

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701, Appendix B

RIN: 3133-AE31

Chartering and Field of Membership Manual.

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: The NCUA Board (Board) proposes to amend the associational common bond provisions of NCUA's chartering and field of membership rules. Specifically, the amendments establish a threshold requirement that an association not be formed primarily for the purpose of expanding credit union membership. The amendments also expand the criteria in the totality of the circumstances test, which is used to determine if an association, which satisfies the threshold requirement, also satisfies the associational common bond requirements and qualifies for inclusion in a federal credit union's (FCU) field of membership (FOM). The amendments will help to ensure FCU compliance with membership requirements. Additionally, NCUA proposes

to grant automatic qualification under the associational common bond rules to certain categories of groups that NCUA has approved in the past after applying the totality of the circumstances test.

DATES: Comments must be received on or before [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Notice of Proposed Rulemaking Regarding Associational Common Bond” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: You may view all public comments on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Sarah Chung, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-1178.

SUPPLEMENTARY INFORMATION:

I. Background

II. Summary of the Proposed Rule

III. Regulatory Procedures

I. Background and Requirements of the Associational Common Bond

NCUA has implemented the Federal Credit Union Act’s (FCU Act) FOM requirements¹ in its Chartering and Field of Membership Manual (Chartering Manual), incorporated as Appendix B to part 701 of NCUA’s regulations.² NCUA also publishes this manual as an Interpretative

¹ 12 U.S.C. 1759.

² 12 CFR part 701, Appendix B.

Ruling and Policy Statement (IRPS). The current version of the manual is published as IRPS 08–2, as amended by IRPS 10–1.

Section 109 of the FCU Act provides for three types of FCU charters: 1) single common bond (occupational or associational); 2) multiple common bond (multiple groups); and 3) community.³

Section 109 also describes the membership criteria for each of these three types of charters.⁴

Special rules apply to each type of charter.

An FOM consists of those persons and entities eligible for membership for each type of charter.

The Chartering Manual sets forth that a single common bond FCU consists of one group having a common bond of occupation or association.⁵ A multiple common bond FCU consists of more

than one group, each of which has a common bond of occupation or association.⁶ This rule will not affect the current requirements for occupational common bonds.

Associational common bond

A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.⁷ Separately chartered associational groups can establish a single common bond relationship if such groups are integrally related and share common goals

³ 12 U.S.C. 1759(b).

⁴ *Id.*

⁵ 12 CFR 701, Appendix B (Chapter 2, Section II.A.1). A community FCU consists of persons or organizations within a well-defined local community, neighborhood, or rural district.

⁶ *Id.*

⁷ 12 CFR 701, Appendix B (Chapter 2, Section III.A.1).

and purposes.⁸ The Chartering Manual more specifically lists the individuals and groups eligible for membership in a single associational credit union. Eligible individuals and groups are natural and non-natural person members of the association, employees of the association, and the association itself.⁹

NCUA determines whether a group satisfies the associational common bond requirements for an FCU charter based on the totality of the circumstances.¹⁰ This test in the current rule consists of seven factors:¹¹

- 1) Whether members pay dues;
- 2) Whether members participate in the furtherance of the goals of the association;
- 3) Whether the members have voting rights;¹²
- 4) Whether the association maintains a membership list;
- 5) Whether the association sponsors other activities;
- 6) The association's membership eligibility requirements; and
- 7) The frequency of meetings.

The Chartering Manual specifies certain examples that may or may not qualify as associational common bonds. Educational groups, church groups, student groups, homeowner associations, and consumer groups may qualify as associational common bonds.¹³ However, associations

⁸ *Id.*

⁹ *Id.*

¹⁰ 12 CFR 701, Appendix B (Chapter 2, Section III.A.1).

¹¹ *Id.*

¹² To meet this requirement, members do not have to vote directly for an officer, but may vote for a delegate who in turn represents the members' interests.

¹³ 12 CFR 701, Appendix B (Chapter 2, Section III.A.1).

based primarily on a client-customer relationship do not meet associational common bond requirements.¹⁴

Multiple occupational or associational common bonds

An FCU may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds.¹⁵ This type of credit union is called a multiple common bond credit union. Each group in the FOM must have its own occupational or associational common bond. These groups must be within reasonable geographic proximity of the credit union.¹⁶ The groups must be within the service area of one of the credit union's service facilities and are referred to as select groups. A select group as a whole will be considered to be within a credit union's service area when a majority of the persons in the select group live, work, or gather regularly within the service area; the group's headquarters is located within the service area; or the group's "paid from" or "supervised from" location is within the service area.

II. Summary of the Proposed Rule

Why is NCUA proposing this rule?

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing rules to make their programs more

¹⁴ *Id.*

¹⁵ 12 C.F.R. 701, Appendix B (Chapter 4, Section IV.A.1.).

¹⁶ A multiple common bond credit union cannot include a trade, industry, or profession single occupational common bond or expand using single common bond criteria.

effective and less burdensome. The amendments to the associational common bond requirements establish a threshold requirement that an association not be formed primarily for the purpose of expanding credit union membership. The amendments also improve and clarify the totality of the circumstances test so that FCUs will better understand it, and will provide regulatory relief for FCUs who want to add to their FOMs certain groups that qualify for automatic approval.

Also, NCUA is concerned that the current totality of the circumstances test may not be sufficiently filtering out those groups that do not meet the associational common bond requirements. In this regard, the amendments also emphasize that the group added to an FCU's FOM must meet the underlying common bond criteria. As noted above, FCUs must follow the associational requirements under the FCU Act and NCUA's regulations. In an attempt to expand their potential FOMs beyond appropriate limits, however, a few FCUs have begun forming their own associations and adding independent associations to their FOMs that may not fully satisfy the intent of the associational common bond rules. This is discussed more fully below.

Automatic Approval

NCUA has historically approved certain associations almost without exception due to their structure, practices, and functions, and because they easily satisfy the Chartering Manual's requirements. For example, churches are consistently recognized as valid associations based on the associational common bond requirements. Likewise, labor unions, scouting groups, electric cooperatives, and homeowner associations are regularly approved for inclusion due to their

natural cooperative structures. By the nature of these groups, members consistently participate in activities developing common loyalties, mutual benefits, and mutual interests to further the goals and purposes of the association. Therefore, religious organizations including churches, homeowner associations, scouting groups, electric cooperatives, and labor unions will be automatically included in an FCU's FOM if it chooses to add the groups, as long as such groups meet service area and other related requirements. Additionally, NCUA proposes to automatically approve associations that have a mission based on preserving or furthering the culture of a particular national or ethnic origin for the same reasons stated above. However, it should be noted that only regular members of these groups will be approved. NCUA will not automatically approve honorary or other classes of non-regular members.

Based on NCUA's experience, alumni associations are also regularly approved for inclusion in FOMs. Consequently, the proposed rule allows alumni associations to be automatically approved. Members of the alumni association need not have attended the college or university if the association's bylaws permit them to join.

The automatic approval of the above associations provides regulatory relief for FCUs as they will no longer be required to obtain and review the association's bylaws, and, for the same reason, will result in more efficient use of NCUA's resources. Further, NCUA is requesting public comment on if NCUA should automatically approve any other categories of associations that are not included above.

NCUA has not deleted the descriptions and examples of associational common bonds in the Chartering Manual, and has now categorized such descriptions and examples as additional information. NCUA has also clarified that health clubs do not qualify under the associational common bond, including YMCAs, because these health clubs function primarily on a client-customer relationship. An FCU should consider this additional information regarding whether a group qualifies as having an associational common bond.

Associational Group Quality Assurance Review

In order to prevent abuses of the membership system, NCUA is currently reviewing the way associational groups are formed and operated. Prior to the issuance of IRPS 99-1, NCUA chartering policy specifically stated that associations formed primarily to obtain an FCU charter do not have a sufficient associational common bond. Since IRPS 99-1, NCUA chartering policy states that the common bond for an associational group cannot be established simply on the basis that the association exists. NCUA is now finding a few FCUs are forming associations for the primary purpose of facilitating credit union membership. NCUA has found that some of these associational groups do not comply with their own bylaws or their bylaws do not reflect current practices.

Prior to IRPS 99-1, NCUA chartering policy specifically stated that all associational common bonds must include a definition of the group that may be served based on the effective date of the association's charter, bylaws, and a geographic limitation. Since IRPS 99-1, NCUA chartering policy has not included a geographic limitation. Without the geographic limitation, NCUA is

finding that associational groups, in conjunction with or at an FCU's instigation, are adding members outside of the FCU's historical operating area to increase FCU membership. This practice does not comply with the limitations in the Chartering Manual. Other associations have changed significantly since they were added to an FCU's FOM, and no longer meet the criteria for the totality of the circumstances test they once met. NCUA is currently reviewing several associations. If any of these associations no longer meet the totality of the circumstances test or an association is not operating according to their official bylaws in a way that impermissibly affects credit union membership, NCUA will remove the association from the FCU's FOM.

Threshold Requirement Regarding the Purpose for Which an Association is Formed

As a threshold matter, when reviewing an application to include an association in an FCU's FOM, NCUA will determine if the association has been formed primarily for the purpose of expanding credit union membership. If NCUA makes such a determination, then the analysis ends and the association is denied inclusion in the FCU's FOM. If NCUA determines that the association was formed to serve another separate function as an organization,¹⁷ then NCUA will apply the totality of the circumstances test to determine if the association satisfies the associational common bond requirements.

Totality of the Circumstances

¹⁷ In furtherance of this requirement, the association must have been operating as an organization independent from the requesting FCU for at least one year prior to the request to add the group to the FCU's FOM.

NCUA proposes to amend the criteria in the totality of the circumstances test for evaluating compliance with the associational common bond requirements. Clarifying and expanding the totality of the circumstances test will better ensure that all associations or groups (the terms “association” and “group” are used interchangeably) have the requisite associational bond. As part of the totality of the circumstances test, NCUA considers all criteria together, and the presence or absence of any one factor is not determinative of the membership eligibility of an association.

NCUA is expanding the totality of the circumstances test by adding an additional criterion regarding corporate separateness. Specifically, as part of the revised analysis, NCUA will review if there is corporate separateness between the association and the FCU. The association and the FCU must operate in a way that demonstrates the separate corporate existence of each entity. NCUA will consider several factors in determining if corporate separateness exists between an association and an FCU. The presence or absence of any one factor is not determinative. The factors NCUA will consider are as follows:

- Their respective business transactions, accounts, and records are not intermingled;
- Each observes the formalities of its separate corporate procedures;
- Each is adequately financed as a separate entity in light of normal obligations reasonably foreseeable in a business of its size and character;
- Each is held out to the public as a separate enterprise; and
- The group maintains a separate physical location, which does not include a P.O. Box or other mail drop or on premises owned or leased by the FCU.

Qualified associations already within an FCU's FOM are grandfathered and will not be subject to the corporate separateness criterion.

While NCUA has added this additional criterion to the totality of the circumstances test, NCUA has not removed any of the current criteria in the current totality of the circumstances test.

However, the Board clarifies that after examining an association's purpose as a threshold matter, NCUA's primary focus under the totality of the circumstances test will be on the following criteria: 1) whether the association provides opportunities for members to participate in the furtherance of the goals of the association¹⁸; 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.

As part of applying the totality of the circumstances test, NCUA will also consider whether an FCU enrolls a member into an association without the member's knowledge or consent. If an FCU enrolls members who do not knowingly and voluntarily join the association then this will reflect negatively on the association's qualification for FCU membership, as it appears that the members do not truly support the goals and mission of the association. An FCU may pay a member's associational dues if the member has given consent.

Grandfathering in Associations

¹⁸ With respect to this criterion, the current totality of the circumstances test reads "whether members participate in the furtherance of the goals of the association." The revised criterion reads somewhat differently in that it clarifies that the criterion is satisfied if the association provides members with opportunities to participate in the furtherance of the goals of the association even if a member does not necessarily choose to participate. This change in language is simply a clarification.

NCUA will grandfather in existing members from all qualified associations currently part of an FCU's membership. NCUA will consider if there are any associations in an FCU's FOM that need to be removed because they no longer meet the totality of circumstances test on a case-by-case basis. If an association that is in an FCU's FOM undergoes significant changes that result in the group no longer meeting the totality of the circumstances test, the FCU should notify NCUA's Office of Consumer Protection, Division of Consumer Access, to determine whether the group should be removed from the FOM or if such non-compliance can be cured.

Does the proposed rule create any new burdens for FCUs?

NCUA does not believe that the proposed requirements pertaining to the associational common bond provisions will add a significant administrative burden for FCUs. NCUA expects that the proposed changes will simplify the process of evaluating the existence of a qualifying associational common bond. FCUs will no longer have to include supplemental documentation, such as bylaws, with requests to serve pre-approved associational groups.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.¹⁹ For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.²⁰ This rule would affect relatively few FCUs and the associated cost is minimal. Accordingly, NCUA certifies the rule will not have a significant economic impact on small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.²¹ For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This proposed rule primarily requires the same information previously required and changes none of the forms listed in the Chartering Manual. Therefore, this proposed rule will not create new paperwork burdens or modify any existing paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles,

¹⁹ 5 U.S.C. 603(a).

²⁰ Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003), as amended by Interpretive Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

²¹ 44 U.S.C. 3507(d); 5 CFR part 1320.

NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.²²

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on April 24, 2014.

Gerard S. Poliquin

Secretary of the Board

²² Public Law 105–277, 112 Stat. 2681 (1998).

For the reasons stated above, NCUA proposes to amend 12 CFR part 701, Appendix B as follows:

PART 701 — ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Section III.A.1. of Chapter 2 of appendix B to part 701 is revised to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

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III. A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons)

whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition and can operate nationally. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds should include a definition of the group that may be served based on the association's charter, bylaws, and any other equivalent documentation.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of NCUA, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—e.g., “Sprocket Association”—and will be shown in the last clause of the field of membership.

III. A.1.a — Threshold Requirement Regarding the Purpose for Which an Associational Group is Formed and the Totality of the Circumstances Criteria

As a threshold matter, when reviewing an application to include an association in a federal credit union’s field of membership, NCUA will determine if the association has been formed primarily for the purpose of expanding credit union membership. If NCUA makes such a determination, then the analysis ends and the association is denied inclusion in the federal credit union’s field of membership. If NCUA determines that the association was formed to serve some other separate function as an organization, then NCUA will apply the following totality of the circumstances test to determine if the association satisfies the associational common bond requirements. The totality of the circumstances test consists of the following factors:

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 – NCUA reviews if there is corporate separateness between the group and the federal credit union. The group and the federal credit union must operate in a way that demonstrates the separate corporate existence of each entity. NCUA will consider several factors in determining if corporate separateness exists between a group and a federal credit union. The presence or absence of any one factor is not determinative. The factors NCUA will consider are as follows:

- Their respective business transactions, accounts, and records are not intermingled;
- Each observes the formalities of its separate corporate procedures;
- Each is adequately financed as a separate entity in the light of normal obligations reasonably foreseeable in a business of its size and character;
- Each is held out to the public as a separate enterprise; and
- The group maintains a separate physical location, which does not include a P.O. Box or other mail drop or on premises owned or leased by the federal credit union.

NCUA considers all of the totality of the circumstances test factors together. No one factor alone is determinative of membership eligibility as an association. The totality of the circumstances controls over any individual factor in the test. However, NCUA's primary focus will be on factors 1-4.

III. A.1.b—Pre-approved groups

NCUA automatically approves the below groups as satisfying the associational common bond provisions. However, if NCUA finds that, for any reason, any such group does not satisfy the associational common bond provisions, then such group may be removed from the relevant federal credit union fields of membership, if appropriate. NCUA only approves regular members of an approved group. Honorary, affiliate, or non-regular members do not qualify.

These groups are:

- 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; and
- 7) Associations that have a mission based on preserving or furthering the culture of a particular national or ethnic origin.

III. A.1.d—Additional information

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Each class of member will be evaluated based on the totality of the circumstances. Individuals or honorary members who only make donations to the association are not eligible to join the credit union.

Educational groups—for example, parent-teacher organizations and student organizations in any school—may constitute associational common bonds.

Student groups (e.g., students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a

church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter.

Tenant groups, consumer groups, and other groups of persons having an “interest in” a particular cause and certain consumer cooperatives may also qualify as an association.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. Health clubs are an example of a group not meeting associational common bond requirements, including YMCAs. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

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