

## NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Field of Membership and Chartering Policy

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

ACTION: Final Amendments to Interpretive Ruling and Policy Statement 94-1 ("IRPS 96-1").

SUMMARY: The NCUA Board is issuing amendments to its field of membership policies. One change will require senior citizen and retiree groups to meet the same conditions as other associational groups in order to qualify for a federal credit union charter or addition to an existing charter through a field of membership amendment. The Board is also issuing five amendments to clarify operational issues. The amendments clarify: 1) the application of field of membership requirements to mergers; 2) the streamlined expansion procedure; 3) the documentation requirements for low-income communities; 4) the use of surveys to support a community common bond; and 5) appeal procedures.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone (703) 518-6540.

### SUPPLEMENTARY INFORMATION:

#### A. Background

In 1984, NCUA adopted a policy which permitted federal credit unions (FCUs) to accept senior citizen and retiree members through the formation of associations. The only requirement for adding these associations to a credit union charter was a written request from the FCU to the NCUA; no request from the group or copy of the association's charter or bylaws was necessary. As a result, many FCUs added senior citizen/retiree associations to their charters. Subsequent policy statements, including Interpretive Ruling and Policy Statement 94-1 (IRPS 94-1) (the "Chartering Manual"), continued this policy. 59 FR 29066 (June 3, 1994).

In 1994, two bank trade associations and six Texas commercial banks filed suit against Communicators FCU of Houston, Texas, as a result of several additions to the FCU's field of membership. The suit challenged, among other additions, the 1994 addition of a senior citizen/retiree group formed solely for the purpose of acquiring credit union service. While upholding the other field of membership additions, the court vacated the addition of the senior citizen/retiree association and permanently enjoined NCUA from adding any similar associations to the FCU. Texas Bankers Association, et al. v. NCUA, et al., 1995 WL 328319 (D.D.C., May 31, 1995) (the "Communicators FCU" decision). On September 28, 1995, partly in response to the Communicators FCU decision, the Board issued proposed amendments to the Chartering Manual. 60 Fed. Reg. 51396 (October 4, 1995).

## B. Comments

Seventy comments were received. Comments were received from thirty-four federal credit unions, two state chartered credit unions, seven state credit union leagues and three national credit union trade associations. The comments were generally positive and supported most of the proposed amendments.

The Board also received comments from twenty-five banking associations. Briefly summarized, the bank commenters support NCUA's proposed amendment to require senior citizen/retiree groups to meet the same conditions as other associational groups before seeking to charter or join a federal credit union. The bank commenters argue against permitting federal credit unions that have adopted the "once a member, always a member" bylaw to continue serving members based on their membership in the senior citizen group. Many of the bank commenters also request that NCUA re-examine its policies relating to all forms of select group field of membership expansions.

### The Senior Citizen and Retiree Association Policy

The Board proposed to modify its senior citizen/retiree policy to require such groups to meet associational common bond requirements before seeking to join or charter an FCU. Twenty-three commenters agree with NCUA that senior citizen and retiree groups should meet the same criteria as other associational groups before seeking to charter or join a federal credit union.

Sixteen commenters disagreed with the Board's proposal. Seven of these commenters believe that such groups are an underserved segment of the population. They believe that a formal organization with bylaws and officer and membership requirements should be sufficient for senior citizen associations. Two commenters recommend that NCUA treat senior citizen groups the same as low-income groups. Two commenters state that the conversion of an existing group to a bona fide association should not require that the association be completely divorced from the credit union. They suggest that a senior citizen/retiree group could have bylaws that permit the group to have the same directors as the credit union and conduct their annual meeting concurrently with the credit union's annual meeting. One commenter suggests that the final amendments clarify that a credit union may help senior groups meet the associational common bond requirement.

The Board believes the policy modification is an appropriate response to the

Communicators FCU decision and is adopting the proposed amendment in final. In determining whether a group satisfies this common bond requirement, NCUA will consider the totality of the circumstances, such as whether the members pay dues, have voting rights, hold office, hold meetings, have a purpose other than to obtain credit union services, whether there is interaction among members and whether the group has its own bylaws. See, Chapter 1, Section II.B. of the Chartering Manual, 59 FR at 29076. Provided operational area requirements are met, senior citizen/retiree associations formed for purposes other than seeking credit union service will qualify to join an existing FCU. The Board is not requiring such associations to have a specific type of internal structure. Moreover, the Board continues to stress that an FCU may assist a senior citizen group to form an

association that will qualify under the Chartering Manual.

The Board also requested comment on how to address members of existing senior citizen/retiree groups which do not meet the proposed characteristics of an association. The Board proposed that such groups must meet the normal associational common bond requirements to enroll new senior citizen/retiree group members. If the credit union has adopted the "once a member, always a member" bylaw, it may continue to serve its current members. Fourteen commenters agree with this proposal. One commenter believes it would be unfair to current senior citizen members to deny them credit union service and benefits because of a change in NCUA policy.

Thirteen commenters oppose NCUA's proposed treatment of senior citizen/retiree groups that do not have associational characteristics. Nine of these commenters recommend grandfathering any existing senior citizen/retiree groups and allowing the credit unions to continue to serve the groups. Two commenters state that the Communicators FCU decision does not compel the Board to retroactively apply any new policy it adopts.

The comments from banking associations all opposed permitting existing members to retain membership.

The Communicators FCU decision does not compel the Board to apply its new policy retroactively. The Board considered whether to grandfather existing groups in the final amendment. However, in light of the rationale expressed in the Communicators FCU decision, the Board believes that grandfathering groups that do not meet the requirements of the new policy is inappropriate. Grandfathering the groups will simply invite litigation without furthering any of NCUA's chartering goals. Therefore, the Board is requiring that all existing senior citizen groups meet standard associational common bond requirements or be deleted from the charter. Many of these groups may already meet these requirements. If the FCU has adopted the "once a member, always a member" bylaw, it can continue to serve members who had joined based on their membership in the senior citizen/retiree group. Any other treatment would not be in the best interest of current members or the credit unions to which they belong. An FCU that has a group that does not meet the associational requirements in its field of membership should delete the group by submitting a charter amendment to the appropriate regional office. Compliance will be monitored through the exam program.

### Low-Income Associations

The Board did not propose any changes to the ability of a federal credit union to add low-income associations that are formed solely for the purpose of obtaining credit union service without meeting the standard characteristics of an association. Thirteen commenters agreed that credit unions should be allowed to add to low-income groups to their field of membership. Three of these commenters stated that this policy enables credit unions to serve groups not currently receiving financial services. One commenter believes this policy is consistent with credit unions' "people helping people" philosophy.

Five commenters stated that federal credit unions should not be allowed to add low-income groups formed solely for the purpose of seeking credit union service.

Two of these commenters found no reason to differentiate between senior citizen groups and low-income groups. One of these commenters believes eliminating this policy would not significantly affect the ability of low-income persons to join federal credit unions. One commenter believes it is preferable for low-income groups seeking credit union service to be encouraged to form a credit union rather than to be included in the field of membership of an existing credit union.

Congress and the NCUA Board have long recognized that special efforts must be made for those who are attempting to serve the needs of persons of limited means. The FCU Act was enacted "to make more available to people of small means credit for provident purposes through a national system of cooperative credit." 12 U.S.C. §1751. Congress established a special segment of credit unions serving predominantly low-income members. 12 U.S.C. 1752(5). Congress also established and funded a Community Development Revolving Loan Fund for Credit Unions, designed to help, through loans to credit unions serving predominantly low-income persons, in providing "basic financial and related services" to low-income persons and in "stimulating economic activities . . . which will result in increased income, ownership and employment opportunities for low-income residents." 12 CFR §705.2(a). See also, 12 U.S.C. §1766(k) (giving the Board authority over the Community Development Revolving Loan Fund for Credit Unions). NCUA defines as "low-income" persons earning less than 80 percent of the average for all wage earners and persons whose annual household income falls at or below 80 percent of the median household income for the nation. 12 CFR §701.32(d)(2). The Board believes that the current low income credit union program continues to serve an important governmental purpose and is therefore not modifying its low-income association policy.

## Clarifications of Operational Issues

The Board proposed five amendments to its chartering and field of membership policies to clarify operational issues. The amendments addressed: 1) the application of field of membership rules to credit union mergers; 2) the use of the streamlined expansion procedure; 3) the documentation requirements for low-income community credit unions as well as low-income additions; 4) the use of surveys to support a community charter; and 5) appeal procedures.

## Mergers

### *A. Operational Area*

The Board proposed to clarify how it applies operational and field of membership requirements to mergers. The Board reiterated that mergers will usually fall into the common bond addition or select group addition category, but some may fall into both categories. In a merger, common bond groups may be added to a federal credit union's field of membership without regard to location. The Board then clarified that for select group additions the field of membership requirements are met for each merging group only if the group could have been added to the continuing credit union without the benefit of the merger. The continuing credit union would have to analyze each group in the merging credit union's field of membership as if the continuing credit union was expanding its own field of membership without a merger. Three commenters support this proposal. One of these commenters believes that a more expansive policy would give large credit

unions a great advantage over smaller credit unions in expanding their field of membership. This commenter believes that most credit unions cannot realistically provide quality service to members who live and work a great distance from the credit union.

Thirty-four commenters disagree with the concept of applying operational area requirements to "select group additions" in a merger. Nineteen commenters believe that a discontinuing credit union's groups should be added to the continuing credit union's charter. Nine commenters believe that operational area is an anachronism in an era of significant technological advancements. Three commenters believe that mergers are a business decision that should best be left to credit unions, not NCUA. Three commenters state that the proposal is overly restrictive. Three commenters state that the clarification will create additional paperwork and delay approval. Two commenters believe the proposal will result in a decrease in the number of mergers. Two commenters state that mergers should be based on the services the continuing credit union can provide and the philosophical "fit" between the merging credit unions. One commenter believes that the economic impact on other credit unions in a similar area should not be the determining factor on whether a merger is approved or not. One commenter suggests NCUA should be concerned with safety and soundness issues and not field of membership issues when considering a merger.

The Board recognizes that how field of membership requirements should be applied in a merger is a continuing controversy within the credit union community. The Board wishes to reiterate that it is not willing to discard operational area requirements in the merger context. However, the Board believes that in response to changing technologies, operational area requirements need to be reviewed, and not only in the context of mergers. The Board is currently in the process of conducting such a review and may issue new policies after the study is complete.

The Board's proposed clarification may, however, impose a paperwork burden without providing any significant assistance in reaching NCUA's field of membership goals. In light of the commenter's concerns and the language of IRPS 94-1, the Board believes that the proposed clarification was overly broad and has reconsidered its position. Rather than requiring each group in the discontinuing field of membership to be within the operational area of the continuing credit union, any of the discontinuing credit union's groups that are within the operational area of either credit union may be transferred intact to the continuing credit union. Any group that is not within the operational area of either federal credit union, prior to the completion of the merger, will be deleted from the continuing credit union's field of membership and only members of record will be transferred to the continuing credit union.

This clarification should not significantly decrease the number of mergers or impose a significant burden on credit unions wishing to merge. Rather, it applies the operational area requirements to mergers as required by IRPS 94-1 since a group could not ordinarily be added to either credit union's field of membership if it was not within the operational area of the credit union.

The Board also requested comment on whether mergers should be limited to credit unions that primarily serve groups in the same geographic location. One commenter supports this concept. Fourteen commenters disagree and believe that

credit unions should be able to merge even if they do not primarily serve groups in the same geographic area. Seven commenters believe that geographic location is unimportant because of current and coming technologies. Four commenters state that the standard for considering mergers should be whether the continuing credit union can provide quality member services. One commenter believes that financial soundness is more important than geographic location. The Board is not placing any new geographic limitations on mergers but is continuing to study whether it should modify how it applies field of membership requirements to mergers.

### *B. Views of Overlapped Credit Unions*

The Board requested comment on whether it should require NCUA Regions to conduct an overlap analysis for merging credit unions and whether an affected credit union should be notified of the merger and be given an opportunity to comment or object. Twelve commenters wanted both an overlap analysis and the opportunity to comment or object. One of these commenters believes that some recent merger decisions have put some smaller credit unions in a competitive disadvantage with larger credit unions. One commenter believes that such an analysis is necessary because of the potential harm to the overlapped credit union. This commenter states that with respect to a preexisting overlap, NCUA should review the effect a proposed merger may have on the nature of any preexisting overlaps.

Sixteen commenters believe that NCUA should not require an overlap analysis for a group in a discontinuing credit union's field of membership that has service available from another credit union. Five of these commenters believe the analysis is unnecessary since one was conducted when the overlap was originally granted. Two commenters state that there is no useful purpose in re-examining an existing overlap. One commenter states that the merger should not adversely affect the credit union anymore than it was affected by the original overlap. Two commenters state that a merger does not add to the number of federal credit unions a member can belong, it just replaces an existing overlap with a different credit union.

The Board believes that conducting an analysis of a preexisting overlap is unnecessary. Such a requirement would increase the burden on the merging credit unions as well as NCUA without any corresponding benefit. The Board believes that transferring a preexisting overlap to the continuing credit would not ordinarily have a significant impact on any other credit union. Consequently, the Board is not modifying its existing policy which does not require the Region to conduct an overlap analysis for merging credit unions.

The Board also requested comment on whether credit unions that may be adversely affected by a merger should have the right to appeal the Regional Director's determination. The Board also asked whether NCUA should establish a formal process for credit unions to comment on a merger prior to the Regional Director making a determination. Thirteen commenters believe that NCUA should establish such a comment process; twelve oppose the right to appeal the Regional Director's decision. Four commenters state that such an appeal creates an unnecessary obstacle to a merger and will delay the process. One of these commenters believes that the appeal process will prove costly to NCUA and credit unions.

The Board believes that a formal comment period will delay the merger process and increase costs for credit unions and NCUA without any corresponding benefits. Therefore, the Board is not establishing such a process. However, the Board will continue to consider appeals from credit unions that may be adversely affected by a merger through the normal appeal process.

### *C. Waivers*

An operational area waiver procedure is available when a state-chartered credit union is merged into an FCU. The Board clarified that the waiver is discretionary on the part of NCUA and permits groups already receiving quality credit union services, who are located outside of the credit union's operational area, to continue to have credit union service after the merger. Two commenters recommend making available to federal credit unions the operational area waiver procedure. The Board does not believe the waiver procedure needs to be extended to federal credit unions because in almost all cases involving federal credit unions operational area requirements will be met. The Board is clarifying in the final amendments that the waiver is only available if the group is not being served by any other credit union. The Board will continue to review this area but is not making any further changes at this time.

### Streamlined Expansion Procedure (SEP)

SEP permits well-operated federal credit unions to add small groups of less than 100 persons with an occupational common bond to its field of membership without prior NCUA approval. The group must be located within 25 miles of the credit union's service facilities and in general, the group must not have credit union service available. The Board proposed three clarifications to this policy. First, the Board proposed that a credit union may use SEP if the only other credit union service available is from a community credit union. The Board is adopting this proposal. Nineteen commenters supported this proposal. One of those commenters requests that it be modified to protect community credit unions serving smaller rural communities. Another commenter that approved of the proposal states that there should be some minimum overlap protection for community credit unions.

Six commenters do not believe credit unions should be able to use SEP to overlap a community credit union. Three commenters believe any overlap of a community credit union should be done through the normal expansion process because the use of SEP could erode a community credit union's potential for growth. One commenter believes that community credit unions need overlap protection. One commenter states that if a company is within a community's boundaries and being adequately served by a community credit union, then no overlap should be permitted.

NCUA does not afford overlap protection to a community credit union when it is overlapped by an occupational group. Chapter I, IV.B.1, Chartering Manual, 59 FR at 29080. This long-standing policy is working well and the Board is not convinced that it should be changed. Since the standard policy is not being changed it is only logical to extend the policy to SEP. To do otherwise would simply place an unnecessary paperwork burden on credit unions and NCUA. Consequently, the Board is adopting the proposed amendment in final.

Second, the Board proposed that, consistent with standard field of membership expansions, the group as a whole will be considered to be within a credit union's 25 mile limit when: a majority of the group's members live or work within the 25 mile limit; or the group's headquarters is located within the 25 mile limit; or the group's "paid from" or "supervised from" location is within the 25 mile limit. Eight commenters support this proposal. One commenter objects to the proposed amendment. Eleven commenters believe that NCUA should eliminate the 25 mile limit for SEP because they believe the concept of operational area is outdated. Six commenters believe that groups added to a credit union's field of membership under SEP should be required to be within 25 miles of the credit union.

The Board believes the 25 mile limit for SEP is working well and should not be modified at this time. The Board is adopting the proposed amendment in final so that SEP's definition of a group's location is consistent with standard field of membership expansions. To eliminate any possible confusion the Board is reiterating that there is no standard 25 mile operational area limit for standard field of membership expansions.

Third, the Board proposed that if an FCU has SEP in its charter and merges into a credit union without SEP, the continuing credit union must submit a charter amendment and receive NCUA approval if it wishes to use SEP. Nine commenters support this proposal. One commenter states that applying for SEP is not a burden for credit unions. One commenter believes that this proposal provides NCUA with appropriate control. One commenter requests that NCUA clarify that if the continuing credit union already had SEP it would not need to reapply after the merger. One commenter believes that if either federal credit union in a merger has SEP then the continuing credit union should maintain SEP.

The Board is adopting this proposed amendment in final to maintain appropriate controls over SEP. The Board believes that the continuing credit union's application for SEP can be accomplished as part of the merger process. The Board is also clarifying that if the continuing credit union already has SEP it need not reapply after the merger.

#### Documentation Requirements to Establish Low-Income Services

The Board proposed that for new low-income charters or community expansions, the Regional Director would decide what documentation satisfies the community common bond requirement. The Board is adopting this proposal. Such documentation must clearly define the area's geographic boundaries and the charter applicant must establish that the area is recognized as a distinct "neighborhood, community or rural district." Chapter 1, Section II.C.1, Chartering Manual, 59 FR at 29077. Twelve commenters support this proposal. One commenter states that depending on the circumstances the Regional Director may be better able to determine documentation requirements. One commenter supports this proposal if it will result in providing more flexibility for groups seeking to charter low-income credit unions or for low-income community expansions.

Five commenters state that the Regional Director should not be allowed to determine the appropriate documentation for low-income charters or low-income expansions. Three commenters believe that documentation requirements for low-income credit unions and expansions should be specific and uniform. Two of the

commenters believe this proposal will result in inconsistencies among the Regions.

The Board believes that in many cases, a low-income area already has the common interest and characteristics of a community just by lacking the basic financial services found in more affluent communities. The Board also believes that allowing the Regional Director to decide what documentation will satisfy the community common bond requirement will provide NCUA with more flexibility in granting low-income community charters and low-income community expansions. The Board also expects that this amendment will minimize bureaucratic hurdles and expedite making credit union service available to persons in low-income communities. The Board will be monitoring the process to assure consistent application among NCUA Regions.

### Community Charters

The Board proposed to amend the Chartering Manual to clarify that surveys are not always required to demonstrate a community charter. Ten commenters agreed with this proposal and none opposed. Surveys should not be required if other evidence is more relevant or more clearly demonstrates the sentiment of the community. The Board is adopting the proposed amendment in final.

### Procedures for Appealing Chartering and Field of Membership Determinations

The Board proposed that all appeals be made within 60 days of the Regional Director's determination. Seventeen commenters agree with this proposal; two commenters believe there should be less time and four commenters oppose the proposed appeal procedure. Three commenters recommend that the appeal process for chartering and field of membership should be the same as those adopted by NCUA for examination issues. One commenter believes the current appeal process is sufficient.

The Board believes that a timeframe should be established to deal with appeals expeditiously and concludes that the 60 days proposed by a majority of those commenting gives the credit union sufficient time to appeal the region's determination. The Board also believes that it and not the supervisory review committee is best suited to resolve field of membership issues. The Board is adopting the proposed amendment in final.

The Board also requested comment on whether there should be a time limit on the Board to render a decision on the appeal. Fourteen commenters believe there should be such a time limit. Nine commenters suggest 60 days, four suggest 30 days and one suggests 10 days. Two commenters believe that the Board's time limit for deciding an appeal could be extended if there were extenuating circumstance or good cause. Two commenters state that there should be a procedure to protect credit unions from possible retaliation as a result of their appeal.

Recent experience leads the Board to believe that flexibility is necessary to respond to unique circumstances. The appealing credit union does not necessarily want the Board's determination fast, they want it correct. The Board is setting a goal of 90 days to render a decision. The Board will investigate any claim by a credit union

that believes it is being singled out by NCUA because of its proper use of the appeal process to immediately contact the Board.

## Miscellaneous Comments

There were several comments received which did not address themselves to specific requests for comment. Three commenters believe that charter amendments and mergers which create virtually unlimited fields of membership violate the cooperative nature of credit unions and dilute the principle of the common bond. One commenter, discussing operational area requirements, stated that if a select group feels they will be better served by a credit union 1000 miles away instead of the neighboring credit union then the select group should be permitted to be added to the field of membership of the distant credit union. One commenter states that NCUA should develop policies that would prohibit overlapping memberships. The Board is continuing to review operational area and overlaps and will take these comments into consideration when studying the issues.

One commenter states that the Regions should be required to make field of membership expansion determinations within 10 days. In fact, most determinations are made within a 10 day period. There are circumstances, however, which make it difficult meet this goal.

One commenter requests that students should be part of the community common bond so that persons who attend any educational institution located in a community would be eligible to join a credit union whose field of membership includes that community. The Board agrees. The Board believes that a student is working for the purpose of the community common bond and therefore a person going to school within a community but is not living within the community boundaries is deemed to be working in the community for field of membership purposes. One commenter believes that NCUA should not allow a federal credit union to add low-income communities to their field of membership. The Board disagrees. The policy is working well and has increased the number of low-income people receiving credit union service.

## Regulatory Procedures

### Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under \$1 million in assets). The changes to NCUA policy resulting from the adoption of these amendments to the IRPS do not have a significant economic impact on a substantial number of small credit unions. The changes are either legally required or simply clarify existing policy. Accordingly, the Board determines and certifies that this final rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Act analysis is not required.

### Paperwork Reduction Act

NCUA has determined that the requirement for a FCU to delete from its charter senior citizen/retiree groups that do not meet standard associational requirements

do constitute a collection of information under the Paperwork Reduction Act. The Paperwork Reduction Act and regulations of the Office of Management and Budget (OMB) require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of burden of the collection of information.

NCUA estimates that it should take an average of 15 minutes for an FCU to prepare and submit the required charter amendment. NCUA estimates that approximately 300 FCUs will need to submit the charter amendment, resulting in a total of 75 burden hours. This increase in burden will only occur once.

The NCUA Board invites comment on (1) whether the collection of information is necessary for the proper performance of the functions of NCUA including whether the information will have practical utility; (2) the accuracy of NCUA's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Suzanne Beauchesne, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. Comments should be postmarked by [insert date 60 days from the date of publication in the Federal Register].

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendments apply to federal credit unions as well as state chartered credit unions that seek to become federal credit unions. Therefore, the actions will not affect state interests.

List of subjects in 12 CFR part 701

Chartering, Conversions, Credit union, Field of membership addition, Mergers.

By the National Credit Union Administration Board on March 13, 1996.

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Becky Baker  
Secretary of the Board

Accordingly, NCUA amends 12 CFR part 701, by amending IRPS 94-1 as follows:

PART 701-ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Public Law 101-73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C 1601, et seq., 42 U.S.C. 1981 and 42U.S.C. 3601-3610.

Section 701.35 is also authorized by 12 U.S.C 4311-4312.

2. Section 701.1 is revised as follows:

§701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration practice and procedure concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 94-1 - Chartering and Field of Membership Policy (IRPS 94-1), as amended by IRPS 96-1. Both IRPS are incorporated into this regulation.

[Note: Neither the amendments nor the interpretive ruling and policy statement will appear in the Code of Federal Regulations.]

3. Chapter 1, Section II.C.2 is revised to read as follows:

II.C.2--Special Documentation Requirements

Information to support that the area chosen represents one welldefined area, distinguishable from the immediate surrounding areas, includes:

- political jurisdictions;
- major trade areas (shopping patterns);
- traffic flows;
- shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- organizations/clubs whose membership is made up exclusively of persons within the area;
- newspapers or other periodicals published for and about the area;
- census tracts;
- common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.);
- history of area; and
- in general, what causes the chosen area and its residents to be distinguishable from the immediate surrounding areas and residents -- some examples are old, well- established ethnic neighborhoods, planned communities and small/rural towns or rural counties.

The following information must be provided to support a need for a community credit union or community field of membership expansion:

- a list of credit unions presently in the area and those credit union's positions regarding a new charter or field of membership expansion; and
- a list of other financial institutions (for example, banks, savings and loan associations) that service the area.

Written documentation reflecting support for the application for the charter, field of membership expansion or conversion to a community credit union may be in the form of letters, surveys, studies, pledges, or a petition. Other types of evidence may also be acceptable. If a survey is used it should reflect the following:

For the residents of the community:

- approximate number contacted
- number in favor of the credit union
- number against the credit union
- number who will join the credit union
- number who have pledged initial and/or systematic savings and amount of pledges
- For the employers in the community:
  - number of area employers and number of employees
  - number contacted
  - number in favor of the credit union
  - number against the credit union
  - number willing to provide payroll deductions to the credit union
  - 
  - number willing to provide other type(s) of support to the credit union
- For community organizations (including churches):
  - number in area and number of members
  - number contacted
  - number in favor of the credit union
  - number against the credit union
  - number willing to provide some type of support to the credit union, i.e., advertising facilities, etc.
  - letters of support from area civic leaders

If the community is also a recognized legal entity, it may be served as, or be included in, the field of membership - for example, "DEF Township, Kansas" or "GHI County, Minnesota."

4. Chapter 1, Section V.A.2 is revised to read as follows:

V.A.2 -- Special Common Bond Rules for Low-income Federal Credit Unions

Generally, a low-income credit union is chartered as a community or associational credit union. The Regional Director will determine whether the applicants have provided sufficient evidence to demonstrate the need for a low-income community charter. Such evidence must establish that the geographic area's boundaries are clearly defined and that the area is recognized as a distinct neighborhood, community, or rural district. A low-income credit union that has a community common bond may include the following language in its field of membership:

"Persons who live in [the target area]; persons who regularly work, worship, perform volunteer services, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons."

In recognition of the special efforts needed to help make credit union service available to persons in low-income communities, NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income

persons. The association must be defined so that all its members will meet the low-income definition of Part 701.32 of NCUA's Regulations. The association, in documenting its low-income membership, may use the same types of documentation as are currently permitted for determining whether a community is low-income under Part 701.32 of NCUA's Regulations.

In addition, a proposed or existing low-income federal credit union whether community or associationally based, may include in its field of membership, without regard to location, one or more groups constituting an occupational, associational or community common bond. Except for the operational area requirements, the proposed or existing credit union must meet all the requisites for including the group in its charter. Moreover, the proposed or existing credit union must take care to ensure that it will continue to meet the requirements for low-income status.

5. Chapter 1, Section V.A.3 is revised to read as follows:

V.A.3 -- Special Common Bond Rules for Other Federal Credit Unions Seeking to Serve Low-income Persons

In the interest of making credit union service available to persons in low-income communities, NCUA also permits any occupational, associational, multiple group, or community federal credit union to include in its field of membership, without regard to location, communities and associational groups satisfying the low-income definition of Part 701.32 of NCUA's Regulations. The associational group may be formed for the sole purpose of providing eligibility for federal credit union service, but must comprise only persons meeting NCUA's low-income definition.

The federal credit union adding the low-income community or association must document that the community or association meets the low income definition in Part 701.32 of NCUA's Regulations, just as is required for a designated low-income credit union. The Regional Director will ensure that the proposed low-income community addition is sufficient to establish a community common bond. A federal credit union adding such a community or association, however, would not be able to receive the benefits, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions, offered to low-income credit unions.

A federal credit union that desires to include a low-income community or association in its field of membership must first develop a business plan specifying how it will serve the entire low-income community. The business plan, at a minimum, must identify the credit and depository needs of the low-income community or association and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan as well as loan penetration rates in the community to determine if the community is being adequately served. NCUA will require periodic service status reports on its service to the low-income community and may review the credit union's service to low-income persons during examinations.

6. Chapter 1, Section V.B is deleted and Sections V.C. and V.D. are redesignated V.B and V.C, respectively.

7. Chapter 1, Section VIII.D is revised to read as follows:

## VIII.D -- Appeal of Regional Director's Decision

If the Regional Director denies a charter application, the group may appeal the decision to the NCUA Board. If not included with the denial notice, a copy of these procedures may be obtained from the appropriate region. An appeal will be sent to the regional office within sixty days of the denial. The Regional Director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal with recommendations to the Board.

Before appealing, the prospective group may, within thirty days of the denial, provide supplemental information to the Regional Director for reconsideration. In these cases, the request will not be considered as an appeal but as a request for reconsideration by the regional director. If the request is again denied, the group may proceed with the appeal process.

8. Chapter 2, Section II.A.3.a is revised to read as follows:

### II.A.3.a--General

The special rules for credit unions serving low-income persons and serving employees at industrial parks, shopping centers and similar facilities apply equally to field of membership additions. However, there are two special situations unique to existing federal credit unions: (1) corporate restructurings and (2) plant or base closings, and other kinds of distress to a substantial portion of a credit union's membership.

9. Chapter 2, Section III.A is revised to read as follows:

### III.A -- Mergers

Generally, the standards applicable to field of membership amendments found in Section II of this chapter apply to mergers where the continuing credit union is a federal charter. This requires analyzing each group in the merging credit union's field of membership. Groups in the merging credit union that are within the operating area of either credit union may be transferred intact into the continuing credit union. Merger applicants must provide NCUA with their own analysis of how the proposed field of membership of the continuing credit union conforms to this policy. For those groups from the merging credit union that do not meet operational area requirements, unless granted a waiver under the procedure for merging state chartered credit unions, only the members of record will be transferred to the continuing credit union.

Where the merging credit union is state chartered, the field of membership rules for a credit union converting to a federal charter apply with the following differences:

In a merger involving a common bond addition, the requirements to provide a request for credit union service from the corporate, associational, or other unit to be added is not required, since the unit already has credit union service.

In a merger involving a select group addition:

For the same reason as above, the requirement for a letter from each group

included in the credit union's field of membership is not required.

Where a state credit union is merging into a federal credit union, the operational area requirement may be waived if it can demonstrate that the group does not have other credit union service available and the credit union will continue to be able to provide quality credit union service to the group. In determining quality of services, NCUA will consider the number of members of the group who are using the credit union's services. The waiver is discretionary on the part of NCUA and will be strictly scrutinized. The waiver will only be granted if supported by clear and convincing evidence. Absent any waivers, only members of record of groups that do not meet operational area requirements will be transferred to the continuing credit union. Upon merging, the state credit union's field of membership will be worded to conform to the NCUA standards set forth in Chapter 1. Any subsequent field of membership amendments must comply with applicable amendment procedures.

In a merger of a community credit union into a federal credit union of any type, the continuing credit union may be permitted to continue to provide service to the merging credit union's members of record as of the merger date where the operational area requirement is satisfied. Except in the case of an emergency merger or where the continuing credit union is low-income, the continuing federal credit union can obtain only the members of record of the merging community credit union.

Where both credit unions are community charters, the continuing credit union is a federal credit union, and the criteria for expanding the service area of a community federal credit union (as discussed previously in this Chapter) are satisfied, the entire field of membership of the merging credit union may be added to the continuing federal credit union's charter.

Mergers must be approved by all affected NCUA regional directors, and, as applicable, the state regulators.

10. Chapter 2, Section III.B. is revised to read as follows:

### III.B -- Emergency Mergers

NCUA may approve emergency mergers without regard to field of membership or other legal constraints. An emergency merger involves NCUA's direct intervention. The credit union to be merged must either be insolvent or be likely to become insolvent within 12 months and NCUA must determine that:

- an emergency requiring expeditious action exists;
- other alternatives are not reasonably available; and
- the public interest would best be served by approving the merger.

In an emergency merger situation, NCUA takes an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the

merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a federal credit union may take into its field of membership a group defined by a community or associational common bond permitted under state law, regardless of whether that common bond definition could be approved under the Federal Credit Union Act. If a federal credit union which has added groups or communities under an emergency merger later proposes to merge with another federal credit union, the groups or communities added pursuant to the emergency merger will not be subject to operational area or field of membership analysis.

11. Chapter 2, Section VIII.B is revised to read as follows:

#### VIII.B -- Streamlined Expansion Procedure (SEP) for Small Occupational Groups

In keeping with the goals of NCUA chartering policy to provide service to all eligible groups desiring credit union service, well operated federal credit unions except those designated as "distressed" may take advantage of the SEP for adding occupational groups to their fields of membership.

To use this procedure, the federal credit union's board of directors must first apply to their respective NCUA regional director for a charter amendment. The charter amendment request must be signed by the presiding officer of the board of directors.

The following is a sample amendment for permitting a federal credit union to use the SEP authority:

Groups of persons with occupational common bonds which are located within 25 miles of one of the credit union's service facilities, which have provided a written request for service to the credit union, which do not presently have credit union service available, other than through a community credit union, which have no more members in the group than the maximum number established by the NCUA Board for additions under this provision: Provided, however, that the National Credit Union Administration may permanently or temporarily revoke the power to add groups under this provision upon a finding, in the Agency's discretion, that permitting additions under this provision are not in the best interests of the credit union, its members, or the National Credit Union Share Insurance Fund.

Once NCUA has approved the amendment and the credit union board has adopted it, the SEP authority may be implemented. The charter amendment permits approved federal credit unions to immediately begin serving employee groups meeting criteria set forth in this section. Under this procedure, there is no formal NCUA action necessary on each group being added.

The maximum number of persons for each group of employees which may be added under SEP will be established by the NCUA Board from time to time. The number will be based on potential primary members -- that is, the persons sharing the basic occupational affinity to each sponsor group; family members and other derivative members are not included in the SEP limit. Several groups may be simultaneously added using these procedures; however, the maximum number of

persons for each group must fall within the SEP limit.

The SEP does not apply to associational groups since NCUA must review membership requirements and geographical area prior to these groups being added to a field of membership. The procedure also does not apply to community charter expansions, because of the more individualized analysis required.

The following SEP steps and documentation requirements must be adhered to:

The federal credit union must complete, for each group to be added, an Application for Field of Membership Amendment form, NCUA 4015, shown in Appendix D.

The federal credit union must obtain a letter, on the group's letterhead where possible, signed by an official representative identified by title, requesting credit union service and stating that the group does not have any other credit union service available from any associational, occupational or multiple group credit union.

The group must be located within 25 miles of one of the federal credit union's service facilities. The group will be considered to be within the 25 mile limit when: 1) a majority of the group's members live or work within the 25 mile limit; or 2) the group's headquarters is located within the 25 mile limit; or 3) the group's "paid from" or "supervised from" location is within the 25 mile limit.

The group must indicate the number of potential members -- the number of employees -- seeking service.

The federal credit union must maintain the above documentation permanently with its charter.

The federal credit union must maintain a control log of groups added to its field of membership under the SEP procedure. The control log must include the date the group obtained service, the name and location of the sponsor group, the number of potential primary members added, the number of miles to the nearest main or branch office, the federal credit union board of director's approval of the group and the date approved. See Appendix D for the SEP Control Log, NCUA 4016.

The groups added under SEP must be reported to the federal credit union's board at the next regular board meeting and made a part of the meeting minutes.

The control log and other SEP documentation must be made available to NCUA upon request.

The regional director may from time to time request service status reports on groups added under SEP. It is advisable to use some method, such as a sponsor prefix added to the member account number, to readily access data for such groups.

Should a federal credit union fail to provide quality credit union service, as determined by the group's members or employees, to a group added under SEP, NCUA may subsequently permit dual membership with another credit union.

Should a federal credit union fail to follow the above procedures or deteriorate

financially or operationally, NCUA, at its discretion, may revoke the SEP privilege.

If a federal credit union that has SEP in its charter merges with another federal credit union that does not have SEP, the continuing credit union, if it desires to have SEP, must submit a charter amendment and receive approval from NCUA to implement SEP. Otherwise, the groups obtained by the merging credit union through SEP must be listed specifically in the continuing credit union's field of membership or a reference to the merging credit union's SEP log must be made in the continuing credit union's field of membership as of the date of the merger.

12. Chapter 2, Section VIII.G is revised to read as follows:

#### VIII.G -- Appeal of Regional Director Decision

If a field of membership expansion, merger, or spin-off is denied by the Regional Director, the federal credit union may appeal the decision to the NCUA Board. If not included with the denial notice, a copy of these procedures may be obtained from the Regional Director who made the decision. An appeal must be sent to the appropriate regional office within sixty days of the denial. The Regional Director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

The federal credit union may, within thirty days of the denial, request reconsideration and provide supplemental information to the regional director. The request for reconsideration will not be considered an appeal but will toll the sixty day requirement to file an appeal until a ruling is received on the request for reconsideration.

13. Chapter 3, Section 3.H, is added as follows:

#### III.H -- Appeal of Regional Director Decision

If a conversion to a state charter is denied by the Regional Director, the credit union may appeal the decision to the NCUA Board. If not included with the denial notice, a copy of these procedures may be obtained from the Regional Director who made the decision. An appeal must be sent to the appropriate regional office within sixty days of the denial. The Regional Director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

The federal credit union may, within thirty days of the denial, request reconsideration and provide supplemental information to the regional director. The request for reconsideration will not be considered an appeal but will toll the sixty day requirement to file an appeal until a ruling is received on the request for reconsideration.

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