

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: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final regulation to amend the associational common bond provisions of NCUA's chartering and field of membership requirements.

Specifically, the amendments establish a threshold requirement which provides that, in order for an association to qualify to be part of a federal credit union's (FCU) field of membership (FOM), the association must not have been formed primarily for the purpose of expanding credit union membership. The amendments also expand the criteria in NCUA's current totality of the circumstances test, which is a regulatory tool used to determine if an association, after satisfying the above-referenced threshold requirement, also satisfies the associational common bond requirements necessary to qualify for inclusion in an FCU's FOM. The amendments will better

ensure that FCUs comply with established membership requirements. Additionally, NCUA is granting automatic membership qualification under the associational common bond requirements to certain categories of associations that NCUA has routinely approved for FCU membership in the past. For ease of reading, NCUA uses the terms “association” and “group” interchangeably in this rulemaking.

DATES: This rule is effective [INSERT DATE 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert Leonard, Director, Division of Consumer Access, and Rita Woods, Director, Division of Consumer Access – South, Office of Consumer Protection, at 1775 Duke Street, Alexandria, VA 22314, or by telephone (703) 518-1140; or Frank Kressman, Associate General Counsel, Office of General Counsel, at the above address, or by telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Legal Background and Summary of the April 2014 Proposal

II. Summary of the Public Comments and the Final Rule

III. Regulatory Procedures

I. Legal Background and Summary of the April 2014 Proposal

A. Legal Background

NCUA has implemented the Federal Credit Union Act's (FCU Act) FOM requirements¹ in NCUA's Chartering and Field of Membership Manual (Chartering Manual), which is incorporated as Appendix B to part 701 of NCUA's regulations.² NCUA also has published the Chartering Manual as an Interpretative Ruling and Policy Statement (IRPS), the current version of which 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 of the FCU Act also describes the individual membership criteria for each of these three types of charters.⁴ Further, each type of charter is subject to, and shaped by, certain applicable limitations.

An FOM consists of those persons and entities eligible for membership for each type of charter, respectively. The Chartering Manual provides that a single common bond FCU consists of one group having a common bond of occupation or association.⁵ A multiple common bond FCU

¹ 12 U.S.C. 1759.

² 12 CFR part 701, Appendix B.

³ 12 U.S.C. 1759(b).

⁴ *Id.*

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

consists of more than one group, each of which has a common bond of occupation or association.⁶

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 with each other if those groups are integrally related and share common goals and purposes.⁸ The Chartering Manual more specifically enumerates the individuals and groups eligible for membership in a single associational common bond 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

Under NCUA's current FOM regulations, NCUA determines if a group satisfies the associational common bond requirements, for purposes of qualifying for membership in an FCU, by applying the below factors, commonly referred to as the totality of the circumstances test.¹⁰ The test consists of the following seven factors:¹¹

- 1) Whether members pay dues;

⁶ *Id.* This final rule does not affect the current requirements for occupational common bond FCUs.

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

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

- 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.

Additionally, the Chartering Manual specifies certain examples of associations that may or may not qualify as having an associational common bond. It states that educational groups, student groups, and consumer groups may qualify as having an associational common bond.¹³

Associations based primarily on a client-customer relationship, however, do not satisfy the associational common bond requirements.¹⁴

B. Summary of the April 2014 Proposal

In April 2014, NCUA issued a proposal to amend the associational common bond requirements in the Chartering Manual.¹⁵ The following is a summary of the proposed amendments.

Threshold Requirement Regarding the Purpose for Which an Association is Formed

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 part 701, Appendix B (Chapter 2, Section III.A.1).

¹⁴ *Id.*

¹⁵ 79 FR 24623 (May 1, 2014).

The proposal established a threshold requirement that, in order for an association to qualify to be part of an FCU's FOM, the association must not have been formed primarily for the purpose of expanding credit union membership. As part of the chartering analysis, NCUA would determine if an association has been formed primarily for the purpose of expanding credit union membership. If NCUA determines it has, then the association is denied inclusion in the FCU's FOM. If NCUA determines that the association was formed to serve some other organizational function, not primarily to expand credit union membership, then NCUA will continue the analysis by applying the totality of the circumstances test to determine if the association satisfies the associational common bond requirements. As part of satisfying the threshold requirement, the proposal would have required that the association being reviewed must have been operating as an independent organization for at least one year prior to the request to add the association to the FCU's FOM.

As discussed more fully below in the section summarizing the public comments and the final rule, NCUA, as a result of the comments, is amending the threshold requirement to provide additional regulatory relief to FCUs.

Totality of the Circumstances Test

NCUA proposed to amend the totality of the circumstances test, as discussed more fully below.

The proposal noted that by clarifying and expanding the test, NCUA would be better able to

ensure that only an association that satisfies the associational common bond requirements would be eligible for inclusion in an FCU's FOM.

More specifically, NCUA proposed to enhance the totality of the circumstances test by adding to it an additional factor regarding corporate separateness. NCUA would review whether corporate separateness exists between an FCU and the association the FCU wishes to add to its FOM. To satisfy this proposed additional factor, the FCU and the association must operate in a way that demonstrates the separate corporate existence of each entity. NCUA proposed to consider the degree to which the following factors are present to determine if corporate separateness exists:

- The FCU's and the association's 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 association maintains a separate physical location, which does not include a P.O. Box or other mail drop, and not on premises owned or leased by the FCU. Acknowledged exceptions to this factor include associations located on the premises of a labor union or church.

The presence or absence of any one of these factors is not determinative.

The proposed rule stated that qualified associations already within an FCU's FOM are grandfathered and would not be subject to the corporate separateness factor.

As discussed more fully below in the section summarizing the public comments and the final rule, NCUA, as a result of the comments, is amending the totality of the circumstances test with respect to the corporate separateness factor to provide additional regulatory relief to FCUs.

While NCUA proposed to add this additional factor to the totality of the circumstances test, NCUA did not propose to remove any of the current criteria from the test. However, the Board clarified in the proposal 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 factors: 1) whether the association provides opportunities for its members to participate in the furtherance of the goals of the association;¹⁶ 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.¹⁷

As part of applying the totality of the circumstances test, NCUA also proposed to consider whether an FCU enrolls a member in an association without the member's knowledge or consent. This practice would reflect negatively on the association's qualification for FCU

¹⁶ With respect to this factor, the underlined portion is additional language that clarifies that the factor is satisfied if the association provides a member with opportunities to participate in the furtherance of the association's goals even if the member does not choose to participate. This change in language is simply a clarification reflecting how NCUA interprets this provision. This also provides additional flexibility to an association that wishes to be included in an FCU's FOM.

¹⁷ Prior to this final rule, the factor regarding an association's membership eligibility requirements did not contain the word "authoritative." However, NCUA has long interpreted this factor to assess if an association's membership eligibility requirements are authoritative. The addition of the word "authoritative" to this factor is simply a clarification of NCUA's longstanding interpretation and practices, and not the imposition of any new requirement.

membership because it suggests that the members do not truly support the goals and mission of the association given they may not even know they are members. However, an FCU may pay a member's associational dues if the member has given his or her consent to do so.

Automatic Approval of Certain Categories of Associations

Historically, NCUA has approved certain categories of associations almost without exception because their structures, practices, and functions so clearly demonstrate compliance with the Chartering Manual's associational common bond requirements. By their very nature, these categories of associations are comprised of members who consistently participate in activities developing common loyalties, mutual benefits, and mutual interests to further the goals and purposes of the associations.

Accordingly, the proposed rule provided for the automatic membership approval of the following categories of associations into an FCU's FOM, if the FCU chooses to add one or more to its FOM: 1) religious organizations including churches; 2) homeowner associations; 3) scouting groups; 4) electric cooperatives; 5) alumni associations; and 6) labor unions. Additionally, for the reasons stated above, NCUA proposed to automatically approve associations that have a mission based on preserving or furthering the culture of a particular national or ethnic origin. However, with respect to all of these associations, NCUA proposed not to include in the automatic approval those individuals who are considered to be honorary members or other classes of non-regular members of the associations.

The automatic approval of the above-referenced associations will provide regulatory relief for FCUs, as they will no longer be required to devote resources to the regular approval process. It also will enable NCUA to more efficiently use its own resources. This aspect of the proposed rule is adopted as proposed, and as discussed below, additional categories of associations are to be automatically approved.

Grandfathering Members

NCUA proposed to grandfather in existing FCU members who attained FCU membership by virtue of their membership in an association currently part of an FCU's FOM.

II. Summary of the Public Comments and the Final Rule

NCUA received forty-three comments on the proposed rule. The comments were received from one bankers association, twenty-three FCUs, three federally insured, state-chartered credit unions, three law firms, and thirteen credit union trade associations. Most of the commenters supported the intent of the proposed rule, but, for various reasons, did not agree with the substance of the rule.

General Comments

Five commenters generally supported the proposed rule as written. These commenters noted that the rule is consistent with the intent of the FCU Act and reinforces the common bond

relationship that is central to credit union membership. In addition, these commenters stated that the proposed amendments, if strictly enforced, would thwart any attempt to expand an FCU's FOM beyond appropriate limits.

About half of the commenters articulated strong concerns with some aspect of the proposed rule. Four commenters recommended that NCUA enforce the proposed chartering provisions through guidance or as part of the supervisory process, rather than by rulemaking. Eight commenters stated that NCUA should withdraw the proposed rule. These commenters maintained that the proposed rule is a reaction to the behavior of only a few FCUs, but that it will cause unintended and undue hardship on all FCUs. A number of commenters urged NCUA to provide further clarification on certain aspects of the proposal and/or to reconsider them. Additionally, several commenters asked NCUA to consider changes outside of the scope of the proposed rule. The Board will consider such changes as part of its broader initiative to review policies and procedures governing FOM expansions and conversions.

Automatic Approval of Certain Categories of Associations

In the proposed rule, NCUA asked commenters to recommend certain categories of associations, in addition to those NCUA specifically identified in the proposal, which NCUA could consider for automatic approval. Almost thirty commenters were supportive of NCUA's proposal to automatically approve certain associations. In response to NCUA's request, a majority of these commenters suggested other categories of associations to be added to the list of automatically approved associations. Some of the most common examples include:

- Groups formed for support of school-based, school-sponsored, or community-based sports teams; extracurricular club activities; fraternal organizations; and social clubs.
- Parent-teacher associations, military-affiliated associations, and 501(c)(3) nonprofits.
- Historical societies, library associations, and museum associations.
- YMCAs, local chamber and rotary affiliates (and other civic organizations), and industry groups.
- Farmer cooperatives.

The Board appreciates the suggestions made by the commenters. After considering the recommendations and further evaluating the agency’s history of approving associational groups, the Board has determined to include additional types of groups that will automatically satisfy the associational common bond requirements. The Board clarifies that when a group “automatically” satisfies the associational common bond requirements, it means that the group will not be reviewed under the totality of the circumstances test. The Chartering Manual’s other prerequisites for an FCU’s charter expansion, including an FCU’s capitalization level and safety and soundness record, must still be satisfied.¹⁸

¹⁸ Chartering Manual, Chapter 2, IV.B.2—*Numerical Limitation of Select Groups*. An existing multiple common bond FCU that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. The NCUA must approve all amendments to a multiple common bond credit union's field of membership. NCUA will approve groups to a credit union's field of membership if the agency determines in writing that the following criteria are met:

- The credit union has not engaged in any unsafe or unsound practice, as determined by the NCUA, which is material during the one year period preceding the filing to add the group;
- The credit union is “adequately capitalized.” NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than six percent. For low-income credit unions or credit unions chartered less than ten

The following additional types of groups will automatically satisfy the associational common bond provisions:

- Parent teacher associations (PTAs) organized at the local level to serve a single school district;
- Chamber of commerce groups (members only and not employees of members);
- Athletic booster clubs whose members have voting rights;
- Fraternal organizations or civic groups with a mission of community service whose members have voting rights; and
- Organizations promoting social interaction or educational initiatives among persons sharing a common occupational profession.

years, the NCUA may determine that a net worth ratio of less than six percent is adequate if the credit union is making reasonable progress toward meeting the six percent net worth requirement. For any other credit union, the NCUA may determine that a net worth ratio of less than six percent is adequate if the credit union is making reasonable progress toward meeting the six percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level;

- The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;
- Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership are also applicable; and
- If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

The table below provides samples of the types of groups that will and will not automatically satisfy the associational common bond requirements:

Type of Group	Will Automatically Qualify	Will not Automatically Qualify
Parent Teacher Association	Anytown Chapter of the Parent Teacher Association of Anytown, Virginia	National Council of Parent Teacher Associations in Anytown, Virginia
Chamber of Commerce	Members of the Jonesboro, Georgia Chamber of Commerce	Employees of Members of the Liverpool, New York Chamber of Commerce
Athletic Booster Club	Voting members of the XYZ High School Booster Club in Hometown, Florida	Members of PDQ Booster Club who become members by paying onetime dues and do not have voting rights
Fraternal Organization	Members of the ABC Fraternal Organization who have voting rights	Persons becoming members of ABC Fraternal Association who do not have voting rights
Professional Organization	Voting members of the National Association of XYZ Profession	Members of the National Association of XYZ Profession who do not have voting rights

Further, commenters suggested some groups for automatic approval that NCUA has not regularly approved. For instance, NCUA has long held that health clubs, such as YMCAs, do not meet the associational common bond requirements because they are based primarily on a client-customer relationship.¹⁹ While fraternal organizations with broad missions or museum associations may, under some circumstances, satisfy the associational common bond criteria, these groups often are not structured in a way that would warrant automatic approval into an FCU's FOM.

¹⁹ 79 FR 24623, 24625 (May 1, 2014).

The Board received several comments recommending that NCUA consider automatically approving farmer cooperatives. After fully considering the agency's experience with farmer cooperatives, the Board has determined not to include them as a category of associations receiving automatic approval. The Board is concerned that farmer cooperatives are not as easily identifiable as other associations, such as religious groups or labor unions. While there is a National Association of Farmer Cooperatives, both it and the United States Department of Agriculture acknowledge that there are a variety of types of farmer cooperatives. The Board does not believe farmer cooperatives can be objectively classified and sufficiently described to support automatic approval as associations that satisfy the associational common bond requirements.

Further, NCUA has approved numerous farmer cooperatives as occupational groups, but has only approved one farmer cooperative as an associational group. Farmer cooperatives also often have characteristics of a customer-client relationship. In many cases, farmer members pay for the services the cooperative provides and the members do not typically interact with one another. As a result, farmer cooperatives will not be automatically approved, but NCUA welcomes the opportunity to evaluate FCU requests to serve individual farm cooperatives on a case-by-case basis.

It is important to highlight that a credit union interested in serving a group which does not fall under the automatic approval categories can still submit documentation to NCUA to support how the group is a valid association. This provides for flexibility in considering unique

circumstances when appropriate and may help to identify other groups which may automatically qualify in the future.

Service Areas and Reasonable Proximity

Thirteen commenters strongly suggested that NCUA should revisit the definitions of “service areas” and “reasonable proximity” as those terms relate to multiple common bond credit unions. These commenters suggested that NCUA should reconsider its interpretation of both definitions in light of the technological advancements now available to credit unions. These comments relate to multiple common bond expansion, an issue not addressed by the April 2014 proposed rulemaking, and which is outside the scope of this final rule. Therefore, this issue will not be part of the final rule but will be considered as part of NCUA’s current review of FOM policies.

Threshold Requirement and Independent Organization for One Year

Twenty-six commenters expressed concern with the proposed threshold requirement. As described above, at the beginning of NCUA’s associational evaluation process, NCUA would determine if the association was formed primarily for the purpose of expanding credit union membership. These commenters were concerned that NCUA was not specific enough about how it would apply the threshold requirement. These commenters also strongly urged NCUA to provide additional guidance in this regard.

Eleven commenters specifically stated their opposition to the proposed threshold requirement. These commenters posited that the threshold requirement seems particularly arbitrary, overly restrictive, and unnecessary. Some of these commenters believed that the NCUA could use its current totality of the circumstances test, or a modified version of that test, to determine if an association was or was not formed primarily for the purpose of expanding credit union membership.

The Board disagrees with the commenters' characterization of the threshold requirement. The threshold requirement will serve as an effective gatekeeper to prevent unqualified associations from joining FCUs. The Board emphasizes that only those groups that are formed primarily to expand credit union membership will fail to satisfy the threshold requirement. In addition, as discussed in the preamble to the proposed rule, 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.

Six commenters expressed concern about the use of the term "primarily" in the phrase "primarily for the purpose of expanding credit union membership" in the proposed threshold requirement. These commenters noted that the term "primarily" is subjective and undefined in NCUA's regulations. Four of these commenters recommended NCUA change "primarily" to "solely." The Board intends for the word "primarily" to be given its plain English definition. For purposes of this rule "primarily" means: *for the most part; essentially; mostly; chiefly; principally.*²⁰

²⁰ See Dictionary.com and m-w.com (Merriam-Webster online).

Twenty commenters had questions or expressed concern about the “one-year” requirement. In the proposed rule, as part of the discussion of the threshold requirement, NCUA stated that “[i]n furtherance of this [threshold] 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.”²¹ These commenters questioned NCUA’s reasoning for the one-year requirement and requested further clarification on what this requirement means. In addition, eleven of these commenters specifically stated their opposition to the one-year requirement. These commenters stated that NCUA did not provide a basis for this minimum time requirement, and the commenters did not believe that it should matter how long the association has been in existence if it serves its members and meets the criteria of the totality of the circumstances test.

Almost half of the commenters who opposed the one-year requirement believed the requirement would have adverse effects on FCU membership. These commenters maintained that it would cause the unintended consequence of preventing FCUs from being able to serve and support their communities. They also believed that this would create a competitive disadvantage for FCUs.

While the Board continues to believe that associations that have operated independently for at least one year are more likely to be associations that exist for organizational purposes beyond primarily expanding credit union membership,²² the Board acknowledges the concerns raised by the commenters in this regard. Accordingly, the Board is taking action to relieve the regulatory burden that commenters associated with the one-year requirement. Specifically, the Board is

²¹ 79 FR 24625 (footnote 17) (May 1, 2014).

²² 59 FR 29066, 29076 (June 3, 1994).

eliminating the one-year requirement from the threshold test so that the one-year requirement is no longer a condition of satisfying the threshold test. This change will provide additional flexibility and opportunity for an association to qualify under the totality of the circumstances test. For example, even if an association has not operated independently for at least one year, the association may still qualify for FCU membership under the totality of the circumstances test.

Totality of the Circumstances Test

As discussed in more detail below, eighteen commenters expressed various concerns with the proposed amendments to the totality of the circumstances test. These commenters generally found the current totality of the circumstances test sufficient. In addition, four commenters requested that NCUA publish guidance to further explain how NCUA will apply the totality of the circumstances test in practice.

Four commenters had concerns with the criterion that assesses the degree to which an association's membership eligibility requirements are authoritative. NCUA clarified this criterion in the proposed rule to emphasize the importance that an association's particular membership requirements be authoritative. These commenters stated that the term "authoritative" was ambiguous and requested further clarification. The Board added the term "authoritative" to this criterion in the proposal to further stress NCUA's long held position that it is important for an association to avoid having lax enrollment standards, as that undercuts its ability to satisfy the associational common bond requirements.

Three commenters supported the criterion that an FCU may pay a member's associational dues if the member has given consent. Two commenters expressed concern with this criterion, suggesting that this transaction could indicate a lack of corporate separateness or that NCUA should not dictate what an association's business model should look like.

The Board believes it is important to continue the policy of allowing an FCU to pay its member's associational dues, if the member has given his or her consent. The Board believes this policy helps to facilitate the appropriate use of qualified associations by providing FCUs with this additional flexibility. If an association is automatically approved or approved because it satisfies the totality of the circumstances test, then this practice is permissible for FCUs, but is not mandatory.

Corporate Separateness

There was little support among the commenters for the proposed corporate separateness requirement, although there was support for grandfathering a qualified association already within an FCU's FOM so it would not need to satisfy the corporate separateness requirement.

Two commenters had specific concerns about this criterion. One commenter believed that this provision would have the unintended consequence of discouraging qualified associations from seeking FCU membership. Another commenter suggested that smaller credit unions and their affiliated associations generally do not have the resources to meet these additional requirements, which could unfairly restrict their membership base. In addition, seven commenters maintained

that it is inappropriate to measure the independence of an association by evaluating whether it maintains a separate physical location. These same seven commenters stated that the physical location of an association has no bearing on its separate corporate existence from an FCU.

The Board has carefully considered these concerns and agrees with commenters that the corporate separateness criterion may be too burdensome as presented in the proposed rule. The Board still believes that an association's degree of corporate separateness is a reasonable factor to consider in determining if an association satisfies the associational common bond requirements and that it is a useful indicator of the true purpose of an association. However, the Board acknowledges that the numerous factors comprising the corporate separateness criterion, as listed in the proposed rule, may be too difficult for some FCUs and associations to demonstrate. Accordingly, as a result of the comments, to simplify the final rule and provide regulatory relief to FCUs, the Board is reducing the multiple corporate separateness factors listed in the proposed rule to just one factor in the final rule. The sole factor to be included in the final rule, which is an easier standard for FCUs and associations to meet, is if an FCU's and an association's respective business transactions, accounts, and records are not intermingled. Also, in the final rule, the Board is adding the word "corporate" to describe what records are not to be intermingled. This addition is purely for clarification and adds no new burden.

The Board reiterates that, in reviewing this less burdensome corporate separateness factor along with the other seven factors that constitute the totality of the circumstances test, no one factor is determinative. Additionally, as noted above, the April 2014 proposed rule stated that qualified

associations already within an FCU's FOM are grandfathered in this regard and will not be subject to the corporate separateness factor.

Quality Assurance Reviews

Over half of the commenters expressed concern about the quality assurance reviews that NCUA's Office of Consumer Protection (OCP) is conducting on currently approved associations. As discussed in the proposed rule, these reviews are intended to ensure that an association currently included in an FCU's FOM continues to satisfy the associational common bond requirements that are required for continued membership. These commenters noted specific concerns about how the reviews are being and will be conducted and what could result from them. The commenters requested that NCUA ensure these reviews are conducted using objective and transparent standards. In addition, some of these commenters noted they did not support NCUA reviewing currently approved associations.

Four commenters specifically questioned if NCUA would allow associations, determined to be out of compliance with the associational common bond requirements, the opportunity to get back into compliance, and, if so, how long would those associations have to do so. They also asked if NCUA's OCP would provide any assistance in that regard. Six commenters also asked if there would be a process by which an FCU could appeal an action by NCUA to remove an association from an FCU's FOM. These commenters recommended such an appeals process. These commenters suggested that an appeals process should establish time frames in which certain

actions must be taken and that an FCU should be able to continue to add new members during the appeals process.

Ten commenters recommended that NCUA clearly articulate that, regardless of the outcome of a quality assurance review, existing FCU members, including those who qualified for FCU membership through membership in the subject qualified association, would be grandfathered and their memberships unaffected. The Board has long held the position that once a person attains membership in an FCU, he or she always remains a member of that FCU, unless expelled by the FCU or upon voluntary withdrawal.²³ Accordingly, the Board confirms that all existing FCU members discussed above are grandfathered and their memberships are unaffected by the results of any quality assurance review.

Twelve commenters stated that they did not support NCUA taking action to remove a currently approved association for any reason. Three of these commenters argued that any new associational common bond standards must only apply to associations seeking membership subsequent to the effective date of this final rule. In addition, six of these commenters requested that NCUA provide guidance on the process for removing an association from an FCU's FOM, including notice, timing, and appeals information. The Board agrees that such guidance is appropriate and has directed OCP to publish guidance in the near future. As noted below, however, NCUA considers removal of an association from an FCU's FOM a last resort.

²³ 12 U.S.C. 1759(e).

Four commenters argued that a quality assurance review could usurp the rights of a currently approved association because the review could result in NCUA removing the association from an FCU's FOM without due process. These commenters noted that NCUA failed to cite to or reference the statutory authority on which NCUA relies to conduct these reviews. These commenters also stated that NCUA failed to provide sufficient notice to associations and FCUs that the agency continues to monitor associations' compliance with NCUA associational common bond requirements. In addition, these commenters argued that NCUA lacks the direct authority to remove an association from an FCU's FOM.

Many commenters have misinterpreted the purpose of the quality assurance reviews. They are intended to protect the integrity of NCUA's FOM requirements, not disrupt an FCU's ability to serve its members or to hamper an FCU's ability to thrive. NCUA will work cooperatively with FCUs and associations to ensure FOM compliance. Further, the Board emphasizes that quality assurance reviews are not a new phenomenon. NCUA's regional offices conducted them for many years and only ceased doing so once OCP assumed responsibility for field of membership processing and chartering activities after its inception in 2010.

OCP currently has in place quality control processes to review associations added to an FCU's FOM. OCP does not plan to change these processes following the adoption of this final rule. OCP's current quality assurance processes require its staff to review for compliance with NCUA's chartering regulations all new FCU requests, including required documentation, to serve groups prior to OCP making a final decision on the request. Specifically for associational groups, OCP has established a checklist for reviewing an association's bylaws and other

associational documentation to ensure that OCP reviews all requests in a consistent manner. This process includes reviewing groups added through the Field of Membership Internet Application (FOMIA) system.²⁴ OCP staff reviews data entered by FCU officials, and, if necessary, OCP staff contacts FCU officials for additional documentation. Through the FOMIA system, OCP also randomly selects certain groups with no red flags for review. This sampling process helps ensure that FCU officials using the FOMIA system are using it as it was intended to be used.

NCUA does not envision the referenced processes or the quality assurance processes will change following the adoption of the final rule. In addition, whether with respect to a new request for an FOM addition or as part of a post-approval quality assurance review, OCP will work closely with FCU officials to determine if there are compliance problems and, if so, how to satisfactorily address those problems. NCUA considers the removal of an association from an FCU's FOM an action of last resort.

Geographic Limitation

Thirteen commenters raised concerns that certain language in the preamble to the proposed rule appeared to indicate that NCUA was seeking to impose a geographic limitation on associational groups, similar to the geographic limitation placed on multiple common bond FCUs. The Board clarifies that nothing in the preamble to the proposed rule was intended to impose such a

²⁴ FOMIA is an online system that multiple common bond credit unions can use to add associational and/or occupational groups of 2,999 potential members or less as well as the non-natural person corporate account associated with that group.

geographic limitation. The Board reiterates that the Chartering Manual clearly states that single associational common bond FCUs do not have a geographic limitation.²⁵

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.²⁶ For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.²⁷ This rule focuses on the structure and operations of independent associations who wish to join an FCU's FOM. To the extent there is any cost to small entities to voluntarily participate in the determination of whether the association satisfies NCUA's associational common bond requirements, those costs are minimal and they are incurred infrequently. Because this final rule would affect relatively few small entities and the associated costs are minimal, NCUA certifies the rule will not have a significant economic impact on small entities.

B. Paperwork Reduction Act

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

²⁶ 5 U.S.C. 603(a).

²⁷ 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).

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.²⁸ 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 final rule amends the criteria NCUA will use to evaluate if an association satisfies NCUA's associational common bond requirements, but it requires essentially the same information from an FCU that was previously required and changes none of the relevant forms identified in the Chartering Manual. Therefore, this final 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, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule applies only to federally chartered credit unions. It does not apply to state-chartered credit unions, which are subject to the FOM requirements of their respective states. Accordingly, 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.

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

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.²⁹

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996³⁰ (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.³¹ NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on _____, .

²⁹ Pub. L. 105–277, 112 Stat. 2681 (1998).

³⁰ Pub. L. 104–121, 110 Stat. 857 (1996).

³¹ 5 U.S.C. 551.

Gerard S. Poliquin

Secretary of the Board

For the reasons stated above, NCUA amends 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. Specifically, this means the

federal credit union's and the group's respective business transactions, accounts, and corporate records are not intermingled.

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. 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;
- 7) Parent teacher associations (PTAs) 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.

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.

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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