

**NATIONAL CREDIT UNION
ADMINISTRATION****12 CFR Part 701****Organization and Operations of
Federal Credit Unions**

AGENCY: National Credit Union
Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its chartering and field of membership manual to update chartering policies and streamline documentation. These final amendments are in response to NCUA's more than four years experience with existing chartering and field of membership policies.

DATES: This regulation is effective May 15, 2003.

FOR FURTHER INFORMATION CONTACT:

Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6540; Regina Metz, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6540; Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6360.

SUPPLEMENTARY INFORMATION: NCUA's current chartering and field of membership policy is set out in Interpretive Ruling and Policy Statement 99-1, Chartering and Field of Membership Policy (IRPS 99-1), as amended by IRPS 00-1 and IRPS 02-2. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1. It is also published as NCUA's Chartering and Field of Membership Manual (Chartering Manual), which is the document most interested parties use and to which references in the following discussion are made.

In 1998, Congress updated the laws on field of membership with the passage of the Credit Union Membership Access Act (CUMAA). On December 17, 1998, in response to CUMAA, the NCUA Board issued a final rule on chartering and field of membership. 63 FR 73022, December 30, 1998. When the NCUA Board issued its final rule, it instructed NCUA's Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99-1. Accordingly, recommendations were made, and final amendments to NCUA's chartering policy were issued by the NCUA Board in 2000 and again

in 2002. 65 FR 64512, October 27, 2000; 67 FR 20013, April 24, 2002.

Over the past four years, NCUA's Field of Membership Taskforce has continued to monitor and review the implementation of the Chartering Manual and its amendments in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. In connection with this review, last year the NCUA Board issued a proposed rule, with a 60-day comment period, that comprehensively updated the agency's chartering policy. 67 FR 72444, December 5, 2002. The comment period ended on February 3, 2003.

Six hundred and seventy comments were received. Comments were received from 263 federal credit unions, 113 state-chartered credit unions, 131 Florida bankers and 69 other banks, 31 state credit union leagues or trade associations, and 4 national credit union trade associations, 32 credit union members, 14 state bank trade associations and 3 national bank trade associations, 2 members of Congress, 2 law firms, 1 insurance company, 2 credit union service organizations (CUSOs), 1 credit union contractor, 1 institute, and 1 shared service center.

Except for the banks and bank trade associations, most commenters were very supportive of the proposed chartering and field of membership policies, with some commenters suggesting ways they would improve the final rule. Many stated that they appreciated the added flexibility permitted under the proposal, and some addressed how the proposal would afford them the opportunity to diversify their membership and how this would result in decreased economic risk. Besides the bank commenters, four credit unions and the institute opposed the proposal. Two of these commenters believe it would harm small credit unions. After the following discussion of the proposed amendments, there is a separate section devoted to the comments received from the bankers and bank trade associations.

A. Proposed Amendments**1. Overlapping Fields of Membership
Among Credit Unions**

As stated in the proposal, the NCUA Board has found no empirical evidence to indicate that overlaps have an adverse impact on credit unions and believes overlaps should generally be permitted. Therefore, except for select group expansions for multiple group credit unions, the NCUA Board proposed to eliminate overlap protection and provide the option to all

credit unions to remove any existing exclusionary clauses in its charter.

Under the Federal Credit Union Act (the Act), the agency must do an overlap analysis on select group expansions for multiple group credit unions so no significant changes were proposed in this area. 12 U.S.C 1759(f)(2)(D). On select group expansions, however, the NCUA Board stated that overlaps of groups of less than 3,000 should be classified as an incidental overlap and no overlap analysis should be required. The 3,000 threshold is taken directly from the CUMAA.

The NCUA Board also stated if two credit unions want to retain an exclusionary clause that is a business decision for them to make. If, however, one credit union wants the exclusionary clause removed, the NCUA Board stated the request should be approved and should be treated as a housekeeping amendment.

One hundred and twenty-two commenters supported this proposed change. Thirteen commenters opposed the change. They generally opposed this change because they believe it may harm small to mid-size credit unions that cannot compete with the rates and total range of services offered by the larger credit unions.

The NCUA Board is committed to the concept of consumer choice as reflected in CUMAA. NCUA has approved charter expansions that overlap other credit unions for decades, without any evidence that the overlap harms the overlapped credit union. Overlap protection can harm the credit union member by denying consumer choice. By adopting the proposed change, the agency's policy will accurately reflect today's marketplace, which provides many choices in financial services to the consumer. Therefore, the NCUA Board believes it is appropriate to eliminate the remaining overlap protections that still exist in the regulation to the extent permitted by statute. The NCUA Board does not believe this overlap policy will have an adverse impact on small credit unions. Accordingly, the NCUA Board is adopting the proposed change on overlaps in the final rule including the procedure on how to remove existing exclusionary clauses.

The NCUA Board is also eliminating a paperwork relic for credit unions that wish to expand their single occupational or associational common bond. Under the current rule, a single common bond credit union needs to obtain a letter from a group's sponsor indicating that the group wants to be added to the credit union's field of membership. The purpose of this requirement was so that NCUA could