



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

January 3, 1990

Office of General Counsel

GC/MM:sg
SSIC 3320
89-1106

Mr. Dante J. Sarubbi
220 White Horse Pike
Audubon, New Jersey 08106

Re: South Jersey Federal Credit Union (Your October
31, 1989, Letter)

Dear Mr. Sarubbi:

You have asked us whether South Jersey Federal Credit Union ("FCU") comes within the definition of a "casino service industry" in view of its status under Federal law. Although, in our opinion, FCU's are not within the definition, that determination will be made by the Casino Control Commission. You also requested information on the regulation of Federal credit unions. See enclosed.

BACKGROUND

Recently, South Jersey Federal Credit Union assumed the membership and operation of the Casino Hotel Employees Federal Credit Union, which serviced employees of various casinos in Atlantic City, New Jersey. As part of its services, the FCU provides a payroll deduction plan in which the employer casino hotel deducts funds from employees' accounts and remits them to the FCU for deposit. New Jersey law requires that firms doing business with the casinos, designated as "casino service industries" must be licensed by the Casino Control Commission. The Casino Control

FOIA

VOL 10, Part H State Laws

Mr. Dante J. Sarubbi
January 3, 1990
Page 2

Commission believes that the FCU must qualify as a licensee in order to continue its relationship with the casino hotels. The justification for this position is that, during a twelve month period, the FCU received \$50,000 from a single casino hotel which represented deductions from the employee payroll which were remitted in a lump sum to the FCU. South Jersey Federal Credit Union is petitioning the Casino Control Commission to contest their designation as a "casino service industry."

APPLICABLE LAW

Section 5:12-91 of the Casino Control Act (N.J.S.A. 5:12-91) states in part that:

All casino service industries offering goods or services which directly relate to casino or gaming activity, including gaming equipment manufacturers, suppliers and repairers, schools teaching gaming and either playing or dealing techniques, and casino security services shall be licensed in accordance with the provisions of this act prior to conducting any business whatsoever with a casino applicant or licensee, its employees or agents, and in the case of a school, prior to enrollment of any students or offering of any courses to the public whether for compensation or not; provided, however, that upon a showing of good cause by a casino applicant or licensee for each business transaction, the commission may permit an applicant for a casino service industry license to conduct business transactions with such casino applicant or licensee prior to the licensure of that service industry applicant

Section 5:12-12 of the Casino Control Act (N.J.S.A. 5:12-2) defines a "casino service industry" as any:

. . . form of enterprise which provides casino applicants or licensees with goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility on a regular or continuing basis, including, without limitation, security businesses, gaming schools, manufacturers, distributors and servicers of gaming devices or equipment, garbage haulers, maintenance companies, food purveyors, and construction companies. . . .

Mr. Dante J. Sarubbi
January 3, 1990
Page 3

ANALYSIS

We have been in touch with the Casino Control Commission. It is our opinion that FCU's should not be classified as "casino service industries" pursuant to the statutory definition. This was brought to the attention of members of the Casino Control Commission. This Office was told that the Casino Control Commission did not have discretion on this matter. The FCU must submit a petition to the Casino Control Commission for a formal ruling on the issue.

The New Jersey Administration Code (Section 19:41-1.2s) allows a business or institution that normally must apply for a license to be granted an exemption from the license requirements when that business or institution is regulated by a public agency. Members of the Casino Control Commission have told us that the exemption could be granted if they conclude that unsavory characters would not be able to infiltrate the business or institution because of other government regulation. The National Credit Union Administration (NCUA) regulates and supervises FCU's. Enclosed is some general background information from the Federal Credit Union Handbook on NCUA's regulatory and supervisory functions which may prove helpful in formulating your petition. In addition, enclosed is Interpretive Ruling and policy Statement 89-1 - Chartering and Field of Membership Policy, which may also be helpful. (See, in particular, Proposed Management's Character and Fitness, found at 54 F.R. 31171.)

In August of this year, Congress passed the Financial Institution Reform, Recovery, and Enforcement Act of 1989. This statute, among other things, amended Section 205(d)(1) of the Federal Credit Union Act. It provides in part that, except with the prior written consent of the NCUA Board:

- (A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not participate, directly or indirectly, in any manner in the conduct of the affairs of an insured credit union; and
- (B) an insured credit union may not permit such participation.

In addition, Section 205(d)(2) of the Federal Credit Union Act provides that anyone who knowingly violates Section 205(d)(1) "shall be fined not more than \$1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years or both." Citation of these provisions in your petition should help allay any fears on the part of the Casino Control Commission on the infiltration of FCU's by unsavory characters.

Mr. Dante J. Sarubbi
January 3, 1990
Page 4

I hope we have been of assistance. Please feel to contact us if any new developments or questions arise.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Associate General Counsel

Enclosures



National
Credit Union Administration

Federal
Credit
Union
Handbook

federal credit union, as stated in Section 101 of the Act, remain unchanged.

National Credit Union Administration

The National Credit Union Administration is in the Executive Branch of the Federal Government. It receives no appropriations and operates solely from monies it receives from insured credit unions. NCUA is headquartered in Washington, D. C., but it operates on a highly decentralized basis through six regional offices which are located in Albany, New York; Washington, D. C.; Atlanta, Georgia; Chicago, Illinois; Austin, Texas (Suboffice in Sioux City, Iowa); and Walnut Creek, California. More than 80 percent of the Agency's employees are assigned to the regions. Each regional office is managed by a regional director who reports directly to the Chairman of the NCUA Board. The NCUA Board consists of a Chairman, a Vice Chairman, and a third Board Member, each appointed by the President and confirmed by the Senate. The NCUA Board and its headquarters staff provide policy direction and administrative support to the regional offices.

NCUA Rules and Regulations

Under authority of the Federal Credit Union Act, NCUA prescribes rules and regulations for the organization and operation of federal credit unions. All rules and regulations are published in the National Credit Union Administration Rules and Regulations.

It is NCUA's policy to ensure that its regulations impose only minimal burdens on credit unions, consumers, and the public; are appropriate for the size of the financial institutions regulated by the Agency; and are clear and understandable. No major regulatory changes are made without first affording federally insured credit unions and other interested persons the opportunity to comment. Credit union officials are encouraged to participate in the regulatory process and submit their comments to NCUA. For further information about the Agency's policies for the promulgation of rules, see NCUA Interpretive Ruling and Policy Statement No. 87-2, dated September 18, 1987. Once finalized, the rules and regulations are officially codified in Chapter VII, Title 12 of the Code of Federal Regulations and have the force of law similar to the requirements of the Federal Credit Union Act.

Charter

After an organization certificate filed by the subscribers of a proposed federal credit union is approved by NCUA, the document becomes the credit union's official charter. Among other things, the charter includes the official name of the credit union and defines its field of membership.

A federal credit union may make changes in its name by amendment to the charter. Amendments should be made from information on charter amendments from NCUA's regional offices.

Bylaws

NCUA prescribes standard bylaws (8001) for adoption upon charter approval by directors, the standard bylaws apply to all credit unions.

Standard bylaw amendments are approved by regional directors without further NCUA approval of non-standard amendments. Regional directors for NCUA may also see *Federal Credit Union Standards* (NCUA 8001A).

NCUA Letters, Interpretive Rulings and Policy Statements

NCUA publishes numbered letters, interpretive rulings and policy statements which deal with a variety of supervisory issues for federally insured credit unions. These are kept in permanent files for ready reference.

Examinations

The principal method by which NCUA exercises its supervisory responsibility is through on-site examinations. Examinations are designed to evaluate the credit unions' employees in carrying out their duties.

It is essential that the credit union cooperate fully throughout the examination process. The credit union's books and records should be available to the examiner. With the cooperation of the credit union, the examiner will be able to conduct an examination that will keep to a minimum any disruption of the credit union's operations.

It is important to understand that the responsibility for the audits rests with the credit union's supervisory committee. The examiner's objectives are to determine if the credit union is financially sound and that it is in compliance with applicable laws and regulations.

The examiner will discuss with the credit union's employees any problems or concerns and will discuss the soundness of the credit union's operations.

Part I

Federal Credit Unions

A federal credit union is a cooperative non-profit financial institution organized to provide its members with a place to save and a source of loans at reasonable rates. It is a corporation chartered under the Federal Credit Union Act to serve groups having a common bond of occupation or association, or groups within a well defined neighborhood, community, or rural district. More information about federal credit union organization and the chartering policies of the National Credit Union Administration (NCUA) may be obtained from NCUA's regional offices.

The Federal Credit Union Act

The Federal Credit Union Act provides for the chartering and supervision of federal credit unions by NCUA and the insuring of member accounts of federal and state-chartered credit unions through the National Credit Union Share Insurance Fund.

Section 107 of the Federal Credit Union Act specifically defines a federal credit union's direct (express) powers. They include, for example, the power to accept share deposits, make loans to members, and borrow funds. Section 107 of the Act also confers indirect (incidental) powers upon a federal credit union. These are powers which are considered necessary to enable a federal credit union to carry out the business for which it was chartered. The Act does not specifically define indirect powers; the board of directors should therefore satisfy itself that any activity not specifically authorized by the Act or NCUA Rules and Regulations is clearly within the credit union's indirect powers. If the board of directors has any questions with respect to the proposed activity, it should seek legal advice or consult the appropriate NCUA regional director.

Since 1934, various amendments to the Federal Credit Union Act have greatly expanded the ability of federal credit unions to meet their members' financial needs; however, the basic purposes of a

tion 101 of the Act, remain

Administration

ration is in the Executive receives no appropriations receives from insured credit Washington, D. C., but it is through six regional offices New York; Washington, D. C.; Austin, Texas (Suboffice in San Diego, California. More than 80 are assigned to the regions. Each regional director who reports to the NCUA Board. The NCUA Board Chairman, and a third Board member, and confirmed by the regional headquarters staff provide policy to the regional offices.

Under the Federal Credit Union Act, NCUA prescribes the organization and operation of federal credit unions. Regulations are published in the Federal Credit Union Rules and Regulations.

Under its regulations impose only on consumers, and the public; are institutions regulated by the Act. No major regulatory action regarding federally insured credit unions without the opportunity to comment. Credit unions are invited to participate in the regulations promulgated by NCUA. For further information on the promulgation of regulations and Policy Statement No. 1000-1000. Once finalized, the rules and regulations have the force of law similar to the Federal Credit Union Act.

By the subscribers of a proposed Federal Credit Union Act, the document becomes the charter. In other things, the charter in the Federal Credit Union Act defines its field of

A federal credit union may find it necessary from time to time to make changes in its name or field of membership, requiring an amendment to the charter. Applications for approval of such amendments should be made to the regional director. Further information on charter amendment procedures may be obtained from NCUA's regional offices.

Bylaws

NCUA prescribes standard Federal Credit Union Bylaws (NCUA 8001) for adoption upon chartering. Once adopted by the board of directors, the standard bylaws become the official bylaws of the credit union.

Standard bylaw amendments may be adopted by the board of directors without further NCUA approval. Applications for approval of non-standard amendments should be forwarded to the regional director for NCUA consideration. For further information, see *Federal Credit Union Standard Bylaw Amendments and Guidelines* (NCUA 8001A).

NCUA Letters, Interpretive Rulings, and Accounting Bulletins

NCUA publishes numbered Letters to Credit Unions, Interpretive Rulings and Policy Statements, and Accounting Bulletins. These deal with a variety of subjects of interest and application to federally insured credit unions. They should be retained in the permanent files for ready reference.

Examinations

The principal method by which NCUA carries out its supervisory responsibility is through on-site supervisory examinations. These examinations are designed to assist the credit union's officials and employees in carrying out their duties and responsibilities.

It is essential that the credit union's officials and employees cooperate fully throughout the examination. This includes making the credit union's books and records readily available to the examiner. With the cooperation of the officials and employees, the examiner will be able to complete the examination more quickly and keep to a minimum any disruption of normal office routine.

It is important to understand that supervisory examinations are not audits. The responsibility for auditing the credit union is placed on the supervisory committee by the Federal Credit Union Act. The examiner's objectives are to determine that the credit union is financially sound and that its operations are being conducted in compliance with applicable laws and regulations.

The examiner will discuss with the appropriate officials and employees any problems or conditions that impair or may impair the soundness of the credit union. The examiner will also assist the

officials in developing plans designed to overcome the underlying causes of any current or potential problems. Through conferences with the officials, the examiner will ensure that they understand what must be done to improve operations.

The results of the examination are provided to the credit union in a written report. To derive the greatest benefit from the examination, the board of directors and committee members should review the report carefully. The board is responsible for taking any necessary action, and the supervisory committee has the duty to determine that the board has followed through.

Organizational

Eligibility for membership in persons and organizations within the credit union's field of membership. A person becomes a member upon payment of the initial installment therefor as required by the board of directors.

The members exercise democratic control by attending and participating in meetings, and by electing a committee, if the bylaws so provide. No member may vote by proxy and no person may vote through a proxy.

Regular and special meetings shall be held in accordance with Sections 110, 115, and 116 of the Act and Articles V, VI, and X of the bylaws.

A member may be expelled from membership by the board of directors if the member is in violation of the Act and Article XVI of the bylaws.

Board

The board of directors is elected by the members and is required to provide general direction for the credit union and is required to meet at least quarterly. The board shall consist of not fewer than five members, not fewer than one-third of whom shall be members of the credit union, and the board may, as such, be

Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

4. In § 77.1, the definition of "Accredited-free state", paragraph (1)(ii), remove the words "Veterinary Services" in the first and second sentences and add "APHIS" in their place.

5. In addition to the amendments set forth above, in 9 CFR Part 77, remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 77.1, definition of "Modified accredited state", paragraph (1)(ii), first and second sentences.

(b) Section 77.1, definition of "Official seal".

(c) Section 77.1, definition of "Uniform Methods and Rules—Bovine Tuberculosis Eradication".

6. In § 77.1, footnote 1 is revised to read as follows:

1. Copies may be obtained from the Animal Health and Depredation Management Systems Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 8505 Belcrest Road, Hyattsville, MD 20782.

§§ 77.1, 77.4, and 77.5 [Amended]

7. In addition to the amendments set forth above, in 9 CFR Part 77, remove the words "a Veterinary Services" and add, in their place, the words "an APHIS" in the following places:

(a) Section 77.1, definition of "Certificate";

(b) Section 77.1, definition of "Permit";

(c) Section 77.4(a);

(d) Section 77.5, paragraph (a)(1), the first and second sentences of paragraph (a)(5), and paragraph (b)(1).

§§ 77.5 and 77.6 [Amended]

8. In addition to the amendments set forth above, in 9 CFR Part 77, remove the word "Deputy" in the following places:

(a) Section 77.5, paragraphs (a)(5) and (b)(1); and

(b) Section 77.6, first and second sentences.

Done at Washington, DC this 24th day of July, 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-17573 Filed 7-26-89; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Charter-Related Activities

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

ACTION: Final rule and final Interpretive Ruling and Policy Statement 89-1—Chartering and Field of Membership Policy (IRPS 89-1).

SUMMARY: The NCUA Board has undertaken a full reexamination of the policies and procedures under which a Federal credit union may obtain and modify its charter. The NCUA issued a proposed IRPS in March of this year to address the entire range of chartering and field of membership activities—new charters, field of membership additions, name changes, mergers and spin-offs, and charter conversions. The proposed IRPS, with minor modification, is now made final and replaces IRPS 84-1 entitled "Membership in Federal Credit Unions," the 1980 NCUA manual entitled "Chartering and Organizing Manual for Federal Credit Unions," the 1985 NCUA pamphlet entitled "Chartering & Organizing of Federal Credit Unions," the NCUA Board's decisions on chartering issues made in November 1988, and all other previous NCUA statements on these matters. IRPS 89-1 will be incorporated into a manual which will include a preface, introduction, glossary, sample forms, and a revised list of type of membership codes. The NCUA will publish the manual and distribute it to credit unions in the fall of 1989.

The NCUA is also issuing a final rule to update § 701.1 of its Rules and Regulations entitled "Organizing a Federal credit union" so that it references and incorporates IRPS 89-1 into the regulations.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Regional Director, Region IV, (Chicago), 300 Park Blvd., Suite #155, Itasca, Illinois 60143, or telephone: (312) 250-6000.

SUPPLEMENTARY INFORMATION: Background

On March 24, 1989, the NCUA Board published a proposed Interpretive Ruling and Policy Statement (IRPS) on chartering and field of membership policies and a proposed rule referencing the IRPS. (See 54 FR 1221.) The proposal was issued with a sixty day comment period that was extended by the NCUA Board for thirty additional days due to public request. The proposed IRPS generally prescribed existing policies and procedures as set forth in previous publications or as practiced by NCUA staff. Changes in policy were highlighted in the supplementary information section to the IRPS. The IRPS is composed of three chapters titled as follows: 1—Federal Credit Union Chartering; 2—Changes in Field of Membership; and 3—Charter Conversions.

Commenters

Forty-two public comment letters were received. Comments were received from four national credit union trade associations, five state credit union leagues, nineteen federally-chartered credit unions, three state-chartered credit unions, one bank, six banking trade associations, and four individuals.

No specific comments were made on Chapter 3—Conversions. The Board has made a few minor changes to Chapter 3. They are discussed at the end of the Supplementary Information section.

A clarification has been made in several places in the IRPS. The NCUA's goal of making credit union service available to "all those who wish to have it" has been changed to "all eligible groups who wish to have it" to clarify that groups must meet field of membership requirements in order to qualify for credit union service. Minor word changes and grammatical corrections made throughout the IRPS are not discussed.

The comments were, for the most part, favorable and were made on existing policy, rather than the few proposed policy changes set forth in the proposed IRPS. All comments on proposed policy changes are specifically noted. Specific issues addressed in the comment letters and changes made to the IRPS are discussed below.

Issues Raised

A number of commenters raised concerns about how NCUA would define "operating satisfactorily." This is a factor cited in Chapter 2 under the heading "Reviewing Field of Membership Addition Requests" as a general prerequisite for Federal credit unions (FCU's) to receive favorable

consideration of field of membership amendment requests. The intent of the IRPS in using this terminology was to give the Regional Directors sufficient latitude to deal with a variety of circumstances. However, in Chapter 2 under the headings "Select Group Additions" and "Reviewing Field of Membership Requests" there is some explanation of the factors to be considered in making this judgment. The discussion under these headings states that among the criteria to be considered are the applicant credit union's current financial condition and CAMEL rating. Among the comments received were four which recognized NCUA's need for flexibility in making this evaluation and the inappropriateness of specific negating standards. For instance, if the IRPS was to indicate that no FCU's with CAMEL ratings of 3, 4 or 5 would be considered favorably, then a number of FCU's which either are in an improving status or which have problems (such as a declining field of membership) which may best be dealt with by field of membership expansions would automatically be excluded from favorable consideration. The Board has therefore determined not to specifically define "operating satisfactorily."

Another generally-defined concept which drew comments was the "convincing support" required by groups with fewer than 500 potential members which are seeking a Federal credit union charter. The NCUA Board maintains that the economic advisability requirements for a charter applicant cited in Chapter 1, II, C. give adequate definition to the terminology. Furthermore, more than half of the respondents who commented on this issue either agreed with the appropriateness of this language or asked that the Board be even more stringent in establishing and enforcing minimum potential member requirements. Since this is an issue (minimum potential member requirements for new charter applicants) which has been previously considered on two occasions by the NCUA Board and for the above noted reasons, no further review is necessary and no change in the IRPS is appropriate.

In a related vein, several commenters expressed concerns about the requirement placed on new charter applicants to conduct potential membership surveys. This requirement is set forth in Chapter 1, II, C.—"Economic Advisability." A minimum of 250 potential members must be included in the survey sample regardless of the new group's total potential membership.

This specific requirement is a new one. Generally, 500 potential members are required for the FCU to have the minimum required economic advisability. The fact that this issue was questioned by only two commenters combined with the need for "convincing support" by applicants with fewer than 500 potential members as expressed above suggests that the policy is reasonable.

Another issue which drew comments was whether a business plan should be required from FCU's seeking significant field of membership expansions. The proposed IRPS stated that "the Regional Director may, at his discretion, after taking into account the significance of the field of membership expansion proposed, require the applicant to submit a business plan." (See Chapter 2, "Reviewing Field of Membership Addition Requests.") The commenters were evenly split on this issue. One of the commenters suggested that the NCUA board impose a requirement for a business plan in those instances where the expansion requested involves an addition in excess of 25% of the FCU's current membership. Such a modification could work to the NCUA's and FCU's detriment in a number of situations. For instance, if a large FCU serving 100,000 members asks to add a group with a potential membership of 20,000, it may be unnecessary to require a business plan. On the other hand, it may be necessary for a small FCU serving 200 members to submit a business plan in order to add a select group with as few as 50 potential members. The NCUA Board maintains that flexibility in this area is advisable and therefore makes no change to the IRPS.

Several respondents commented on the proper channelling of appeals of decisions by Regional Directors. Chapter 1, X "Appeals" and Chapter 2 "Reviewing Field of Membership Requests" state that appeals to the NCUA Board should be submitted through the appropriate Regional Director. The majority of the commenters indicated that the appeals should go directly to the NCUA Board, instead of to the Regional Director whose decision is being appealed. The existing system for processing appeals was not established and is not changed by this IRPS. It has been in place for some time to accommodate appeals of all types of Regional Director decisions. This IRPS is not the vehicle to accomplish a change in the appeal process. Appeals are not handled by the Regional Offices. They are forwarded by the Region to NCUA's Central Office

and are investigated and presented to the NCUA Board by staff who are objective and have had no previous involvement in the case.

Service status reports (defined in the IRPS at the end of Chapter 2) as a written summary of the result of FCU efforts to bring service to members of select groups added) were questioned by a number of commenters. Some of these commenters, including several who supported the concept in general, asked that the IRPS clearly state the purpose of the reports, the specific information to be accumulated, and the intervals at which the reports are to be submitted. The IRPS does indicate the fundamental purposes of the service status reports. In addition to assisting credit union management in assessing marketing needs and successes, the reports provide the NCUA with information to evaluate the extent to which an applicant FCU is serving its current potential membership. As far as the specific information to be reported and the intervals at which the reports are to be submitted, those determinations are best left to the respective Regional Directors based on the circumstances involved in each case. Hence, no change is made in this area.

Community chartering and field of membership policies received a variety of comments. First, a number of commenters were concerned about the policy change deleting select group additions for community FCU's. (See Chapter 2 "Community FCU Field of Membership Expansions" and discussion in Supplementary Information section of proposed IRPS.) The Board maintains that the elimination of this alternative for community charters is appropriate. In order for a community credit union to expand its field of membership, it must provide evidence that the extended area of service possesses all of the characteristics of a well-defined community. Upon presentation of such evidence, and satisfaction of all other appropriate criteria, the community charter's boundaries will be modified and its area of service will be enlarged. The intent of IRPS 84-1, which first provided community charters access to select groups was to allow community charters to add such groups outside the described community boundaries, but only after the area outside the boundaries had been shown by applicant FCU to represent a natural extension of the original community. The Board believes that community chartering policy should be to encourage service to all of those within the

community boundaries and therefore makes no change to the IRPS.

A related question raised by several commenters is what happens to select groups located outside of a community charter's specified boundaries which were added to a community charter's field of membership during the past five years. These groups would continue to have membership eligibility from the community FCU. They would continue to be specifically named in the community FCU's field of membership.

A number of respondents questioned whether partnerships, corporations, and other legal entities ("non-natural persons") could be included in the field of membership of community-chartered FCU's without being specifically listed in Section 5 of the charter. These non-natural persons are legal entities which are located within the boundaries of community charters. One commenter pointed out that Part 705 of the NCUA Rules & Regulations formerly included discussion about this topic and provided specific wording for use in community charter field of memberships. In addition, many community charters have assumed that these non-natural persons qualify for membership under the general clause "organizations of such persons." The NCUA Board is persuaded that a clarification is necessary. Hence, a change in the IRPS is appropriate. Chapter 1, Section II, subsection 3, has been modified accordingly. Also, the community field of membership examples have been modified to show that business and other entities within the service area can become members without being specifically listed in the charter.

The topic of overlaps (see Chapter 1, II, C, 2.) received the attention of a number of commenters. Most commenters agreed with the approach to overlaps expressed in the IRPS. The remarks about overlaps from a credit union trade association commenter are particularly noteworthy. The commenter indicates that procedures to deal with material and potentially troublesome overlaps have been addressed by NCUA but similar procedures have not been forthcoming from state regulators' offices. The commenter encourages NCUA to develop agreements with each of the state regulators which will facilitate a two-way flow of information regarding overlaps or potential overlaps that are consistent with the dual chartering policy. The Board believes that its overlap policy as set forth in the IRPS is appropriate. However, NCUA continues to pursue such agreements with state regulators.

The policy of granting cross-regional associational charters and field of

membership expansions (see Chapter 1, IV—"Widely-Dispersed Associated Charters") drew a number of comments. Most of the commenters agreed with the position taken in the IRPS which mandates that affected Regional Directors vote on such expansions and charters. Several commenters indicated complete opposition to such charters/expansions and asked for a total prohibition of such groups. Two other commenters indicated that the policy is an overreaction to the granting of a few charters. The NCUA Board continues to believe that this policy, adopted last year, is reasonable and appropriate and that it should be left intact. A clarification that this policy applies to expansions is made to Chapter 2 at the end of the Section entitled "Select Group Additions."

Several commenters recommended that the term "expansion" be deleted from Chapter 2 of the IRPS and that some other similar term such as "adjustment," "change," "addition," or "amendment" be substituted therefore. The term "expansion" was eliminated where possible prior to the publication of the proposed IRPS. Accordingly, no further substitutions/changes have been made.

The retiree/senior citizens policy received several comments. This policy is set forth in Chapter 2—"Addition of Retiree or Senior Citizen Associations" and has been NCUA policy since 1984. All credit union comments were supportive of the policy. Letters from four bankers' associations opposed the policy. This policy is not new and is generally considered to be noncontroversial. Hence, no change is made.

The issue of background/credit checks for prospective officials/employees of new FCU's received unanimously favorable comments. This is addressed in Chapter 1, II, C, 1, b—"Proposed Management's Character and Fitness." One commenter suggested that some type of safeguards be added to prevent "straw man" officials from circumventing the policy's purpose. Although the Board recognizes this concern as genuine, we believe that the commitment to serve document that each prospective official must sign is a reasonable counterbalance. No threats/punitive actions would be appropriate since the Board does not wish to discourage persons from serving in these largely volunteer capacities. Therefore, no changes are made.

Several comments were received about the section in Chapter 1 entitled "Appropriateness of Proposed Federal Credit Union Name." (See Chapter 1, III.) These limits on the naming of FCU's

are longstanding NCUA policy. However, this is the first time they have been set forth in an IRPS. Although the commenters were generally in agreement with the discussion in the proposed IRPS, one commenter wanted the list of inappropriate names expanded to include names used by other financial institutions and by the U.S. Government. There is in existence a criminal statute prohibiting misuse of titles of federally-insured institutions. Since it is required that the last three words of every Federal credit union's name must be "Federal Credit Union," no modification to this section is necessary.

The issue of emergency mergers/purchase and assumptions received a number of comments. (See Chapter 2 section entitled "Additions Via Mergers and Purchase and Assumptions.") The credit union commenters supported the policy in the proposed IRPS, the bankers' associations were opposed. The bankers' associations claimed generally that the policy results in dilution of the common bond. The Board maintains that the latitude permitted in this subsection of the IRPS is good public policy since it serves to reduce the exposure to loss by the National Credit Union Share Insurance Fund. Also, the consolidation of a troubled credit union's field of membership with an effectively-operated FCU does not create new credit union service. Existing eligibility for membership is simply transferred from one credit union to another. These are not new NCUA policies and the NCUA Board believes no change to them is necessary.

The requirement for new charter applicants to enter into a Letter of Understanding & Agreement (LUA) received several comments. This issue is discussed in Chapter 1, VIII entitled "LUA's." LUA's have been traditionally used with new charters. One commenter stated that it should be made clear to the officials of a new FCU that the terms and conditions in the LUA's may be modified. Accordingly, a change has been made to Exhibit B of the IRPS adding a seventh clause to the specimen LUA to read "As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties." Another commenter asked that NCUA specify the precise circumstances under which an LUA will be required. The IRPS states that LUA's will be required for most new charter applicants.

The policy on chambers of commerce and similar organization drew several

comments. The policy set forth in the proposed IRPS prohibiting inclusion of the employees of member of a chamber of commerce, or similar association, in a credit union's field of membership elicited several negative comments. The IRPS states that if an FCU wishes to serve the employees of a members of a chamber of commerce or similar professional organization (e.g., employees of member of a bar or medical association, employees of a franchisee), it must follow the procedures for field of membership expansion set forth in the select group expansion section. Although this may be considered a tightening of chartering and expansion policies, it does not eliminate the availability of credit union service to any group. Hence the Board makes no change to the proposed IRPS.

One commenter wanted the IRPS to assure new charter applicants that their proposed field of membership would be given consideration early on in the chartering process. Although the IRPS does not directly address this concern, there is a full discussion of what types of fields of membership are appropriate and inappropriate. Charter applicants should deal with field of membership issues up-front. The Regional Offices are prepared to answer any questions and settle any uncertainties pertaining to field of membership which the charter applicant is unable to resolve by reading the IRPS. Therefore, no change is made.

One commenter recommended that there be specific discussion and encouragement in the IRPS relating to FCU service to high school student groups. Chapter 1, II, A, 2 notes that student groups constitute an associational common bond. High school student groups do qualify as student groups. It should be noted that high school student groups may be added to an existing Federal credit union under the policy pertaining to select associational group expansions. Of course, all other select groups expansion requirements must be met.

Though no comments were received on charter conversions (Chapter 3), NCUA took a final look at the subject and found some additional ways to streamline and clarify the state-to-Federal charter conversion process. The three significant changes were: (1) Addition of specific reference to the need and timing for submitting Form NCUA 4000 (Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter); (2) deletion, as unnecessary, of the requirement to submit a Form NCUA 5300; and (3) addition of specific

reference to the time when an NCUA on-site review will be conducted.

Comments were received recommending that the introduction or preface to be part of the manual incorporating the IRPS contain a thorough discussion of credit union uniqueness, philosophy, and the common bond. The introduction to the manual will contain such a discussion. Another commenter recommended that a "glossary" be added to furnish definitions of special terminology such as "select group" and "multiple group charter." The Board believes this recommendation is a good one, hence a glossary will be included as part of the manual.

Regulatory Procedures

Regulatory Flexibility Act

As was noted in the proposed IRPS, the NCUA Board has determined and certifies that changes to NCUA policy resulting from adoption of the IRPS will not have a significant economic impact on a substantial number of small credit unions (those under \$1 million in asset size); changes are directed at clarification of existing policy rather than creation of new restrictions. Therefore, a regulatory flexibility analysis has not been performed.

Paperwork Reduction Act

This IRPS does contain several collection requirements. All of the collection requirements contained in the IRPS and NCUA forms which will be a part of the manual were submitted to the Office of Management and Budget (OMB) for approval in early June. We have not yet heard from OMB. A notice of OMB approval will be published in the Federal Register upon its receipt. Any comments regarding collection requirements should be sent to the NCUA, Administrative Office, 1776 G Street, NW., Washington, DC 20456; and to Gary Waxman, OMB, Room 3228, NEOB, Washington, DC 20503.

Executive Order 12812

Implementation of the IRPS will not affect the state regulation of either federally- or state-chartered credit unions.

List of Subjects in 12 CFR Part 701

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

By the National Credit Union Administration Board on July 20, 1989.

Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA amends 12 CFR Part 701, supersedes IRPS 84-1 and

establishes the following IRPS 89-1 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. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.1 is revised as follows:

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

National Credit Union Administration practices and procedures concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 89-1—Chartering and Field of Membership Policy (IRPS 89-1). The IRPS is incorporated into this regulation. Copies of the IRPS can be obtained from the National Credit Union Administration, Washington, DC, 20456.

3. IRPS 84-1 is superseded by the following IRPS 89-1.

Note.—The following ruling will not appear in the Code of Federal Regulations.

INTERPRETIVE RULING AND POLICY STATEMENT 89-1—CHARTERING AND FIELD OF MEMBERSHIP POLICY

Chapter 1—Federal Credit Union Chartering

I. Goals of NCUA Chartering Policy

NCUA's chartering policies are directed toward achieving three goals:

- A. To uphold the provisions of the Federal Credit Union Act concerning granting Federal charters;
- B. To promote credit union safety and soundness; and
- C. To make quality credit union service available to all eligible groups who wish to have it.

II. Who May Apply for a Federal Credit Union Charter

NCUA may grant a charter to any group where it finds:

- The group possesses a recognizable and appropriate common bond;
- The subscribers are of good character and are fit to represent the group; and
- Establishment of the credit union is economically advisable—i.e., it will be a viable institution and its chartering will not materially affect the interests of other credit unions or the credit union system.

Generally, these are the only criteria NCUA will look to. In unusual

circumstances, however, NCUA may consider other factors, such as other Federal law or public policy in deciding if a charter should be approved.

A. *Common Bond.* Congress has recognized three types of Federal credit union common bonds: occupational, associational, and community. A Federal credit union may also consist of a combination of occupational and associational groups—for example, NCUA may charter a Federal credit union consisting of employees of a local school district and members of a church group. Individual groups have their own common bond. All of the groups belonging to one particular credit union (i.e., listed in Section 5 of the credit union's charter) make up the credit union's field of membership.

If the charter is granted, the Federal credit union will only be able to grant loans and provide services to persons within the groups defined in the charter. If the Federal credit union later wishes to add persons to its field of membership, it must submit a charter amendment request to NCUA in accordance with the procedures set forth in Chapter 2.

1. *Occupational Common Bond.* NCUA has limited this common bond to employment by the same enterprise. Persons sharing this common bond may be geographically dispersed. Employees of a parent corporation and its wholly-owned subsidiaries and persons under contract to work regularly for an enterprise may be considered under a single occupational bond. Each category to be served (e.g., subsidiaries, contractors) must be separately listed. Persons with different employers, even if closely related geographically—persons working at a single shopping center, industrial park, or office building, for example—are not treated as having a single common bond, but will be considered under NCUA's community or multiple-group charter policies.

All occupational common bonds will include a geographic definition: e.g., "employees, officials, and persons who work under contract regularly for ABC Corporation or any of its subsidiaries, who work in Miami, Florida." Other acceptable geographic definitions are: "employees . . . who are paid from . . ." or "employees . . . who are supervised from . . ."

The employer may also be included in this common bond—e.g., "ABC Corporation and its subsidiaries." The employer will be defined in the last clause describing the group.

Some examples of occupational group definitions are:

a. "Employees of the Scott Manufacturing Company who work in Chester, Pennsylvania . . ."

b. "Employees and elected and appointed officials of municipal government in Parma, Ohio . . ."

c. "Employees of Johnson Soap Company and its majority-owned subsidiary, Johnson Toothpaste Company, who work in Augusta and Portland, Maine . . ."

d. "Personnel of fleet units of the U.S. Navy home ported at Mayport, Florida . . ."

e. "Civilian and military personnel of the U.S. Government who work or are stationed at, or are attached or assigned to Fort Belvoir, Virginia, or those who are retired from, or their dependents or dependent survivors who are eligible by law or regulations to receive and are receiving benefits or services from, that military installation . . ."

f. "Employees of these contractors who work regularly at U.S. Naval Shipyard in Bremerton, Washington . . ."

g. "Employees, doctors, medical staff, technicians, medical and nursing students who work at Boston Medical Center at the locations stated: . . ."

h. "Employees and teachers who work for the School District Number 3 in Austin, Texas . . ."

Some examples of insufficiently defined occupational groups are:

a. "Employees of engineering firms in Seattle, Washington." (No common employer; names of firms must be stated; however, may be the basis for a multiple group.)

b. "Persons employed or working in Chicago, Illinois." (No common employer; names of firms must be stated.)

c. "Persons working in the entertainment industry in California." (No common employer; names of firms must be stated.)

2. *Associational Common Bonds.* NCUA limits this common bond to groups consisting primarily of individuals (natural persons) who participate in activities developing common loyalties, mutual benefits, and mutual interests. Qualifying associational groups must hold meetings open to all natural person members at least once a year, must sponsor other activities providing for contact among natural person members, and must have an authoritative definition of who is eligible for membership—usually, this will be the association's constitution and bylaws. The clarity of the associational group's definition and compactness of its membership will be important criteria in reviewing the application. NCUA policy is to organize

associational charters at the lowest organizational level which is economically feasible.

Student groups constitute an associational common bond and may qualify for a Federal credit union charter.

Associations formed primarily to obtain a credit union charter do not have a sufficient associational common bond; nor do associations based on a client or customer relationship—an insurance company's customers or a buyer's club, for example.

NCUA normally charters associational Federal credit unions consisting of natural person members. In certain instances, NCUA will allow nonnatural persons (e.g. corporate sponsor or organizations of members) to be eligible for membership.

Moreover, the common bond extends only to the association's members. The employees of a member of a local chamber of commerce, for example, do not have a sufficiently close tie to the association to be included. A proposal to include these persons among those to be served by the Federal credit union will be considered as a multiple-group charter application.

Homeowner associations, tenant groups, electric co-ops, consumer groups and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may be eligible to receive a Federal charter; however, they must make a strong showing of common activities and economic viability. Newly-organized associations must make a similar showing; experience has shown that a new group's efforts are best focused on solidifying member interest before attempting to offer credit union service.

All associational common bonds will include a definition of the group and a geographic or "operational area" limitation—unless the constitution or bylaws of the associational group limit the geographical area—e.g., "Members of the ABC Association living or working in New York, New York, who qualify for membership in accordance with its constitution and bylaws in effect on January 21, 1989."

The association itself may also be included in the field of membership—e.g., "ABC Association."

Some examples of associational group definitions are:

a. "Regular members of Locals 10 and 13, IBEW Union, Miami, Florida, who qualify for membership in accordance with their constitution and bylaws in effect on May 20, 1989."

b. "Members of the Hooster Farm Bureau who live or work in Grant

Laguna, or Lee Counties of Indiana, who qualify for membership in accordance with its constitution and bylaws in effect on March 7, 1980."

c. "Members of the Mennonite Church who live or work in the State of Kansas."

d. "Members of the Shalom Congregation who live in Chevy Chase, Maryland."

e. "Regular members of the Corporate Executives Association, located in Westchester, New York, who live or work in Westchester, Rockland, and Suffolk Counties in New York, who qualify for membership in accordance with its constitution and bylaws in effect on December 1, 1985."

f. "Members of the Northern Michigan Electric Co-op located in Marquette, Michigan."

Some examples of insufficiently defined associational group definitions are:

a. "Members of military service clubs in the State of New Mexico." (No single associational tie; specific clubs and locations must be named; may be considered as multiple group).

b. "Veterans of U.S. military service." Some examples of unacceptable associational common bonds are:

a. "ABC Buyers Club." (An interest in purchasing only does not meet associational standards.)

b. "Customers of ABC Insurance Company." (Policyholders or customer/client relationships do not meet associational standards.)

3. Community Common Bonds.

Congress has required that a credit union charter that will be based on a tie to a specific geographic location be limited to "a well-defined neighborhood, community, or rural district." NCUA policy is to limit the community to a single, compact, well-defined area where residents commingle and interact regularly. NCUA recognizes two types of affinity on which a community charter bond can be based: residence and employment. Businesses and other legal entities within the community boundaries may also qualify for membership. Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups who wish to have it, NCUA has established the following common bond requirements:

a. The geographic area's boundaries must be clearly defined; and

b. The charter applicant must establish that the area is recognized by those who live and work there as a distinct "neighborhood, community, or rural district."

A typical definition of a community-based common bond is: "Persons who live or work in and businesses and other legal entities located in ABC, the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west."

If the community is also a recognized legal entity, it may also be included in the field of membership—e.g., "DEF Township."

Some examples of community common bond definitions are:

a. "Persons who live or work in ABC County, Maine."

b. "Persons who live or work in and businesses and other legal entities located in Independent School District No. 1, ABC County, Minnesota."

c. "Persons who live or work within a ten-mile radius of Walnut, Illinois" (Rural areas only.)

Some examples of insufficiently defined community common bond definitions are:

a. "Persons who live or work within and businesses located within a ten-mile radius of Washington, D.C." (Not a recognized "neighborhood, community, or rural district.")

b. "Persons who live or work in the industrial section of XYZ, New York."

4. *Multiple-Group Charters.* NCUA may charter a Federal credit union to serve a combination of distinct, definable occupational and/or associational groups. However, NCUA will not charter as a single Federal credit union multiple groups which include one based on a community common bond.

In addition to general chartering requirements, special requirements pertaining to multiple-group applications must be satisfied before NCUA will grant such a charter.

a. Each group to be included in the proposed field of membership of the Federal credit union must have its own common bond.

b. Each group must individually request inclusion in the proposed Federal credit union's charter.

c. All groups must be within the operational area of a planned home or branch office of the proposed Federal credit union. "Operational area" is an area surrounding the home or a branch office that can be reasonably served by the applicant as determined by NCUA. For chartering purposes, "branch office" means any office of a Federal credit union where an employee accepts payment on shares and disburses loans. An ATM or similar cash disbursing machine does not qualify as a "branch office."

An example of a multiple-group field of membership is:

"The field of membership of this Federal credit union shall be limited to those having the following common bond:

1. Employees of DuPont Corp. who work in Wilmington, Delaware;

2. Partners and employees of the law firm of Smith & Jones who work in Wilmington, Delaware;

3. Members of the GHI Associations who live in Wilmington, Delaware, and qualify for membership in accordance with its constitution and bylaws.

5. *Other Persons Sharing Common Bond.* A number of persons by virtue of their close relationship to a common bond group may be included at the charter applicant's option in the field of membership:

a. "Spouses of persons who died while within the field of membership of this credit union";

b. "Employees of this credit union";

c. "Persons retired as pensioners or annuitants from the above employment";

d. "Members of their immediate families";

e. "Volunteers";

f. "Organizations of such persons."

"Members of their immediate families" may be generally defined as deemed appropriate by a Federal credit union when including this group among those to be served. To be made effective, however, the Federal credit union's board of directors must approve the definition by resolution, and include it in Article XVIII, Section 2, of its bylaws. The single exception is for those Federal credit unions serving student groups: only the "members of the immediate families" of students who actually join the Federal credit union may be included. NCUA defines this secondary group for student groups as follows: "Members of the immediate families of students who are members of this credit union."

Volunteers, by virtue of their close relationship with a sponsor group may be included. Examples include volunteers working at a hospital or in a church.

Under Article II, Section 5, of NCUA's Standard Bylaws, if a member leaves the field of membership, standard member services will be terminated. However, the board of directors may, by resolution, set forth the circumstances under which a member may maintain membership. This option is commonly referred to as the "once a member, always a member" bylaw provision.

B. *Character and Fitness of Subscribers.* The Federal Credit Union

Act requires that seven or more natural persons must present to NCUA for approval a sworn organization certificate stating at a minimum:

1. The name of the proposed Federal credit union;
2. The location of the proposed Federal credit union and the territory in which it will operate;
3. The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
4. The initial par value of the shares;
5. The proposed field of membership, specified in detail;
6. The term of the existence of the corporation, which may be perpetual; and
7. The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

These seven or more persons will be the proposed Federal credit union's "subscribers." False statements on this certificate may be grounds for Federal criminal prosecution.

The Act also requires NCUA to satisfy itself as to the "general character and fitness" of these subscribers. These persons, therefore, may be the subject of credit and background investigations at NCUA's discretion.

C. Economic Advisability. Before chartering a Federal credit union, NCUA must be assured that the institution will be viable and that it will not materially affect existing state or Federal credit unions. This economic advisability inquiry has become especially important since 1970, when Congress assigned NCUA the obligation to establish a Fund insuring credit union shares and to preserve that Fund.

NCUA will conduct an independent on-site investigation for each charter application to assure itself that the proposal can be successful.

1. The Proposed Federal Credit Union's Viability. The success of any credit union depends on: (a) The depth of the members' support; (b) the character and fitness of management; and (c) present and projected market conditions.

a. Member Support. While NCUA has not set a minimum size field of membership for chartering a Federal credit union, experience has shown that a credit union with under 500 potential members generally is unlikely to succeed. A charter applicant with a proposed field of membership of under 500 will have to demonstrate convincing support for the credit union. For example, in an occupational group a commitment for significant long-term support from the employer must be in evidence.

The group's size is only of help if members participate in the credit union. The charter applicant must show that a substantial percentage of the group's members will join the credit union and use its services. Survey results must be based at a minimum on a sampling of 250 potential members. In particular instances, especially where the common bond is broadly-defined or newly-established, NCUA may require a larger sampling.

b. Proposed Management's Character and Fitness. The applicant must provide a list of the persons who will serve as officials. NCUA will conduct a credit and background (including criminal record) investigation on each of the proposed Federal credit union's officials. NCUA also reserves the right to perform such checks on employees of the applicant FCU. The Agency will also need assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the Federal credit union a success.

c. Present and Future Market Conditions: The ability to compete in the marketplace and to adapt to changing market conditions is key to the survival of any enterprise, and a crucial part of that is the ability to plan well. NCUA, therefore, requires an applicant to submit a business plan based on realistic and supportable projections and assumptions, including, as a minimum, these elements:

- i. Mission statement;
- ii. Analysis of market conditions—economic prospects for the group, availability of financial services from credit unions, banks, S&Ls;
- iii. Summary of survey results;
- iv. Financial services needed/desired;
- v. Financial services to be provided;
- vi. How/when services are to be implemented;
- vii. Staffing of credit union and credentials of key employees;
- viii. Physical facility—office, equipment;
- ix. Type of recordkeeping system;
- x. Budget for 1st, 2nd, and 3rd year;
- xi. Semiannual pro forma financial statements for 1st, 2nd, and 3rd year, including assumptions—e.g., loans and dividend rates;
- xii. Goals for number of members;
- xiii. Goals for operating independently;
- xiv. Source of funds to pay expenses during initial months of operation;
- xv. Written policies (lending, investments, funds management);
- xvi. Goals for dividends, generation of resources;

xvii. Plan for continuity—directors, committee members; and
xviii. Evidence of sponsor commitment if subsidies are critical to success of the Federal credit union.

NCUA expects that the subscribers and proposed officials will understand and support the business plan submitted.

2. Overlaps. (This discussion pertains to new charters as well as existing charters.)

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. General policy requires that every effort be made to avoid an overlap. Ideally, a group of persons should be included in the field of membership in only one credit union.

Both new and existing credit unions are obligated to investigate the possibility of an overlap prior to submitting an application for a new charter or adding a group, by surveying the prospective field of membership and contacting the state credit union supervisor and the local credit union league or trade association. If and when an overlap situation does arise, officials of the involved credit unions are encouraged to work out the overlap problem between or among themselves. If the matter is resolved informally, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group. If no resolution is possible, an application for a new charter or expansion may still be submitted, but must also include information regarding the overlap and document attempts at informal resolution. In any event, the applicant Federal credit union must clearly indicate why a new credit union or expansion is being sought and why existing and potential members of the current credit union will support and join a newly-chartered or expanded Federal credit union.

When resolution of an overlap problem is not forthcoming, and other circumstances warrant an overlap, then an overlap may be permitted. Among the circumstances which may justify an overlap are: (1) Failure of the original credit union to provide service to the group, (2) limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time, and (3) incidental overlap (the group of persons in question is so small as to have no material effect on the original credit union). In reviewing the overlap, the Regional Directors will consider the nature of the problem:

efforts made to resolve the situation; financial effect on the overlapped credit union; the desires of the group(s); the opinion of the state credit union supervisor, if applicable; and other interested parties; and the best interests of the involved potential or current members. In general, NCUA will not protect associational and community charters from overlaps with occupational charters.

A number of situations may not justify approval of a requested overlap. For example, if the requesting credit union offers certain specialized services not offered by the original credit union (such as credit cards, ATMs, and IRAs), the extra services alone may not justify the overlap. Also, proximity, by itself, does not warrant approval of an overlap. A Federal credit union in Chicago, Illinois, may not have a convincing argument, based on geography alone, that a select employee group (SEG) also located in Chicago would be better served by it than by the SEG's headquarters credit union located in Dallas, Texas.

From an overlap prevention perspective, new charter applicants and every occupational or associational group which comes before the Regional Directors for affiliation with an existing Federal credit union must advise in writing whether the group is included within the field of membership on any other credit union. This requirement will alert the Regional Directors to possible overlap situations before they occur. Thus, most potential field of membership conflicts can be avoided. If cases do arise where the assurance given to a Regional Director concerning unavailability of credit union service turns out later to be inaccurate, the misinformation is grounds for removal of the group from the Federal credit union's charter.

3. Exclusionary Clauses. (This discussion pertains to new charters as well as existing charters.)

In certain instances, exclusionary wording prohibiting certain overlaps may be used to help define the field of membership of a Federal credit union. Use of exclusionary wording should be avoided if possible. Generally, a thorough investigation of a charter application or an application for a field of membership expansion will disclose the situations where other credit union service is available. The field of membership should be written so that only the specific locations where credit union service is not currently available are allotted to the new charter or to the Federal credit union seeking the field of membership addition.

However, certain cases exist where a specific recitation of work locations (for

an occupational group) or member locations (for an associational group) is not feasible. Corporations or associations with widely-dispersed employees or members fall into this "exception" category. In these special cases, exclusionary wording could be used to provide some limits on an extensive field of membership. An example might be employees of XYZ Corporation where XYZ Corporation is a relatively new company which specializes in acquisitions and divestitures and its corporate makeup is constantly changing. In this case the field of membership could be described as "employees of XYZ Corporation who work in the United States, except employees eligible for membership in another occupational-type credit union serving an employee unit of XYZ Corporation."

Another situation which may require exclusionary wording is the chartering of a new community credit union or the field of membership conversion of an existing occupational or associational credit union to a community charter. Although investigation may show that the residents of the proposed area of service by and large do not have access to a credit union, other credit unions may be operating in the community which desire to remain autonomous entities. If the Regional Director determines that avoidance of overlap is warranted, an exclusionary clause may be inserted in the community credit union's field of membership. Examples of exclusionary wording are as follows:

1. Persons who reside or work in Portland, Maine, except persons eligible for primary membership in ABC Employees Federal Credit Union or Portland City Employees Credit Union as of the date of this charter;
2. Persons who reside or work in Hilo, Hawaii, except employees of Hilo Sugar Company and the United States Government.

The exclusionary language in a community charter's field of membership ordinarily applies only to "primary" members of existing occupational-type credit unions. "Primary" is defined as the basic occupational or associational affinity to the field of membership defined in section 5 of the charter. In example 1 above, assuming that the two excluded Federal credit unions have single sponsor fields of membership, only employees of ABC Company and of the City of Portland would be excluded. Family members (or other secondary or derivative members) are not excluded. Also, unless special circumstances warrant, only occupational field of membership will be protected by the

exclusion. That is, associational, multiple group and other community credit unions will not normally be afforded protection from overlap. Finally, by dating the exclusion, only those employee units in the field(s) of membership of the protected credit union(s) as of the specified date are excluded from membership eligibility in the community credit union. Thus, groups added by an occupational credit union subsequent to the establishment of the community charter are not excluded from the community credit union. In the second example above, dating the exclusion clause, which is written very specifically, is inappropriate.

Although use of exclusionary clauses by NCUA will normally be on an exception basis only, Regional Directors may, at their discretion, apply exclusionary wording to a credit union's field of membership. However, the clauses shall not be used in lieu of a thorough investigation of the availability of existing credit union service by a charter applicant or an applicant for a field of membership addition. Furthermore, it is NCUA's intent to use exclusionary clauses only to increase the vitality and strength of the credit union system, not to prevent people from obtaining credit union service.

III. Appropriateness of Proposed Federal Credit Union Name

It is the responsibility of the Federal credit union organizers to ensure that the FCU applicant's name or FCU name change does not constitute an infringement on the name of any corporation in their trade area. Prior to granting a charter or approving a name change, NCUA will ensure that the credit union's name: (a) is not already being used by another Federal credit union; (b) will not be confused with NCUA or another Federal or State agency, or with another credit union; and (c) does not include inappropriate language. The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

IV. Widely-Dispersed Associational Charters

NCUA policy is to charter associational Federal credit unions at the lowest organization level which is economically feasible. This does not preclude the granting of associational charters with widely-dispersed memberships. NCUA may grant such charters after scrutinizing the adequacy of the applicant's common bond. NCUA may, at its discretion, require that the proposed field of membership be

approved before granting a new charter; expansion to include a large portion of the association's members may be allowed at a later time if appropriate.

Also, as with any widely-dispersed group, overlap issues are likely to arise, either at the time of or subsequent to chartering. NCUA will consider the effect that granting a charter with such a group in its field of membership would have on any number of existing credit unions. In addition, an associational credit union with a widely-dispersed membership may expect overlaps to be granted to other credit unions in the future, particularly at the local level.

In recognition of these unique problems, NCUA follows a separate internal procedure for associational charter applications for associations with proposed fields of membership of 500 or more persons which cross NCUA regional boundaries. NCUA's Director of Examination and Insurance and all NCUA Regional Directors with any of the association's members located in their region must vote on the charter application. A majority vote is required for approvals; tie votes are referred directly to the NCUA Board for decision; denials are appealable to the Board.

V. Industrial Parks, Shopping Centers and Similar Groupings

A Federal charter may be available to persons working in a particular industrial park or shopping mall, either as community-based or as a multiple group. If the multiple group option is selected, all multiple group requirements must be met. Each employee group within the industrial park or shopping center must submit a letter requesting service. Only those groups submitting letters will be added to the charter. If the community option is selected, the industrial park or shopping center must meet the standards for community charters.

VI. Specially-Designated Federal Credit Unions

Some credit unions are recognized and designated by NCUA to perform certain functions different from those available to Federal credit unions in general. An applicant wishing to be considered for such a designation may, at the time of charter application, provide the additional information NCUA needs. NCUA will then consider the designation and the charter application together. The designation can also be applied for at a later time if all the requirements are met.

A. Low-Income Credit Union. A low-income credit union is defined as one where a majority of its members fall into one or more of these categories: (1)

Those whose annual income falls at or below the lower level standard of living classification as established by the Bureau of Labor Statistics and as updated by the Employment and Training Administration of the U.S. Department of Labor; (2) those who are residents of a public housing project who qualify for such residency because of low income; (3) those who qualify as recipients in a community action program; (4) those who are enrolled as full-time or part-time students in a college, university, high school, or vocational school. The Federal credit union applicant should forward a separate request for a low-income designation at the time the application is submitted with appropriate documentation.

A credit union designated by NCUA as a low-income credit union has greater flexibility in accepting nonmember deposits insured by NCUA. The credit union may also participate in special funding such as the Community Development Revolving Loan Program for Credit Unions if it is involved in the stimulation of economic development activities and community revitalization efforts.

B. Corporate Federal Credit Union. A corporate credit union is defined as: (1) One that is operated primarily for the purpose of serving other credit unions; and (2) one whose total dollar amount of outstanding loans to member credit unions plus shares issued to member credit unions equals or exceeds 75 percent of its total outstanding loans plus shares and deposits. They are governed by different reserving and other standards as set forth in Part 704 of NCUA's Rules and Regulations.

VII. How To Apply for a Federal Credit Union Charter

A. Organizing a Federal Credit Union. Federal credit unions are organized by persons who donate time and resources and are responsible for determining the interest, commitment, and advisability of forming a Federal credit union. The organization of a Federal credit union takes considerable planning and dedication in order to ensure the success of the new credit union.

Persons interested in organizing a Federal credit union should contact the NCUA Regional Director serving the state in which the credit union will be organized or their state credit union league. A list of NCUA offices is attached as Exhibit A to this Chapter. NCUA will provide information to groups interested in pursuing a Federal charter and will assist them in obtaining an organizer.

A credit union organizer may be a trade association representative, an NCUA examiner, or a volunteer with training and experience in chartering new Federal credit unions. The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the group members is critical to the chartering process.

Once the group has decided to apply for a Federal credit union charter and the organizer is satisfied that the application has merit, the group should elect 7 to 10 persons to serve as subscribers. The subscribers and organizer will work together to ensure that information required in the Federal Credit Union Investigation Report (NCUA 4001 for Federal credit union applicants or NCUA 4000 for applications to convert to a Federal charter) is well supported and documented. The organizer and subscribers should develop a business plan as discussed earlier in this chapter. The subscribers should also locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as treasurer/manager of the proposed credit union. This documentation will be submitted along with other chartering documents by the organizer following the charter organization meeting.

A charter organization meeting will be called as soon as the subscribers and organizer are satisfied that the required chartering information has been collected. The charter organization meeting should be attended by all subscribers, persons who have agreed to serve on the board or committees, and any other potential members of the credit union. At this meeting, the organizer will discuss the progress and conclusions of the charter investigation, will announce the proposed state of officials, and will respond to any questions posed at the meeting. When satisfied that the group meets all the chartering requirements, the subscribers should then sign and have notarized two copies of the Organization Certificate (NCUA 4008) and provide this to the organizer for inclusion in the charter application. As their final duty, the subscribers will elect the board of directors and credit committee of the proposed Federal credit union. The charter organization meeting should then be adjourned.

Follow the charter organization meeting, the board of directors should meet to elect officers and appoint members of the supervisory committee. The credit and supervisory committees should then meet to elect their respective chairmen and secretaries. The minutes of these and all future board of directors and committee meetings should be kept and safeguarded by their respective secretaries. Each official should execute a copy of Report of Officials and Agreement to Serve (NCUA 4012) to be submitted with the charter application package.

The board of directors should take action to apply for insurance of member accounts. The Certificate of Resolutions (NCUA 9501) should be executed by the president and secretary. Following action on this issue, the president and treasurer should execute the Application and Agreements for Issuance of Accounts (NCUA 9500). These documents should be provided to the organizer as part of the charter application. These actions conclude the major activities for the first meeting of the board of directors.

B. Support for Charter Application. As discussed previously in this Chapter, applicants for Federal credit union charters must, at a minimum, provide evidence that:

The group constitutes a recognized common bond;

The subscribers are of good character; and

The establishment of the credit union is economically feasible.

In addition, the Federal Credit Union Act requires applicants to submit a sworn organization certificate setting forth seven criteria (see Section II B of this Chapter). In order to process the application and capture all required information, NCUA has developed certain chartering forms to assist organizers.

1. Federal Credit Union Investigation Report. Applications for new Federal credit unions will be submitted on Form NCUA 4001. (State-chartered credit unions applying for conversion to Federal charter will use Form NCUA 4000. See Chapter 3 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request. Instructions and guidance for completing the form are provided on the form's reverse side. Associational charter applicants must include a statement of their membership criteria (normally the associations' constitution or bylaws) and the association's current financial statement.

2. Report of Official and Agreement to Serve, NCUA 4012. This form documents general background information of each official of the proposed Federal credit union. Each official must complete and sign this form. In addition, NCUA will request credit and criminal investigations of new officials.

3. Organization Certificate, NCUA 4008. This document establishes the seven criteria required of subscribers by the Federal Credit Union Act and is signed by the subscribers and notarized. This document should be executed in duplicate.

4. Certification of Resolutions, NCUA 9501. This document certifies that the board of directors of the proposed Federal credit union has resolved to apply for insurance of member accounts and has authorized the president and treasurer to execute the Application and Agreements for Insurance of Accounts. This form must be signed by both the president and secretary of the proposed Federal credit union.

5. Application and Agreements for Insurance of Accounts, NCUA 9500. This document contains the agreements with which Federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts, including appropriate fidelity bond coverage of officials. The document must be completed and signed by both the president and treasurer.

6. Business Plan. While the required business plan need not follow a prescribed form, it must include all of the information set forth in Chapter 1.

C. Submittal of Application. Applications for new charters should be submitted to the Regional Director serving the state in which the proposed credit union is headquartered. Applications for Federal credit union charters should include, at a minimum, the documentation discussed in section B above. All charter applications are processed by the Regional Director in accordance with NCUA procedures.

The appropriate NCUA regional office will investigate all applications for Federal credit union charters. The investigation will include on-site contacts by NCUA with proposed officials and others having an interest in the proposed new charter. Credit and background checks will be requested for the credit unions' proposed officials. NCUA will acknowledge receipt of the application and will estimate processing time. Every effort will be made to act expeditiously on all applications.

VIII. Letters of Understanding and Agreement

NCUA has found from experience that certain activities generally cause significant problems for new credit unions. Therefore, in most cases, NCUA will require the prospective Federal credit union's officials to enter into an agreement not to engage in certain activities. The agreement is for a limited term—usually two to four years. A sample letter is attached as Exhibit B of this Chapter.

IX. Approvals

NCUA will make every effort to process the application expeditiously. Once approved, the board of directors of the newly-formed Federal credit union will receive a signed charter and bylaws from the Regional Director. In addition, the officials will be advised of the name and mailing address of the examiner who has been assigned responsibility for supervising and examining the credit union. Generally, the examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation). Assistance in commencing operations is generally available through the various state credit union leagues.

X. Appeals

New charter applications denied by the NCUA Regional Office are appealable to the NCUA Board. All such appeals should be sent to the appropriate NCUA Regional Office to be forwarded to the Central Office.

Exhibit A—NCUA Regions/Regional Offices

REGION I—ALBANY

9 Washington Square Washington Avenue
Extension Albany, NY 12205

Commercial: 518-472-454

FTS: 8-382-4454

FAX: 518-869-1788

Maine	Rhode Island
New Hampshire	Connecticut
Vermont	New York
Massachusetts	New Jersey
Virgin Islands	Puerto Rico

REGION II—CAPITAL

1776 G Street, NW, Suite 800 Washington, DC
20006

Commercial: 202-682-1900

FAX: 202-789-2043

Pennsylvania	Delaware
Maryland	Virginia
West Virginia	Distict of Columbia

REGION III—ATLANTA

7000 Central Parkway
Suite 1800

Atlanta, Georgia 30328

Commercial: 404-396-4042

FAX: 404-598-8211

Kentucky
Tennessee
North Carolina
South Carolina
Mississippi

Louisiana
Arkansas
Georgia
Alabama
Florida

REGION IV—CHICAGO

100 Park Blvd., Suite 155
Itasca, Illinois 60143
Commercial: 312-250-6000
FTS: 8-312-250-6000
FAX: 312-889-9707

Wisconsin
Michigan
Ohio

Indiana
Illinois
Missouri

REGION V—AUSTIN

48007 Spicewood Springs Road
Suite 5200
Austin, Texas 78759
Commercial: 512-482-4500
FTS: 8-770-4500
FAX: 512-482-4511

Kansas
Oklahoma
Arizona

New Mexico
Utah
Texas

AUSTIN SUBOFFICE

320 6th Street, Room 202
Sioux City, Iowa 51101
Commercial: 712-233-3233
FTS: 8-862-3233
FAX: 712-255-9145

Minnesota
Iowa
Nebraska
Colorado

South Dakota
North Dakota
Wyoming

REGION VI—PACIFIC

2300 Clayton Road
Suite 1350
Concord, California 94520
Commercial: 415-486-3490
FTS: 8-449-3490
FAX: 415-486-3729

Washington
Oregon
California
Alaska
Hawaii

Montana
Idaho
Nevada
Guam

Exhibit B—Letter of Understanding and Agreement

To the Board of Directors and Other Officials
_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly-chartered credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits

from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner, financial and statistical reports as required by the Federal Credit Union Act and Bylaws, by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

Dated this _____ day of _____, 1989.
National Credit Union Administration Board
on behalf of the National Credit Union
Share Insurance Fund

Regional Director

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____, 1989.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

_____ Federal Credit Union

By: _____
Date: _____

Chief Executive Officer (President)
Date: _____

Chief Financial Officer (Treasurer)
Date: _____

Chief Recording Officer (Secretary)

Chapter 2—Changes in Field of Membership

As in the case of NCUA chartering policy, the goals for field of membership expansion are:

A. To uphold the provisions of the Federal Credit Union Act concerning the granting of Federal charters;

B. To promote credit union safety and soundness; and

C. To make quality credit union service available to all eligible groups who wish to have it.

A Federal credit union's field of membership is an official statement which specifically defines who may become a member of the credit union. It is recorded in section 5 of the credit union's charter.

Any change to the field of membership, whether it is an addition, deletion, or simple update, must be reflected formally in section 5 of the credit union's charter. Changes to section 5 are normally initiated by the officials of the respective Federal credit union and submitted in writing to the appropriate NCUA Regional Office for approval.

The National Credit Union Administration Board has delegated the authority to the Regional Directors to act on most charter amendment requests. This delegation enables the Agency to respond to the majority of requests promptly. However, certain complex proposals require special investigation by the Regional Directors, and may also require consultation with other Regional Directors and the Agency's Central Office. Applicants submitting such complex proposals will be advised in writing of the need for special review and the likelihood of extra processing time.

Reasons for Requesting an Amendment

A Federal credit union's board of directors may wish to request a field of membership amendment for a variety of reasons, including, but not limited to:

—Providing credit union access and service to an additional, clearly-defined group of persons who desire to be served by the applicant credit union;

- Accommodating sponsor acquisitions or reorganization;
- Diversifying the membership base in order to withstand real or potential economic adversities (e.g., sponsor shutdown or cutback, economic downturn);
- Merger with another credit union;
- Expanding the membership base to facilitate an improvement of service to all members.

Field of Membership Addition Requests—Types and Criteria

Four types of charters exist (occupation, association, community, and multiple group) for purposes of establishing a Federal credit union. Field of membership expansions are achieved by adding groups (either occupational, associational or community) to an existing credit union.

The definition of common bond for purposes of field of membership additions is the same as that found in the previous chapter concerning Federal credit union chartering. The examples of groups which do and do not meet the definition of common bond found in that chapter apply to field of membership additions as well. Different criteria apply to occupational, associational and multiple group field of membership additions than apply to community field of membership expansions. These two sets of criteria are discussed below.

Special rules apply for credit union additions to provide service to retiree and senior citizen groups. Additional methods of increasing the field of membership are possible through a merger or a purchase & assumption. All of these types of expansions are discussed briefly below.

Occupational and associational groups which share the same common bond as the credit union's primary sponsor fall under the category of common bond additions. Occupational and associational groups which have a separate common bond from a Federal credit union's primary sponsor (common bond group) are added under the provisions of select group field of membership expansion policy. Select group and common bond expansions are treated somewhat differently.

Additions Within the Common Bond

Some field of membership expansions for occupational and associational type Federal credit unions can be accomplished along traditional common bond lines. For example, an FCU whose primary sponsor is a particular corporation may add by a charter amendment: the employees of that corporation who work at another location; employees of the corporation

who are paid from or are supervised from the headquarters location, such as sales persons or sales agents who work at a number of locations; employees of a division or majority-owned subsidiary of the parent corporation regardless of location or employees of a related company, such as a company under contract and possessing a strong dependency relationship on the sponsoring corporation.

The written request for an addition must be supported by a letter from an authoritative representative of the organization to be added. This letter should indicate:

- (1) That the group wants to affiliate with the applicant Federal credit union;
- (2) That at present the group does not have the availability of a credit union; and
- (3) The number of persons currently employed by the corporate unit.

Whenever possible, this letter should be submitted on the letterhead stationery of the respective corporate entity. Included with the request for expansion must be a current financial statement for the applicant Federal credit union.

For associational Federal credit unions, expansions along common bond lines will normally be allowed only at the lowest economically feasible organizational level of the sponsoring association. For example, a Federal credit union serving the members of a local chapter of an association could apply to serve the members of another chapter.

The approval or disapproval of a field of membership amendment request of an existing FCU adding an association which crosses NCUA regional boundaries may be subject to special review, and this may cause some delay in processing. The Regional Director whose jurisdiction includes the applicant credit union will notify the applicant of the special review and will advise the applicant in writing of the estimated time frame needed to reach a decision.

Unlike select group additions, common bond additions do not have operational area requirements. That is, an addition within the common bond may be approved even though the applicant FCU does not have an office in the vicinity of the group to be added.

Select Group Additions

A select group of persons seeking credit union service from an occupational, associational or multiple group Federal credit union must have its own common bond. The select groups themselves may be either employee (occupational) groups or associational

groups. However, a select group for expansion purposes cannot be defined by a common bond of community. The group's common bond need not be similar to the common bond(s) of the existing Federal credit union. In addition to the group having its own common bond, the following five criteria must be satisfied before an addition request will be approved.

a. All affected groups have requested service from the applicant FCU.

b. The applicant FCU possesses the financial resources and management capability to provide quality credit union service to each group. The applicant credit union's current CAMEL rating and financial condition will be considered under this criterion.

c. The addition request is economically feasible and advisable.

d. The applicant obtains a written statement from each group indicating whether the group is currently eligible for membership or is being served by any other credit union. If the groups are eligible for membership in another credit union, justification must be provided to show that the groups no longer desire that eligibility for continued service. The applicant credit union must provide a written statement from any overlapped credit union concurring or objecting to the overlap.

e. The group must be within the operational area of the home or a branch office of the FCU. Operational area is defined as an area surrounding the home or branch office that can reasonably be served by the applicant as determined by NCUA. Although a new select group alone is not enough to justify a proposed branch office, it is permissible to include new groups as partial justification for a proposed branch office if that office will also improve credit union service to the existing field of membership. However, the current field of membership must comprise a significant portion of the total field of membership to be served initially by the proposed branch office. A branch office means any office of a Federal credit union where an employee accepts payment on shares and disburses loans. An ATM, or similar cash disbursing machine, does not qualify as a branch office for purposes of field of membership expansion.

The process to add a select group to a Federal credit union's field of membership is a relatively simple one. A Federal credit union must submit a formal written request for the expansion to the appropriate Regional Office of NCUA. The request should be signed by the credit union's president or chairman of the board of directors. Accompanying

the correspondence from the requesting credit union should be (1) a letter signed by an authoritative representative of each select group to be added and (2) a current financial statement for the requesting credit union. The letter from the select group should indicate at least the following:

1. The number of employees or members in the select group;
2. Whether the group currently has access to another credit union (if it does, then the other credit union should be specifically identified. A letter from the overlapped credit union should be obtained stating its concurrence or objection. If objections are raised, then the overlapped credit union is required to furnish the number of persons from the select group who are enrolled as members.);
3. That the select group is interested in obtaining service from the requesting credit union and that the group will support the credit union by such means as providing access to its employees or members via payroll deduction, use of employee or member newsletters, etc., and
4. The proximity to the applicant credit union's closest office.

Credit unions using the select group addition alternative should obtain the supporting letter from the group on the select group's letterhead stationery. The letterhead will enable NCUA to correctly identify the proper title of the select group and will provide validation of the select group's location (to ensure that the operational area requirement is satisfied).

It is possible for a Federal credit union to serve the employees or members of a select group who are located outside the operating area of the credit union as long as the select group has its headquarters (or its "paid from") location within the credit union's operating area, or a majority of the company's employees work within the credit union's operational area. However, special care will be exercised by the Regional Directors in considering requests for select associational group expansions where the association's membership is geographically dispersed. The associational chartering policy criteria discussed in Chapter 1 including Chapter 1, IV—Widely Dispersed Associational Charters, will apply in its entirety to select associational group expansion requests.

Community FCU Field of Membership Expansions

Community Federal credit union's may expand their fields of membership only by redefining the boundaries of their service area. Community charter

policy stipulates that there be regular contact among persons who live or work within a well-defined neighborhood, community or rural district in order to satisfy the common bond requirements of the Federal Credit Union Act. The burden of proof for existence of the common bond is placed upon the applicant credit union.

An existing community Federal credit union may submit a request to expand its area of service by changing the boundaries which define its community field of membership. The enlarged area must constitute a geographical area that could be established as a community credit union under NCUA policy. Also, an existing occupational, associational or multiple group type Federal credit union may apply to convert to a community charter. In order to support a case for such an expansion, the applicant Federal Credit Union must submit a map or maps showing both the existing and proposed boundaries for the field of membership. The most current population figures for the two areas must be obtained and included in the package. The source of the population information must be recorded in the credit union's request. Evidence in the form of surveys or letters from authoritative representatives of prominent groups located in the area to be added must be furnished to show that the residents of the area are interested in affiliating with the applicant credit union. Information concerning the availability of financial services to the residents of the new area must be supplied. Especially important is whether other credit union service is currently available. If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed expansion.

In addition, depending upon the significance of the potential membership increase, the Regional Director may require formulation of a business plan to show how the residents of the new area are to be served and whether the costs of this proposed service can be afforded by the applicant credit union. Whether or not a formal business plan is required, the applicant FCU must submit current financial statements with its proposal.

Finally, in the majority of cases where community credit unions are asking to expand their areas of service and in all cases where a conversion to a community charter is proposed, an NCUA examiner will make an on-site evaluation of the proposal. The examiner will prepare a separate analysis of the proposed expansion independent of the credit union's application. Following completion of the

on-site evaluation and Regional Office review of the examiner's report, the Regional Director will act on the proposal, provided that the size of the proposed area's population does not exceed his delegated authority. If so, the applicant credit union will be formally apprised of the need for NCUA Board consideration.

Addition of Retiree or Senior Citizen Associations

Special rules apply for retiree or senior citizen groups that seek credit union service. For field of membership addition purposes, these groups are viewed as unique associational groups which do not need to meet all the requirements for associations discussed in Chapter 1. It is NCUA Board policy to make FCU service available to as many senior citizens and retirees as possible who are in fact interested in obtaining access to a credit union. Federal credit unions are encouraged to bring associations of senior citizens or retired persons within their fields of membership, and to sponsor and assist in the formation of such associations where they do not exist. The policies recited in Chapter 1 for associational groups (requiring that the sponsoring association be well-established and that it not be an organization created solely as a vehicle to obtain credit union service) do not apply to retiree or senior citizen associations. Such groups may be formed with the primary purpose of providing eligibility for FCU service to the associations and their members. The definitions of senior citizen or retiree are left to each organization. The operational area criterion does apply to senior citizen and retiree organizations.

Additions Via Mergers and Purchase and Assumptions

A Federal credit union may obtain the entire field of membership of another credit union through a merger. In general, for mergers where the continuing credit union is federally chartered, the field of membership criteria stipulated in this and the preceding chapter are applicable. The criteria do not apply in the case of emergency mergers.

The following discussion pertains to a continuing credit union that is federally chartered. Most mergers fall into one of two fields of membership categories. The mergers are feasible either because the two credit unions had common sponsors (like common bonds) or were located in the same operational area (multiple group). Two credit unions serving the employees of the same corporation may merge without regard

to the locations of the credit unions' offices. Similarly, two credit unions serving members of the same association may merge even though the two are not located in the same operational area. However, two credit unions with unlike fields of membership may only merge when they are located in the same operational area. Any combination of associational, multiple group, and occupational is permissible as long as the operational area requirement is satisfied. Mergers of any of these three types of field of membership into a community charter are permissible as long as the merging credit union is located within the community credit union's service area. The resulting field of membership remains a community charter.

Mergers of community credit unions into a Federal credit union of any type may be accomplished where the operational area requirement is satisfied and the continuing Federal credit union is not interested in obtaining the field of membership of the merging community charter. The continuing Federal credit union will only obtain the members of record of the merging credit union. Where both credit unions are community charters and the criteria for expanding the service area of a community credit union (as discussed previously in this chapter) are satisfied, the entire field of membership of the merging credit union will be added to the continuing Federal credit union's charter.

Regardless of the type of credit union involved where the merging credit union is suffering such severe financial difficulties that it will become insolvent within six months, it may merge into any Federal credit union in the same operational area. If the merging credit union is community based, its field of membership will be transferred intact to the continuing Federal credit union. In this case, the continuing Federal credit union will remain as an occupational, associational, multiple group, or community charter for purposes of future field of membership expansions.

Finally, a specifically designated emergency merger may be approved by the NCUA Board 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 in danger of insolvency and the NCUA Board must determine that:

- A. An emergency requiring expeditious action exists;
- B. Other alternatives are not reasonably available; and

C. 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 credit union.

Another alternative for acquiring the field of membership of a failing credit union is through consolidation known as purchase and assumption. A purchase and assumption has limited application because the failing credit union must be placed into involuntary liquidation. However, in the few instances where purchase and assumption may occur, the assuming Federal credit union may acquire the entire field of membership along with loans, shares and certain designated assets and liabilities, without regard to field of membership expansion restrictions and without changing the character of the credit union for purposes of future field of membership expansions.

Spin-Offs

A "spin-off" is, in effect, a partial merger. By agreement of the parties, a portion of the field of membership of a credit union, along with assets, liabilities, and capital, is transferred to a new or existing credit union. If the spin-off goes to a new Federal charter, the requirements of Chapter 1 apply. If it goes to an existing Federal charter, the requirements of Chapter 2 apply. Prior to completion, NCUA must approve all spin-offs in which a Federal credit union is involved.

Overlaps—See Chapter 1 for discussion.

Exclusionary Clauses—See Chapter 1 for discussion.

Reviewing Field of Membership Addition Requests

All field of membership requests will be reviewed by Regional Office staff in order to ensure that the requests conform to NCUA policy, are properly documented and do not cause significantly harmful or unreasonable overlap with the fields of membership of existing credit unions. NCUA understands and appreciates the importance of timely processing of well-supported addition requests. To respond to this desire for prompt handling, each Regional Office has established a goal

of ten working days from the date of receipt in the Regional Office for complete processing of a routine addition request. A fully documented request that fulfills all of the criteria discussed in this manual and does not require written or telephone follow-up will normally be processed within this time.

In some cases, an on-site review by NCUA examiner staff may be requested by the Regional Director before acting on a proposed addition. Nonstandard or controversial requests, those involving associational, community or multiple charters, or those from credit unions with serious operational or management problems, are most likely to fall into this category. In addition, as stated in the earlier discussion in this chapter under community charter expansions, the Regional Director may, at his discretion, after taking into account the significance of the field of membership expansion proposed, require the applicant to submit a business plan.

The condition of the requesting credit union will be considered in every instance. The economic feasibility of expanding the field of membership of a credit union with serious management or operational problems must be carefully considered by regional staff if the safety and soundness of the credit union is to be preserved. In most cases, field of membership additions will only be approved for credit unions which are operating satisfactorily. If a Federal credit union is having difficulty providing good service to its current membership, it may have even more difficulty serving an enlarged field of membership. In some cases, expanding the field of membership of a struggling credit union may do more harm than good. A struggling credit union's resources need to be focused on current problems. Placing an additional strain on these resources by increasing the field of membership may also increase the credit union's problems.

If the requested addition is approved by the Regional Director, the credit union will be furnished a formal, updated section 5 of its charter which restates the entire field of membership, including the requested addition. After action by the board of directors, the form should be promptly filed with the credit union's official charter and bylaws.

If the request is denied by the Regional Director, the credit union will be so advised in writing and furnished specific reasons for the denial. This correspondence may include suggestions and other options for the credit union's consideration. This letter will also

include information about the availability of the appeals process. If a credit union's request is disapproved by the Regional Director, the credit union may appeal the decision (or request a review of the policy involved) to the NCUA Board through the appropriate Regional Director.

Service Status Reports

Federal credit unions which frequently add select groups to their fields of membership should be prepared to furnish a written summary of the results of their efforts to bring service to the employees or members of the select groups. The Regional Offices will request periodically that such FCU's submit service status reports to NCUA showing, at a minimum, the number of primary potential members of each select group added and the number of persons from each select group who have actually enrolled as credit union members. These service status reports can be enlarged to require information concerning aggregate share and loan activity by select group or participation in other credit union services. In any event, Federal credit unions using the select group addition method should implement an information gathering system early in their addition/diversification program to track their progress in bringing service to the potential members of their select groups.

This information will help the credit union to operate efficiently and will give management the data necessary to make decisions about marketing strategy, new promotions, implementation of new services, etc. The service status reports will enable NCUA to determine which Federal credit unions are serving newly-added groups, as well as any Federal credit unions that are not serving new groups. If the NCUA determines that a Federal credit union is not adequately serving new groups, the Regional Director may remove the select group(s) not being served from Section 5 of the credit union charter.

Chapter 3—Charter Conversions

A charter conversion is a change in the jurisdictional authority under which a credit union operates. A credit union's charter is the instrument given to the institution by the government, either state or Federal, granting to it the authority to carry out credit union business in accordance with law.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation; they are incorporated under Federal law. State-chartered credit unions are incorporated in a particular state, receiving their charter from the

state agency responsible for credit unions and subject to the state's supervisory authority. If the state-chartered credit union is federally insured by NCUA, it will also fall under NCUA's jurisdiction.

A Federal credit union's power and authority are principally derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are principally governed by state law and regulation.

There are two types of charter conversions: Federal charter to state charter, and state charter to Federal charter. Although common bond is not an issue from NCUA's standpoint in the case of a Federal to state charter conversion, the procedures and forms relevant to such a conversion have been included.

I—Conversion of a State Credit Union to a Federal Credit Union

A. General Requirements

Any state-chartered credit union may apply to convert to a Federal credit union. In order to convert, it must:

1. Comply with state law regarding conversion;
2. File proof of compliance with NCUA;
3. File the required preliminary documents with NCUA;
4. Upon NCUA's approval of the preliminary documents file a proposed Federal credit union organization certificate;
5. Comply with the requirements of the Federal Credit Union Act, e.g., common bond and reserve requirements; and
6. Be granted a charter by NCUA.

Conversions are treated the same as any initial application for a Federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter application.

A converting state credit union's proposed field of membership must conform to NCUA chartering policy. However, existing members who would not be within the revised field of membership will be allowed to retain their membership after the conversion.

B. Submission of Conversion Proposal to NCUA

The following actions are to be taken before submitting a conversion proposal:

1. The credit union board must approve a proposal for conversion.

2. The Application to Convert (NCUA Form 4401) must be completed. Its purpose is to provide the Regional Director with information on the present operating policies and financial condition of the credit union and the reasons why the conversion is desired. A continuation sheet may be used if space on the form is inadequate. Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.

3. The Application must be accompanied by all required attachments. Additional attachments not specified in the Application but which must also be provided are:

- a. Evidence that the state supervisory authority is either in agreement with the conversion proposal or, if not in agreement, the reasons therefor; and
- b. The Application for Insurance of Accounts (Form NCUA 9600) in the case of a state credit union that is not federally insured.
- c. The Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter (Form NCUA 4000).
- d. The most current financial and statistical report.

C. NCUA Consideration of the Application to Convert

1. *Review by the Regional Director.* The Application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The Regional Director may make further investigation into the proposal and may require the submission of additional information to support the request to convert. At this point, NCUA will conduct an on-site review of the credit union.

2. *Examination and Payment of Fees.* NCUA will examine the books and records of the credit union on-site. NCUA will charge the credit union an examination fee. Nonfederally-insured credit unions will also be assessed an application fee.

3. *Conditions to the Approval.* The Regional Director will specify any special conditions that the credit union must meet in order to proceed with the conversion. When necessary, this will include changes to the credit union's

field of membership in order to conform to NCUA's chartering policies.

4. *Approval by the Regional Director.* The conversion will be approved by the Regional Director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for Federal insurance.

5. *Notification.* The Regional Director will notify both the credit union and the state supervisory authority of the decision on the conversion.

D. Action by Board of Directors

Upon being informed of the Regional Director's approval, the board must:

1. Comply with all requirements of the state supervisory authority that will enable the credit union to convert to a Federal charter and cease being a state credit union;

2. Obtain a letter or official statement from the state supervisory authority certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a Federal charter. A copy of this document must be submitted to the Regional Director;

3. Submit a statement of the action taken to comply with any conditions imposed by the Regional Director in the approval of the conversion proposal.

E. Application for a Federal Charter

When the Regional Director has received evidence that the board has completed the actions described in (D) above, the credit union will be authorized to proceed in making application for a Federal charter.

The Regional Director will normally assign a staff member to assist the credit union in preparing its Organization Certificate, (Form NCUA 4008), and an Application and Agreements for Insurance of Accounts (Form NCUA 9500).

The Organization Certificate will be submitted to the Regional Director, together with the Application for Insurance.

When received by the Regional Director, the proposed Organization Certificate will constitute the credit union's formal application to become a Federal credit union. If the application is approved, the credit union may complete the conversion. Denials are appealable to the NCUA Board.

F. Completion of the Conversion

1. *Effective Date of Conversion.* The date on which the Regional Director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a

Federal credit union. The Regional Director will forward to the credit union its Federal charter and Certificate of Insurance and will notify the state supervisory authority of the date of the conversion.

2. *Assumption of Assets and Liabilities.* As of the effective date, the Federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

3. *Board of Directors Meeting.* Upon receipt of its Federal charter, the board will hold its first meeting as a Federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations. Actions to be taken at this meeting include:

a. Change of the credit union's name on all records, accounts, investments, and other documents evidencing assets or liabilities of the credit union;

b. Changes to the credit union's books and records:

(1) As of the commencement of business, the accounting system, records, and forms must conform to the standards established by NCUA;

(2) New journal and cash record and general ledger pages should be set up. The general ledger accounts for the state credit union will be posted through the effective date of the conversion, and the new balances will be transferred to the new general ledger accounts of the Federal credit union;

(3) The income and expense accounts of the state credit union will not be closed unless the conversion is at the close of an accounting period or is required by the state supervisory authority; and

(4) The individual share and loan ledger accounts used by the state credit union may continue to be used. The Federal credit union's name should be properly reflected on these accounts.

4. *Reports to NCUA.* Within 10 days after commencement of operations, the Federal credit union must submit to the Regional Director the following:

a. Report of Officials (NCUA 4501); and

b. Financial and Statistical Reports, (Forms FCU 109A, 109B, and 109F, or their equivalent) as of the commencement of business of the Federal credit union.

II—Conversion of a Federal Credit Union to a State Credit Union

A. General Requirements

Any Federal credit union may apply to convert to a state credit union. In order to do so, it must:

1. Comply with the requirements of the Federal Credit Union Act (section 125) that enable it to convert to a state credit union and to cease being a Federal credit union; and

2. Comply with applicable state law and the requirements of the state supervisory authority.

B. Special Provisions Regarding Federal Share Insurance

If the Federal credit union wants to continue Federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (Form NCUA 9600) to the Regional Director at the time it requests approval of the conversion proposal. The Regional Director has the authority to approve or disapprove the Application.

If the converting Federal credit union does not want to continue Federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the Federal credit union will be terminating all share insurance or converting from Federal to nonfederal share insurance, it must comply with the membership notice and voting procedures set forth in section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations.

Where the state credit union will be nonfederally insured, Federal insurance ceases on the effective date of the conversion. If it will be otherwise uninsured, then Federal insurance will cease one year after the date of conversion subject to the restrictions in section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the Federal credit union's NCUSIF capitalization deposit and any unused portion of the Federal insurance premium after the final date on which any of its shares are federally insured. The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

C. Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the Federal credit union's bylaws, the conversion proposal will be submitted to the Regional Director and will include:

1. A current financial report;
2. A current delinquent loan schedule;
3. An explanation and appropriate documents relative to any changes in insurance of member accounts;
4. A resolution of the board of directors;
5. A proposed Notice of Special Meeting of the Members (Form NCUA 4221);
6. A copy of the ballot to be sent to members (Form NCUA 4506);
7. Evidence that the state supervisory authority is in agreement with the conversion proposal; and
8. A statement of reasons supporting the request to convert.

D. Approval of the Proposal to Convert

1. Review by the Regional Director. The proposal will be reviewed to determine that it is complete and is in compliance with section 125 of the Federal Credit Union Act. The Regional Director may make further investigation into the proposal and require the submission of additional information to support the request.

2. Conditions to the Approval. The Regional Director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

3. Approval by the Regional Director. The proposal will be approved by the Regional Director if it is in compliance with section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of section 206 of the Federal Credit Union Act.

4. Notification. The Regional Director will notify both the credit union and the state supervisory authority of the decision on the proposal.

E. Approval of Proposal by Members

Upon approval of the proposal by the Regional Director, the following actions will be taken by the board of directors:

1. The proposal must be submitted to the members for approval and a date set for a vote on the proposal. The proposal may be acted on at the annual meeting, at a special meeting for that purpose, or by written ballot to be filed by the date set for the vote.
2. Members must be given advance notice (NCUA 4221) of the meeting at

which the proposal is to be submitted in accordance with the provisions of the Federal Credit Union Bylaws (Article V). The notice shall:

- a. Specify the purpose, time and place of the meeting;
- b. Include a brief and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;
- c. Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;
- d. Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and
- e. State in bold face type that the issue will be decided by a majority of members who vote.

3. A copy of the Notice of the meeting shall be delivered to the Regional Director at the same time that it is delivered to the members.

4. The proposed conversion must be approved by a majority of all of the members who vote on the proposal in order for the credit union to proceed further with the proposition. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with (2.c.) above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.

5. The board of directors shall, within 10 days, certify the results of the membership vote to the Regional Director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on Form NCUA 4505.

F. Compliance with State Laws

If the proposition for conversion is approved by a majority of all members who voted, the board of directors should then:

1. Ensure that all requirements of state law and the state supervisory authority have been accommodated;
2. Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert;
3. Ensure that the Regional Director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the Regional

Director should be informed of the reasons for the delay.

G. Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

1. The board of directors will submit a copy of the state charter to the Regional Director within 10 days of its receipt. This will be accompanied by the Federal charter and the Federal insurance certificate. A copy of the financial reports (Forms FCU 109A and 109B) as of the preceding month-end should be submitted at this time.

2. The Regional Director will notify the credit union and the state supervisory authority in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.

3. The effective date of conversion is the day immediately preceding the date on which the credit union became a state credit union. The credit union shall cease to be a Federal credit union as of the effective date.

4. If the Regional Director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state supervisory authority shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the Regional Director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be affected and completed until the improper actions and steps have been corrected.

5. Upon ceasing to be a Federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if Federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the Federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state credit union supervisory authority.

6. If the Regional Director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the Federal charter will be canceled.

7. There is no requirement for closing the records of the Federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter, except that the

credit union shall no longer use the words "Federal Credit Union" in its name nor represent itself in any manner as being a Federal credit union.

8. If the state credit union is to be federally insured, the Regional Director will issue a new insurance certificate.

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12 CFR Parts 701 and 741

Nonmember and Public Unit Accounts

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

ACTION: Final rule.

SUMMARY: This final rule replaces the interim final rule on nonmember and public unit accounts issued by the NCUA Board in December of 1988. The final rule continues the requirement that federally-insured credit unions wish to maintain nonmember and public unit shares in excess of 20% of their total shares must submit a plan setting forth the intended use of the funds and request NCUA's approval. The rule includes the procedures and standards NCUA will use in evaluating the requests.

Also, the rule provides that NCUA will not approve a request from a federally-insured state-chartered credit union without first obtaining the concurrence of the appropriate state regulator.

EFFECTIVE DATE: July 27, 1989.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or Hattie M. Ulan Assistant General Counsel, at the above address or telephone: (202) 682-9640 (Mr. Riley) or 682-9630 (Ms. Ulan).

SUPPLEMENTARY INFORMATION:

Background

Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) authorizes a Federal credit union (FCU) to accept and maintain certain types of nonmember shares. Section 101(5) of the FCU Act (12 U.S.C. 1752(5)) defines "member account" to include the accounts of nonmember credit unions and the accounts of nonmember units of Federal, state, or local governments and the political subdivisions of such units. The term also includes, but only in the case of a credit union that serves predominantly low-income members and has received a low-income designation from NCUA, accounts of any nonmember. The terms "predominantly" and "low-income member" are currently defined in Section 700.1 of NCUA's

Regulations (12 CFR 700.1). Concurrent with this final rule, the NCUA is issuing a proposed amendment adding a new § 701.32(d) to clarify that FCU's must obtain a designation from NCUA prior to accepting nonmember shares pursuant to the low-income authority, and that federally-insured state-chartered credit unions (FISCU's) must receive such a designation from the appropriate state regulator with the concurrence of NCUA. The NCUA is also proposing to move the definitions of "predominantly" and "low-income members" to § 701.32(d).

On December 19, 1988, the NCUA Board published an interim final rule limiting to 20% of total shares the amount of public unit and nonmember accounts that may be maintained by FCU's and FISCU's without prior NCUA approval. (See 53 FR 50918.) Although the interim final rule was made immediately effective, the NCUA Board provided a 60-day comment period. The comment period was later extended for approximately 90 days to May 15, 1989. (See 54 FR 8280 2/28/89.)

Comments

One hundred and twenty-six comments were received. Fifty of the commenters were FCU's and nine were state-chartered credit unions. Thirty-nine of the commenters were community and religious organizations. Nine commenters were state credit union leagues. Five comments were from national credit union trade associations, and four commenters were other types of trade associations. Four of the commenters were state credit union regulators. Comments were also received from a local association of credit unions, a Congressman, and a county treasurer. Three comments were from individuals.

Discussion

The reaction of many of the commenters was that the rule was an overreaction to the potential losses to the National Credit Union Share Insurance Fund (NCUSIF) associated with the 1988 failure of the Franklin Community FCU. Commenters stated that other credit unions should not be penalized for the actions of one credit union. Some commenters believed that NCUA should not have made the rule immediately effective, that is, without a prior comment period. The reasons for the immediate action were set forth in the preamble to the interim rule.

Franklin Community FCU was only one of several cases involving the misuse of credit union, public unit, and other nonmember funds. The preamble to the interim final rule listed six credit

unions other than Franklin where the misuse of such funds has resulted in losses to the NCUSIF. The interim final rule is not intended to penalize credit unions, but to ensure that nonmember and public unit shares are accepted and utilized by credit unions in a safe and sound manner and to further the interest of serving members. The commenters' belief that misuse of such funds is not a pervasive problem for credit unions is correct. It is, however, a costly problem when it occurs, and one that affects all federally-insured credit unions in two ways: Through losses to the NCUSIF, and loss in confidence in credit unions when public units and nonmembers suffer losses because their accounts are in excess of the share insurance limit.

The majority of the commenters objected to the interim final rule, stating that it was unduly harsh on community development and low-income credit unions. Many of these commenters were low-income designated and/or community development credit unions, and community and religious organizations that have accounts in these credit unions. The credit union commenters stated that the rule would affect their ability to make loans and may jeopardize their existence. The organizational commenters stated that they generally have accounts that earn below market rates in low-income credit unions to provide a source of funds for the poor and minorities, and that the rule would limit their altruistic goal.

The rule is not a prohibition on public unit and nonmember shares. All FCU's may continue to accept other credit union and public unit shares. FCU's with a low-income designation from NCUA may continue to accept nonmember shares. FISCU's may accept public unit, credit union, and nonmember shares to the extent permitted under the appropriate state law. The rule does, however, require federally-insured credit unions that wish to accept such shares in excess of 20 percent of total shares to submit to NCUA a reasonable plan setting forth the intended use of the funds and obtain NCUA approval.

The rule requires that a federally-insured credit union's plan describe how public unit and nonmember funds will be used to serve the credit union's membership, i.e., by providing loanable funds to its members or through increased earnings; provide for matching maturities of public unit and nonmember shares with corresponding assets, or a justification for any mismatch; and provide for an adequate income spread between public unit and nonmember shares and corresponding assets. The rule further requires that a credit union