



OHIO CREDIT  
UNION LEAGUE

June 30, 2014

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

Re: Chartering and Field of Membership Manual  
12 CFR Part 701  
RIN 3133-AE31

Dear Mr. Poliquin:

The Ohio Credit Union League (OCUL) appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) Proposed Rule modifying the Chartering and Field of Membership Manual regarding Associational Common Bonds.

OCUL is a state trade association and advocates on behalf of Ohio's 335 federal- and state-chartered credit unions, serving 2.8 million members. The comments reflected in this letter represent the recommendations and suggestions that OCUL believes would be in the best interest of Ohio credit unions.

Field of membership is one of the core concepts of credit union philosophy of providing cooperative financial services through volunteer-led organizations. It is OCUL's position that these standards must be as expansive and inclusive as possible to empower consumers through participation in a financial cooperative. While clarity of standards regarding appropriate determination of who may be included within a field of membership is appreciated, portions of the proposed changes will have the effect of excluding associations that should be permitted to become or remain within the field of membership of a credit union. The proposed changes appear to be an overreaching response to the actions of either a few examples of credit union exceptions or the competitive pressure applied by bank trade associations, or both, and are not needed at this time. NCUA's primary mission should be to protect the safety and soundness of the credit union system while promoting inclusion of as many individuals and associations as possible in credit union membership.

#### **Definition of "Association"**

NCUA's current chartering policy, to be codified under this proposed rule, states that the common bond for an associational group cannot be established on the basis that an association exists. NCUA's rules outline a "totality of circumstances" test. As a threshold, NCUA proposes to examine whether the association was formed primarily for the purpose of expanding credit union membership. Part of this determination would be whether the association has operated "independent from the requesting federal credit union (FCU) for at least one year prior to the request to add the group to the FCU's field of membership." (footnote 17)



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OCUL strongly disapproves of such examinations. This is an area where federal government should not be involved. How will NCUA reach its conclusion? What factors form the basis of the NCUA judgment? Historically, credit unions were formed as associations of like-minded people, organized to mutually benefit their members.

An association formed to provide financial counseling or education may have close ties to a credit union, particularly if the credit union has provided seed money to get the program started. On the surface, this may appear that the association might have been formed to expand credit union membership due to the close cooperation between the credit union and the association, where actually the opposite is true. The association was created in order to provide a benefit to its members that coordinates with a credit union's mission of "people helping people," not for the purpose of expanding membership. Without inquiring from all of the association's members what their motive was for joining the association and for joining the credit union, any judgment made by NCUA will be speculative.

Further, many such associations, such as foundations, are dependent on funding from outside sources in order to provide their services. If a credit union chooses to fulfill part of its mission of community involvement by supporting the association, financially or otherwise, corporate separateness may not be possible without crippling the association's mission.

### **Geographic Limitations on Approved Associations**

The rules limit adding groups that lie "outside of the federal credit union's (FCU's) historical operating area." Geographic limitations are an outdated notion in regard to credit union membership eligibility and should be diminished, not perpetuated. Such a restriction may have made sense in the days before the Internet and mobile banking, however, today such a strict limitation seems nonsensical. Many associations today have widespread membership, linked through the web, social media, and other modern forms of "community" and "connection." How would NCUA determine whether such association lies within a historic service area? Would it be determined by where the primary office is located? Or would it be determined by where a majority of the association's membership is located? A wide variety of long-established associations have members across the country, and even across the globe, from the American Medical Association to groups supporting various causes, linked by social media, Internet forums, and other global methods of communication and interaction. Credit unions with robust mobile banking and other services would have no difficulty in providing service to members of such associations, and in fact, already continue to provide service to credit union members who have moved out of the "historical operating area."

OCUL therefore urges that NCUA eliminate considerations of an FCU's "historical operating area" from its test to determine whether members of an association may be served by the FCU in cases where the FCU can demonstrate that its members can receive services remotely.

### **Automatic Approval of Certain Associations**

NCUA has listed some examples of types of associations that may receive automatic approval under the associational guidelines, by reason of their cooperative nature. The list includes churches, labor

unions, scouting groups, electric cooperatives, homeowner associations, and adds “associations that have a mission based on preserving or furthering the culture of a particular national or ethnic origin. NCUA cautions that it will not approve “honorary or other classes of non-regular members.”

NCUA’s list does not include other groups that have been formed to cooperatively further their members, for example, agricultural or purchasing cooperatives. The rules should be modified to allow other types of cooperative groups to be automatically approved.

Further, NCUA’s prohibition on allowing honorary or other non-regular members to be considered as members of the association and therefore eligible in the FCU’s field of membership once again places NCUA in the position of judging the motives of the association and its members. One example of an honorary member who perhaps should be included in the associational field of membership is an honorary or visiting priest or pastor at a church. There are numerous other examples of honorary members who fully participate in an association. Substituting NCUA’s judgment for the association’s as to who its members are is another overreach, and is another example of restrictive, rather than expansive, membership eligibility perspective on the part of NCUA.

### **Grandfathering Membership**

NCUA has proposed that there are many associations currently included in the field of membership of some FCU’s that no longer meet the threshold for determining the validity of the association, and that NCUA examiners will determine whether the association should be kept within the field of membership of an FCU. This is supervisory overreach. To revisit whether an association that has already been approved, should now be disallowed for membership appears to fly in the face of a long-standing credit union principle of “once a member, always a member,” although that principle generally applies to natural persons. Adding yet another item to be reviewed to its already lengthy examination process is not the best use of an NCUA examiner’s time. All current associations should be grandfathered as qualifying. The supervision process should not include judging associations valid or invalid for purposes of membership eligibility.

Further, should NCUA persist in its proposal to re-examine the validity and separateness of associations already included in an FCU’s field of membership, it is not clear that individuals in the FCU’s field of membership, because of their membership in an association, would be grandfathered. Such individual members should not be forced to leave the credit union.

### **Conclusion**

NCUA’s proposal is flawed in that it substitutes the agency’s judgment as to an association’s motives for existence for the judgment of the association and its members. The proposal further does not recognize innovations in the ability of an FCU to serve members remotely, nor does it recognize that many associations do not have a single geographic location.

Although the inclusion of a list of types of associations that would receive automatic approval is welcomed as a measure to make associational membership approvals simpler, the list is too limited

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and does not allow for other types of cooperative associations to receive automatic approval. The prohibition against including honorary or other non-regular members puts NCUA into the position of judging the credibility of an association and its partner credit union in managing membership rolls, another area that the federal government does not need to micromanage.

Finally, NCUA should not re-examine associations which have already been approved for inclusion in an FCU's field of membership. Both the associations, and their members who have joined the credit union, should be grandfathered.

OCUL's recommendations are as follows:

- 1) Retract the proposal – it is not necessary. Credit union membership eligibility should be expansive, not restrictive.
- 2) Short of retracting the proposal, modify the “totality of circumstances” test as follows:
  - a) Eliminate the requirement of one year of corporate separateness, especially in the case of a foundation or other credit union mission-related organization formed to provide financial counseling or other services related to “people helping people”; and
  - b) Develop other measures to determine if the credit union can serve members of the association proposed as an expansion of the credit union's field of membership, reducing or eliminating the use of geographical considerations;
- 3) Expand the list of types of associations qualifying for automatic approval to include other types of cooperative groups;
- 4) Remove provisions prohibiting inclusion of honorary or other non-regular members;
- 5) Grandfather existing associations previously qualifying within a credit union's field of membership to permit the association's members to remain eligible to become credit union members.

The Ohio Credit Union League appreciates the opportunity to provide comments on the NCUA's proposed rule modifying the Chartering and Field of Membership Manual regarding Associational Common Bonds, and is available to provide additional comments or information on this proposal if so requested. If you have any questions, please do not hesitate to contact me at (

Sincerely,



John F. Kozlowski  
General Counsel



Carole McCallister  
Manager, Regulation & Information

cc: Barry Shaner, OCUL Chair  
OCUL Board of Directors  
OCUL Government Affairs Committee  
Paul Mercer, OCUL President