to add groups to its field of membership through FOMIA:

- 1) A letter or equivalent documentation from the association indicating it wants to be added to the FCU's field of membership; the number of primary potential members for the association; and the associational group's proximity to the FCU or its nearest service facility; and
- 2) A copy of the most recent bylaws or other equivalent documentation (such as the charter or articles of incorporation) for the association the FCU wishes to add to its field of membership.

At the end of the application process, the FCU will receive a confirmation certificate electronically indicating whether the application is approved or pending. An FCU may begin serving members of the group approved through FOMIA after the FCU board adopts the required resolution to expand its field of membership. If in finalizing the approved

⁶ The term "manually" refers to expansion applications received through mail, email, and fax, but not through FOMIA.

⁷ FCUs may also use the FOMIA system to submit a request to add an occupational group consisting of 2,999 or fewer primary potential members.

application, OCP determines a request is inaccurate, incomplete, or insufficient, it will request the FCU provide some or all the documentation cited above.⁸

In addition, as a part of the routine FOMIA system process, an FCU also may receive a notification an application is pending. A pending notification can occur for several reasons. For instance:

- OCP requires clarification about FCU responses provided through FOMIA;
- OCP requires additional information about the FCU’s financial or operational condition; or
- The system randomly selects the application for review as part of the quality control process.

Whenever OCP requires additional information or clarification, it will follow the procedures discussed in the section “**How will OCP staff respond to incomplete or insufficient applications?**” appearing later in this document. Once receiving a complete application, OCP will provide a response within 15 days.

B. How are requests submitted through FOMIA reviewed by OCP staff?

Threshold Requirement

OCP staff must determine whether or not the group to be added to an FCU’s field of membership was formed primarily to increase credit union membership. The FOMIA system requires the FCU to indicate if the association was formed primarily to increase credit union membership. If an FCU indicates the association was in fact formed primarily to increase credit union membership, the FOMIA system will not allow the FCU to proceed electronically. In such cases the FOMIA system will instruct the FCU to submit its application manually as discussed below in the section “**How are manually submitted requests reviewed by OCP staff?**” This process will help facilitate OCP’s determination of the threshold requirement.

If the FCU indicates through the FOMIA system that the association was not primarily formed to increase credit union membership, the FCU may proceed electronically. OCP staff will continue reviewing the application to determine if the group to be added meets the associational common bond requirements. OCP staff will evaluate the totality of the circumstances, when applicable, and the remaining Chartering Manual requirements.

⁸ Finalizing an application refers to OCP staff’s weekly process of updating the official field of membership records to include the newly approved groups.

Totality of the Circumstances Test

Once OCP staff, through the FOMIA system, determines the proposed group was not formed primarily to increase FCU membership, it will then determine if the group is a valid association. **Under the Rule, the 12 groups listed earlier in this document (in the “What are the key provisions of the Rule?” section) automatically qualify as valid associations and are presumed to meet the totality of the circumstances test. All other types of associations (non-automatically qualifying) are required to meet the totality of the circumstances test.**

Totality of the Circumstances Test Factors

When applicable, OCP staff will determine if the association satisfies the totality of the circumstances test, which includes:

1. Whether the association provides opportunities for members to participate in the furtherance of the goals of the association;
2. Whether the association maintains a membership list;
3. Whether the association sponsors other activities;
4. Whether the association's membership eligibility requirements are authoritative;
5. Whether members pay dues;
6. Whether the members have voting rights; to meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
7. The frequency of meetings; and
8. Separateness – whether the respective business transactions, accounts, and corporate records of the FCU and the group are not intermingled.⁹

No one factor alone determines whether the association meets membership eligibility in the FCU's field of membership. OCP staff will instead make its determination based on the totality of the circumstances applicable to the association, which includes a review of its bylaws, articles of incorporation, or other equivalent documentation.¹⁰

As stated in the Rule, OCP will primarily focus its review on the totality of the circumstances factors 1 through 4. A positive determination of these four factors, along

⁹ For purposes of this review, charitable donations made by an FCU to an association do not constitute intermingling of the business, accounts or corporate records of the FCU and association. Likewise, an FCU that sponsors a charitable event for, or with, an association would not be a sufficient basis to challenge corporate separateness.

¹⁰ For FOMIA, when applicable, the totality of the circumstances factors are included in the application and the FCU must attest to which factors apply to the association.

with a favorable analysis of factor 8 (corporate separateness), generally supports the determination that the group has a satisfactory associational common bond.

Accordingly, if OCP staff determines factors 1, 2, 3, 4 and 8 are satisfied, the association is deemed to have met the totality of the circumstances test. OCP staff will then review the remaining regulatory requirements to add an association to an FCU's field of membership.

Other Regulatory Requirements

Once OCP staff determines through the FOMIA system that the threshold requirement and, when applicable, the totality of the circumstances test, have been met, OCP staff will then consider the remaining Chartering Manual regulatory requirements for adding an association to an FCU's field of membership.¹¹ Specifically, OCP staff will determine whether:¹²

1. The association is within reasonable proximity of the FCU or a service facility (see footnote 1). OCP staff will continue the practice of reviewing reasonable proximity on a case-by-case basis;
2. The FCU has not engaged in any material unsafe or unsound practices during the twelve months preceding the date of the application. An unsafe or unsound practice is defined in the Chartering Manual as any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund;
3. The FCU is "adequately capitalized" as defined in Part 702 of the NCUA Rules and Regulations; and
4. The FCU has the administrative capability to serve the group.

C. How are manually submitted requests reviewed by OCP staff?

For manually submitted expansion requests, FCUs will continue to submit either an Application for Field of Membership Amendment, NCUA Form 4015 or NCUA Form 4015 EZ (which includes a letter from the group the FCU is seeking to add to its field of membership). In addition to the attestations made as part of the manually submitted application, FCUs will submit the association's charter, bylaws or other equivalent documentation, such as articles of incorporation. An FCU may begin serving members of

¹¹ 12 CFR 701, Appendix B, Chapter 2, Section IV.B.2.

¹² In making these determinations, OCP staff will rely on a variety of sources, including but not limited to, the Chartering Manual, examination reports, call report data, and other relevant documentation. OCP staff will also consult, as appropriate, with the assigned field Supervisory Examiner and District Examiner on these particular matters.

the group approved after receiving the field of membership amendment from OCP and the FCU board adopts the required resolution to expand the FCU's field of membership.

OCP's review requirements for each manually submitted application vary based on the size and structure of the group under consideration. Whenever OCP requires additional information or clarification, it will follow the procedures discussed in the section "**How will OCP staff respond to incomplete or insufficient applications?**" appearing later in this document. Once receiving a complete application, OCP will provide a response within 15 days.

In general, the analysis and responsibilities of OCP staff in processing manually submitted expansion applications are the same as processing applications through the FOMIA system. However, there are a few different procedures, as explained below.

Threshold Requirement

As with applications submitted through the FOMIA System, OCP must determine whether or not the group to be added to an FCU's field of membership was formed primarily to increase credit union membership. In making this determination, OCP staff may rely on the FCU's written statement along with the materials provided in support of the application.¹³ If OCP staff determines an association was formed primarily to increase credit union membership, the analysis will end and OCP will deny the FCU's request. An FCU may appeal this decision, as discussed in the section "**What appeal process is available to FCUs if disagreeing with a decision issued by the OCP Director?**" appearing later in this document.

Once OCP staff confirms that an association was not formed primarily for the purpose of expanding credit union membership, it will then continue reviewing the application to determine if the group to be added meets the associational common bond requirements. OCP staff will evaluate the totality of the circumstances, when applicable, and the remaining Chartering Manual requirements.

Totality of the Circumstances Test

If OCP determines the group was not primarily formed to increase credit union membership, it will review the application to determine if the group is a valid association. **Under the Rule, the 12 groups listed earlier in this guidance (in the section "**What are the key provisions of the Rule?**") automatically qualify as valid associations and are presumed to meet the totality of the circumstances test. All other types of associations (non-**

¹³ The threshold requirement may be addressed by a statement from the FCU indicating the association was not formed for the primary purpose of increasing credit union membership.

automatically qualifying) are required to meet the totality of the circumstances test.

For non-automatically qualifying associations reviewed manually, OCP staff will complete a checklist to indicate whether the association meets the totality of the circumstances test. Please refer to the section “Totality of the Circumstances Test” under the discussion “**How will OCP process requests to add an association to an FCU’s field of membership?**” appearing earlier in this document for a listing of the totality of circumstances test factors.

No one factor alone determines whether the association meets membership eligibility in the FCU’s field of membership. OCP staff will make its determination based on the totality of the circumstances applicable to the group, which includes a review of its bylaws, articles of incorporation, or other equivalent documentation.

As stated earlier, OCP will primarily focus its review on the totality of the circumstances factors 1 through 4:

1. Whether the association provides opportunities for members to participate in the furtherance of the goals of the association;
2. Whether the association maintains a membership list;
3. Whether the association sponsors other activities; and
4. Whether the association's membership eligibility requirements are authoritative.

A positive determination of these four factors, along with a favorable analysis of factor 8 - corporate separateness, generally supports the determination that the group has a satisfactory associational common bond.

Accordingly, if OCP staff determine factors 1, 2, 3, 4 and 8 are satisfied, the association is deemed to have met the totality of the circumstances test. OCP staff will then review the remaining regulatory requirements to add an association to an FCU’s field of membership.

Other Regulatory Requirements

Once OCP staff determines that the threshold requirement, and when applicable, the totality of the circumstances test have been met, OCP staff will then consider the remaining Chartering Manual’s requirements for adding an association to an FCU’s field of membership. OCP staff will determine whether:¹⁴

¹⁴ In making such determinations, OCP staff will consult, as appropriate, with the assigned field Supervisory Examiner and District Examiner on these particular matters.

1. The association is within reasonable proximity of the FCU or a service facility. OCP staff will continue the practice of reviewing reasonable proximity on a case-by-case basis;
2. The FCU has not engaged in any material unsafe or unsound practices during the 12 months preceding the date of the application. An unsafe or unsound practice is defined in the Chartering Manual as any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund;
3. The FCU is “adequately capitalized” as defined in Part 702 of the NCUA Rules and Regulations;
4. The FCU has the administrative capability to serve the group;
5. The potential harm to any overlapped credit union (excluding community charters and non-federally insured credit unions) is outweighed by the probable benefits the expansion will have if approved (applies only to groups with 3,000 or more potential primary members); and
6. The group does not have the ability to form a separate credit union (applies only to groups with 3,000 or more potential primary members).

How will OCP staff respond to incomplete or insufficient applications?

OCP staff will evaluate all incoming field of membership applications, whether submitted via FOMIA or manually, to determine if the application contains accurate and sufficient information to analyze the request.¹⁵ When OCP staff determines an application is incomplete or lacks sufficient information to analyze the request, staff will:

1. Within 10 days of receiving the application, call or email the FCU to request the missing or additional information. The FCU will have 15 days to provide the necessary documentation.¹⁶ If the FCU cannot provide the information within this timeframe, OCP staff will issue a formal letter deferring the application;
2. After receiving the additional documentation, if any concerns remain outstanding, OCP staff will again correspond with the FCU to provide a 15-day time frame for correcting the concern. OCP staff will respond to the FCU within 30 days of receiving the information. OCP staff will also provide an update to the FCU during this period if the review is expected to take more than 15 days; and
3. If the FCU does not provide the requested information to adequately address OCP’s

¹⁵ In general, incomplete or insufficient applications submitted through the FOMIA system will be electronically confirmed through the system as “pending” or flagged by OCP staff through its approval process.

¹⁶ OCP staff may on a case-by-case basis, grant the FCU additional time to respond to a request for information. The FCU’s request, by telephone or in writing, should indicate the reasons for the extension of time to respond. OCP staff will document any telephone calls in writing to accurately measure the time requirements.

concerns, the OCP Director will formally deny the application and notify the FCU of its appeal rights, as stated below in this guidance in the section **“What appeal process is available to FCUs if disagreeing with a decision issued by the OCP Director?”**

How will OCP conduct quality assurance reviews following the implementation of the new rule?

OCP has in place quality control processes that protect the integrity of NCUA’s field of membership requirements. As part of this obligation, OCP will randomly select groups added through FOMIA for quality assurance reviews even if the expansion application meets all the conditions for approval.¹⁷ This sampling process helps ensure FCUs use the FOMIA system as intended.

Also, as indicated above in this document under the section **“What are the requirements of the FOMIA System?”** each FCU is responsible for obtaining certain documentation when seeking to add groups to its field of membership through FOMIA. In addition, as indicated in the FOMIA User Instructions Guide, an FCU must permanently retain the documentation from the select group requesting service and the Confirmation Certificate generated at the time the FOMIA request is submitted to NCUA. As part of the quality assurance process, OCP reserves the right to request this documentation at any time. If the FCU fails to provide this documentation when OCP requests it, OCP may consider removing the group from the FCU’s field of membership and restricting the FCU from using the FOMIA system for future requests.

Specifically, as part of the FOMIA quality assurance process, OCP staff will do the following:

1. Within 10 days of receiving an application selected for a quality assurance review, notify the FCU of the documentation OCP requires. The FCU will have 15 days to provide the necessary documentation. OCP staff will respond to the FCU with a determination on the quality assurance review of the association within 15 days of receiving the requested information;
2. After receiving the additional documentation, if any concerns remain outstanding, OCP staff will again correspond with the FCU and provide a 15-day time frame for correcting the concern. OCP staff will respond to the FCU with a determination on the quality assurance review of the association within 15 days of receiving the requested information; and
3. If the FCU does not provide the requested documentation, or cannot correct the concern,

¹⁷ This type of quality control process has been used by NCUA since the inception of FOMIA in 2002. Also, in general, applications submitted through FOMIA undergoing a quality control process will be electronically confirmed through the system as “pending”

the OCP Director will deny the application and notify the credit union of its appeal rights, which are below in the section **“What appeal process is available to FCUs if disagreeing with a decision issued by the OCP Director?”**

How will OCP investigate potential field of membership violations?

OCP is responsible for investigating field of membership complaints from the public, and matters referred to it from the field.¹⁸ It also pursues corrective action as needed for FCUs with confirmed field of membership violations. Although circumstances can vary with each case, OCP staff will generally adhere to the following process for investigating and addressing potential field of membership violations:

1. Initially correspond with management to outline concerns and request clarifying information within 60 days. OCP staff will also provide context as to the source of OCP’s concerns, such as the discovery of new information about a particular group or an examination finding brought to OCP’s attention;
2. If OCP does not receive the requested information within 60 days, it will notify the FCU and again request the required information be provided within 30 days;
3. After receiving the additional documentation, if any concerns remain outstanding, OCP staff will again correspond with the FCU to provide a 60-day time frame for addressing the concern; and
4. If the FCU is unable to correct the concern, and after consultation with the Office of General Counsel and the appropriate Regional Office, and in accordance with agency guidelines for administrative actions, OCP will remove the group from the FCU’s field of membership pursuant to NCUA Delegations of Authority CHA 1B and CHA 2B, as applicable. Removal of a group is treated the same as an initial denial under the Chartering Manual. In any adverse final determination on removal under the above delegations, OCP will notify the FCU of its appeal rights, as discussed in the section **“What appeal process is available to FCUs if disagreeing with a decision issued by the OCP Director?”**

NCUA considers the removal of an association from an FCU’s field of membership as an action of last resort. If a group is removed, the FCU can no longer add new members from the group, but can continue serving those who are already members of the FCU under the “once a member, always a member” provision of the Federal Credit Union Act. Also, if the

¹⁸ OCP staff relies on regional field staff, as part of the comprehensive assessment of risk, to monitor membership enrollment and advertising practices to ensure FCUs are only serving their authorized fields of membership and to refer more complex questions to OCP for review and assessment. However, removal of a group from an FCU’s field of membership is only delegated to OCP and, in disputed circumstances, is subject to appeal rights under the Chartering Manual as indicated below in the section “What appeal process is available to FCUs if disagreeing with a decision issued by the OCP Director?” in this guidance.

group subsequently qualifies due to changes to the group itself, management can submit a new application at that time.

What appeal process is available to an FCU if it disagrees with a decision issued by the OCP Director?

FCUs have appeal rights in any instance when the OCP Director denies a request to add a new group or removes an existing group from an FCU’s field of membership. The FCU may request a reconsideration of the OCP Director’s decision or appeal directly to the NCUA Board.

If OCP denies an application or removes a group, the Director must state the specific reason(s) for the denial or removal.

Before appealing, and within 30 days of the denial or removal, the FCU may supplement its application or provide additional information and submit a request for reconsideration to the OCP Director. The OCP Director will have 30 days from the date the supplemented application or additional information is received to make a final decision. If the OCP Director upholds the denial or removal, the FCU may appeal the decision to the NCUA Board.

If the FCU decides to appeal a decision, the appeal must be sent to the NCUA Board Secretary within 60 days of the date of the last adverse decision by the OCP Director regarding the denial or removal. The appeal must be clearly identified as such and address the specific reason(s) the FCU disagrees with the denial or removal. A copy of the appeal must be sent to the OCP Director. NCUA central office staff will undertake an independent review of the facts and present the appeal to the NCUA Board with a recommendation.