Comment Call (14-09)
NCUA – Chartering and Field of Membership Manual

Impact: Federal Credit Unions
Relevant Department: CEO
Priority Level: ***Medium***

Background

The NCUA is proposing to amend the associational common bond provisions of the chartering and field of membership rules. The amendments will establish a threshold requirement that an association not be formed primarily for the purpose of expanding credit union membership. Amendments are also being proposed to expand the criteria in the totality of the circumstances test. Lastly, NCUA is proposing to grant automatic qualification under the associational common bond rules to certain categories of groups that NCUA has approved in the past, after applying the totality of the circumstances test.

The proposal can be found here.

Comments must be received on or before **June 30, 2014.**

Summary of Proposed Rule Changes and Request for Comment

NCUA implements the Federal Credit Union Act's (FCU Act's) Field of Membership (FOM) requirements in its Chartering and Field of Membership Manual, Appendix B to part 701 of NCUA regulations.

Section 109 of the FCU Act provides for three types of FCU charters:

1. Single common bond (occupational or associational);
2. Multiple common bond (multiple groups); and
3. Community

A single common bond FCU consists of having a common bond or occupation or association.

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

Associational Common Bond

The single associational common bond consists of individuals and/or groups whose members participate in activities developing common loyalties, mutual benefits and mutual interests. Separately chartered associational groups can establish a single common bond relationship if such groups are integrally related and share common goals and purposes. Examples would include educational groups, church groups, student groups, homeowners associations, etc. NCUA determines whether a group satisfies the associational common bond requirements for an FCU charter based on the totality of circumstances. The test currently consists of seven factors:

1. Whether members pay dues;
2. Whether members participate in the furtherance of the goals of the association;
3. Whether the members have voting rights;
4. Whether the association maintains a membership list;

5. Whether the association sponsors other activities;
6. The association's membership eligibility requirements; and
7. The frequency of meetings.

Multiple Occupational or Associational Common Bonds

FCUs chartered to serve a combination of distinct, definable single occupational and/or associational common bonds are multiple bond credit unions. Each group in the FOM must have its own occupational or associational common bond. These groups must be within reasonable geographic proximity of the credit union. . The groups must be within the service area of one of the credit union's service facilities and are referred to as selected groups.

Automatic Approval

NCUA has historically approved certain associations almost without exception due to their structure, practices, and functions, and because they easily satisfy the Chartering Manual's requirements. For example, religious organizations including churches, homeowner associations, scouting groups, electric cooperatives and labor unions will be automatically included in an FCU's FOM if it chooses to add the groups, as long as such groups meet service area and other related requirements.

The NCUA proposes to automatically approve associations that have a mission based on preserving or furthering the culture of a particular national or ethnic origin for the same reasons stated above. Additionally, the proposed rule allows alumni associations to be automatically approved. Members of the alumni association need not have attended the college or university if the association bylaws permit them to join.

Comments

1. The NCUA is requesting public comment if they should automatically approve any other categories of associations that are not included above.

Associational Group Quality Assurance Review

NCUA is currently reviewing the way associational groups are formed and operated in order to prevent abuses of the membership system. The NCUA is finding a few FCUs are forming associations for the primary purpose of facilitating credit union membership and that some of these associational groups do not comply with their own bylaws or their bylaws do not reflect current practices.

Since the IRPS 99-1, the NCUA chartering policy has not included a geographic limitation. Without this limitation, NCUA is finding that associational groups, in conjunction with or at a FCU's instigation are adding members outside of the FCU's historical operating area to increase FCU membership.

The NCUA is currently reviewing several associations. If any of these associations no longer meet the totality of the circumstances test or an association is not operating according to their official bylaws in a way that impermissibly affects the credit union membership, NCUA will remove the association from the FCU's FOM.

Threshold Requirement Regarding the Purpose for Which an Association is Formed

When reviewing an application to include an association in a FCU's FOM, the NCUA will determine if the association has been formed primarily for the purpose of expanding credit union membership. If the NCUA makes that determination, the inclusion of the association is denied in the FCU's FOM. If the NCUA determines that the association was formed to serve another separate function, the NCUA will apply the totality of the circumstances test to determine if the association satisfies the associational common bond requirements.

Totality of the Circumstances

NCUA is proposing to amend the criteria in the totality of circumstances test for evaluating compliance with the associational common bond requirements. The NCUA believes that clarifying and expanding the totality of the circumstances test will better ensure that all associations or groups have the requisite associational bond.

The NCUA is proposing to expand the totality of circumstances test by adding an additional criterion regarding corporate separateness. Specifically, the NCUA will review if there is a corporate separateness between an association and the FCU. Both must operate in a way that demonstrates the separate corporate existence of each entity. The factors that the NCUA will consider are as follows:

1. Their respective business transactions, accounts, and records are not intermingled;
2. Each observes the formalities of its separate corporate procedures;
3. Each is adequately financed as a separate entity in light of normal obligations reasonably foreseeable in a business of its size and character;
4. Each is held out to the public as a separate enterprise; and
5. The group maintains a separate physical location, which does not include a P.O. Box or other mail drop or on premises owned or leased by the FCU.

Qualified associations already within an FCU's FOM are grandfathered and will not be subject to the corporate separateness criterion.

The NCUA has not removed any of the current criteria in the test, however the NCUA clarifies that after examining an association's purpose as a threshold matter, the NCUA's primary focus under the totality of the circumstances test will be on the following criteria:

1. Whether the association provides opportunities for members to participate in the furtherance of the goals of the association;
2. Whether the association maintains a membership list;
3. Whether the association sponsors other activities; and
4. Whether the association's membership eligibility requirements are authoritative.

In applying this test, the NCUA will also consider whether an FCU enrolls a member into an association without the member's consent or knowledge. This will reflect negatively on the association's qualification for FCU membership.

Grandfathering in Associations

NCUA will grandfather in existing members from all qualified associations currently part of an FCU's membership. The NCUA will review and consider if there are any associations in an FCU's FOM that need to be removed because they no longer meet the totality of circumstances test on a case-by-case basis. FCUs that have groups no longer meeting the test will need to determine whether the group should be removed from the FOM or if non-compliance can be cured, with the NCUA's Office of Consumer Protection, Division of Consumer Access.

<u>Comment Letters</u>

Please submit a Comment Letter to:

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke St.

Alexandria, VA 22314-3428

Comments should be identified by "Notice of Proposed Rulemaking Regarding Associational Common Bond"

Electronically:	http://www.regulations.gov; follow the instructions for submitting comments. http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html; follow the instructions for submitting comments.
E-mail:	regcomments@ncua.gov, including your name – "Comments on Notice of Proposed Rulemaking Regarding Associational Common Bond" in the subject line.
Fax:	(703) 518-6319

Please submit to the MCUL a copy of your response to the attention of:

Kieran Marion
Vice President Governmental Affairs
Michigan Credit Union League & Affiliates
38695 W. Seven Mile Road, Suite 200
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We Appreciate Your Response.