

7535-01-U

**NATIONAL CREDIT UNION ADMINISTRATION**

**RIN 3133-AD80**

**Corporate Credit Unions**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed Interpretive Ruling and Policy Statement 10-XX.

**SUMMARY:** The NCUA Board is proposing to adopt an Interpretive Ruling and Policy Statement (IRPS) setting forth the requirements and process for chartering corporate federal credit unions.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER 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 website:  
<http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx>. Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on “Notice of Proposed Rulemaking for Corporate FCU Chartering” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.

- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

**PUBLIC INSPECTION:** All public comments are available on the agency's website at <http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected 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](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Lisa Henderson, Staff Attorney, Office of General Counsel, at the address above or telephone: (703) 518-6540; or Dave Shetler, Deputy Director, Office of Corporate Credit Unions, at the address above or telephone: (703) 518-6640.

## **SUPPLEMENTARY INFORMATION:**

### **A. Background**

NCUA recently finalized changes to its Corporate Credit Union Rule, 12 C.F.R. 704. These changes, as well as NCUA's other efforts to resolve the problems created by the legacy assets remaining in the corporate credit union system, are likely to result in a fundamental restructuring of the corporate credit union system. As part of this restructuring, NCUA believes that some groups of natural person credit unions may wish to form new corporate credit unions.

NCUA first issued guidance on chartering corporate federal credit unions (corporate FCUs) in 1982, but withdrew this guidance and never reissued it. See NCUA Interpretive Ruling and Policy Statement (IRPS) 82-6. In light of the impending

changes to the corporate system, NCUA is now reissuing chartering guidance in the form of a new proposed IRPS. The proposed IRPS explains the requirements for prospective new corporate FCUs and NCUA's standards for evaluating applications and will assist credit union officials in assessing the feasibility of a new corporate charter. The proposed IRPS also lists timeframes for NCUA action on corporate charter applications.

The proposal requires charter applicants submit various information to NCUA, including:

- A detailed business plan;
- NCUA Form 4001, the Federal Credit Union Organization Report;
- NCUA Forms 9500 and 9501, regarding federal share insurance for member accounts;
- NCUA Form 4012, containing key biographical information and authorization of a background check and credit check for each prospective board member, credit and supervisory committee member, and senior management employee; and
- NCUA Form 4008, the credit union's organization certificate.

The proposed IRPS also includes detailed timelines for processing a charter application.

## **B. Comment Period and Charter Applications Submitted Before IRPS is Finalized**

The Board is proposing this IRPS with a 30 day comment period rather than NCUA's standard 60-day comment period. The Board believes that this proposal is neither novel nor complex, and that 30 days should be sufficient for all parties interested in commenting. Any charter application submitted before this IRPS is finalized should conform to the requirements of the proposed IRPS, and NCUA will process applications under the terms of the proposed IRPS until the IRPS is finalized. The possibility of impending charter applications further supports the Board's perceived need for a shorter comment period and a quicker finalization of the IRPS.

## **C. Regulatory Procedures**

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under \$10 million in assets). The proposed IRPS only applies to corporate credit unions, all of which have assets well in excess of \$10 million.

Accordingly, the proposed IRPS will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

### *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. 44 USC 3507(d); 5 CFR part 1320. 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. The Office of Management and Budget (OMB) has approved the current information collection requirements in part 704 and assigned them control number 3133-0129.

The proposed IRPS contains an additional information collection in the form of an application requirement. Any group of persons creating a new federally chartered corporate credit union must apply for NCUA's approval. As required by the PRA, NCUA is submitting a copy of this proposed IRPS to OMB for its review and approval. Persons interested in submitting comments with respect to the information collection aspects of the proposed IRPS should submit them to OMB at the address noted below.

1. Estimated PRA burden

The following describes the application requirements in the proposed IRPS that create manhour burdens:

- a. Form 4001 and business plan.

The proposed IRPS requires applicants for a corporate FCU charter to submit Form 4001, which lists the prospective credit union's officers, directors and basic information about proposed operations. Form 4001 also requires applicants to submit a business plan. For corporate credit union charter applications, the business plan must address the following items:

- Mission statement;
- Analysis of market conditions (i.e., economic prospects for the corporate credit union and availability of proposed financial services from alternative depository institutions);
- Summary of survey results and/or customer base analysis;
- Proposed financial services to be offered;
- How and when services are to be implemented;
- Anticipated corporate credit union staffing and credentials of key employees;
- Physical facility – office and equipment;
- Proposed recordkeeping, data processing, and communications systems and/or vendors;
- Budget for the first three years;
- Semiannual pro-forma financial statements for the first three years, including a listing of the assumptions used to develop the financial statements;
- Goals for the number of members and shares under various scenarios;
- Projected break-even or date of achieving independent operations;
- Source of funds to pay expenses during the initial setup and early months of operation;
- Written policies for shares, lending, investments, funds management, capital accumulation as required by Part 704, payment systems, and EDP;
- Plan for continuity – directors, committee members, and senior management;

- Evidence of commitment (i.e., letters and/or contracts used to substantiate projections); and
- Services and marketing strategies for financial and correspondent services, including the ability of the proposed corporate credit union to efficiently deliver these products.

While the precise time necessary to prepare the business plan will vary with the intended complexity and activities of the proposed corporate credit union, NCUA estimates that on average, preparation of Form 4001 and an acceptable business plan will require 300 hours.

b. Form 4012, Report of Official or Employee.

NCUA requires each prospective board member, members of key committees, and senior management employees to submit this form providing basic biographical information and authorizing NCUA conduct a background and credit check. Because the form is straightforward and applicants are likely to have most of the information requested in other formats, such as resumes, NCUA estimates completion of the form will take no more than one hour for each individual required to submit the form.

c. Forms 9500 and 9501, Insurance Forms

NCUA requires the prospective chief executive officer and recording officer to submit Form 9500 to certify that the prospective board has adopted a resolution that the prospective FCU will apply for federal share insurance. NCUA requires the chair and the chief financial officer to submit Form 9501 to apply for federal share insurance. NCUA estimates completion of both these forms will require no more than one hour per charter applicant.

d. Form 4008, Organization Certificate.

Prospective organizers must also submit an organization certificate listing the credit union's name and names and contact information of the initial subscribers. NCUA

estimates that collection of the required information and completion of this form should require no more than two hours per charter applicant.

## 2. Summary of Collection Burden

NCUA estimates the total information collection burden represented by the proposal, as follows:

Estimated annual number of respondents: 1 corporate FCU charter applicant.

Preparation of Form 4001 and business plan: 1 charter applicants X 300 hours = 300 hours.

Preparation of NCUA Form 4012: 1 charter applicants X 25 individual officials, committee members and employees per applicant X 1 hour per individual = 25 hours.

Preparation of NCUA Forms 9500 and 9501: 1 charter applicants X 1 hour = 1 hours.

Preparation of NCUA Form 4008: 1 charter applicants X 2 hour = 3 hours.

Total Estimated Annual Burden Hours: 329 hours.

The NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulation.

Comments on the proposed information collection requirements should be sent to: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, DC 20503; Attention: NCUA Desk Officer, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

### 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, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

The proposed IRPS would not have substantial direct effects 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 that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999--Assessment of Federal Regulations and Policies on Families*



The NCUA has determined that this proposed IRPS will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

By the National Credit Union Administration Board on September 24, 2010.

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Mary F. Rupp

*Secretary of the Board.*

**Authority:** 12 U.S.C. 1753, 1754, 1758, 1766.

## **CORPORATE FEDERAL CREDIT UNION CHARTERING GUIDELINES**

### I—GOALS OF NCUA CORPORATE CHARTERING GUIDELINES

These guidelines are intended to achieve the following goals:

- Uphold the provisions of the Federal Credit Union Act (Act);
- Promote safety and soundness within the credit union industry; and
- Provide quality services to members.

NCUA will consider the above criteria as the primary factors in determining whether to approve a corporate federal credit union (FCU) charter. In unusual circumstances, NCUA may consider other information in deciding if a charter should be approved, such as other federal law or public policies.

### II--SUBSCRIBERS

Seven or more natural person representatives of natural person credit unions (NPCUs) – “the subscribers” -- must present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed corporate FCU;
- The location of the proposed corporate FCU;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares; and
- The proposed field of membership.

False statements on any of the required documentation filed in obtaining an FCU charter may be grounds for federal criminal prosecution.

### III--ECONOMIC ADVISABILITY

#### *A--General*

Before chartering a corporate FCU, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. NCUA will conduct an independent investigation of each charter application to ensure that the proposed corporate credit union can be successful. In general, the success of any credit union depends on: (a) The character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

#### *B--Proposed Management's Character and Fitness*

The Act requires NCUA to ensure that the subscribers of federal charters are of good "general character and fitness." In addition, employees and officials must be competent, experienced, honest, and of good character.

NCUA will conduct background and credit investigations on prospective officials and employees, and the reports must establish each applicant's character and ability to effectively handle financial matters. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of fraud and dishonesty. Other factors, such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks, may also disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills--particularly in leadership, accounting, funds management, and payment systems risk--and the commitment to dedicate the time and effort needed to make the proposed corporate FCU a success.

Section 701.14 of NCUA's Rules and Regulations sets forth the procedures for NCUA approval of officials of newly chartered FCUs, including corporate FCUs. If the application of a prospective official or employee to serve is not acceptable to NCUA's Director, Office of Corporate Credit Unions (OCCU), the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the OCCU's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an applicant acceptable to NCUA must be provided before the charter can be approved.

#### *C--Member Support*

An important chartering consideration is the degree of support from the field of membership. The charter applicant must demonstrate a sufficient customer base from which to draw business in the form of membership applications, capital and share commitments, and commitments to use the corporate FCU's services. The applicant must provide surveys and/or written commitments certifying to this potential membership base and capital commitment to the levels required by Part 704 of NCUA's Rules and Regulations. Although NCUA may work with a newly chartered corporate on a plan to meet the retained earnings requirements of Part 704, the newly chartered corporate must have a viable plan to solicit and maintain sufficient contributed capital. Generally, the plan must show how the corporate FCU will keep its total capital at 4 percent or more of its moving daily average net assets at all times beginning on the date NCUA issues the charter.

#### *D--Present and Future Market Conditions--Business Plan*

The ability to provide effective service to members, compete in the marketplace, and adapt to changing market conditions are key to the survival of any enterprise. Before NCUA will charter a corporate credit union, a charter applicant must submit a business plan based on realistic and supportable projections and assumptions. The business plan should contain, at a minimum, the following elements:

- 1) Mission statement;
- 2) Analysis of market conditions (*i.e.*, economic prospects for the corporate credit union and availability of proposed financial services from alternative depository institutions);
- 3) Summary of survey results and/or customer base analysis;
- 4) Proposed financial services to be offered;
- 5) How and when services are to be implemented;
- 6) Anticipated corporate credit union staffing and credentials of key employees;
- 7) Physical facility – office and equipment;
- 8) Proposed recordkeeping, data processing, and communications systems and/or vendors;
- 9) Budget for the first three years;
- 10) Semiannual pro-forma financial statements for the first three years, including a listing of the assumptions used to develop the financial statements;
- 11) Goals for the number of members and shares under various scenarios;
- 12) Projected break-even or date of achieving independent operations;
- 13) Source of funds to pay expenses during the initial setup and early months of operation;
- 14) Written policies for shares, lending, investments, funds management, capital accumulation as required by Part 704, payment systems, and EDP;
- 15) Plan for continuity – directors, committee members, and senior management;
- 16) Evidence of commitment (*i.e.*, letters and/or contracts used to substantiate projections); and

- 17) Services and marketing strategies for financial and correspondent services, including the ability of the proposed corporate credit union to efficiently deliver these products.

#### IV--ORGANIZING A CORPORATE FEDERAL CREDIT UNION

The subscribers must submit the following documentation to the NCUA Office of Corporate Credit Unions (OCCU) for processing:

- 1) NCUA Form 4001 – Federal Credit Union Investigation Report.
- 2) NCUA Form 4012 - Report of Officials and Agreement to Serve. This form documents general background information for each official and employee of the proposed corporate credit union. Each designee must complete and sign this form. In completing the form, subscribers may disregard any reference to “common bond.” In addition, where Section B.2 of the form requires a potential interest survey sample of at least 250 potential members, subscribers may use a sample of at least 30 potential members.
- 3) NCUA Form 4008 - Organization Certificate. This document establishes the seven criteria required of subscribers by the Act and is signed by the subscribers and notarized. This document should be executed in duplicate.
- 4) NCUA Form 9501 - Certification of Resolutions. This document certifies the board of the proposed corporate credit union has resolved to apply for federal insurance of member’s accounts and has authorized the chief executive officer and chief financial officer to execute the Application and Agreements for Insurance of Accounts. Both the chief executive officer and recording officer of the proposed corporate credit union must sign this certification.
- 5) NCUA Form 9500 - Application and Agreements for Insurance of Accounts. This document contains agreements FCUs must comply with in order to obtain NCUA insurance coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer.

#### V--NAME SELECTION

It is the responsibility of the corporate FCU organizers to ensure that the proposed corporate FCU name does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the corporate credit union's name:

- Is not already being officially used by another FCU;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and
- Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be “Federal Credit Union.”

## VI--NCUA REVIEW

### *A--General*

OCCU will conduct an independent investigation of the corporate credit union's charter application to assess the economic and long-term viability of the proposed corporate credit union. OCCU field staff will conduct the review and, if necessary, perform an on-site contact with selected officials and others having an interest in the proposed corporate credit union.

The review will include evaluation of proposed management's experience and suitability, commitment of proposed officials, and assessment of economic viability. OCCU field staff may also be called upon to assist subscribers in the proper completion of required forms and the Organization Certificate - NCUA Form 4008.

OCCU field staff will thoroughly analyze the prospective corporate credit union's business plan for realistic projections, attainable goals, and time commitment. Any concerns will be reviewed with the subscribers and discussed with prospective officials.

NCUA will follow the timeline set forth below in processing corporate charter applications:

1. Within 30 days of receipt of the charter package, OCCU field staff will meet with the proposed officials and management team to evaluate the adequacy of management and the information provided and to discuss the FCU's ability to begin operations and meet their financial projections if the charter is approved.
2. On completion of all required reviews, but no later than 60 days after the meeting described above, OCCU field staff will make a recommendation to the OCCU Director regarding the charter application. The recommendation may include provisional requirements to be completed prior to final approval of a corporate FCU charter.
3. Within 30 days of receiving OCCU field staff recommendation, an OCCU analyst will determine if the application package can be forwarded to the NCUA Board for appropriate action, or if it should be returned to the subscribers. The subscribers will receive written notification of this decision.
4. Within 60 days after receipt of a complete application that addresses all of OCCU's concerns, the NCUA Board will vote on the proposed charter. If the charter is approved, the officials must sign a "Letter of Understanding and Agreement" (LUA) before the corporate credit union can commence operations. This LUA will impose certain operational restrictions, require compliance with NCUA's Rules and Regulations and adoption of the standard Corporate FCU Bylaws, and contain

several financial performance milestones that the new charter must meet, consistent with Part 704.

*B--Finalization of New Charter*

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors for the newly chartered corporate FCU. The new board of directors will subsequently appoint the supervisory committee. The corporate FCU must then submit a report of officials to OCCU.