

monitor overlaps. Since overlaps are now permitted for single common bond credit unions, this sponsor letter serves no safety and soundness or other policy purpose. A couple of commenters specifically addressed this issue and suggested the elimination of this requirement. Therefore, the NCUA Board is modifying the single common bond expansion procedure for both occupational and associational credit unions. Under the new procedure, a credit union need only state how the common bond is shared and how it will serve the expanded group. The requirement for a sponsor letter is eliminated.

The NCUA Board is also clarifying in the final rule that a single common bond credit union can merge into a multiple common bond credit union if the single common bond credit union is completely overlapped by the multiple common bond credit union. The NCUA Board believes that, if a multiple group credit union has a complete overlap of a single common bond credit union's field of membership, then the two credit unions should be allowed to merge without analyzing the group's ability to form its own credit union. This change is consistent with the new overlap policy as well as previous modifications to merger policy. Chapter 2, section IV.D.1.c is modified accordingly in the final rule.

## *2. Reasonable Proximity and Service Facility for Select Group Expansions*

Under CUMAA, if the formation of a separate credit union is not practicable or consistent with the standards in the Act, then a select group can be included in the "field of membership of a credit union that is within reasonable proximity to the location of the group." 12 U.S.C. 1759(f)(1)(B). The Act does not define a service facility for the purpose of analyzing reasonable proximity. In the proposal, the NCUA Board defined a service facility for multiple group expansions as a place where shares are accepted for members' accounts, loan applications are accepted, or loans are disbursed.

In defining reasonable proximity, the NCUA Board has continually stated that the group to be added must be within the "service area" of a "service facility" of the credit union. After reviewing CUMAA and its legislative history again, the NCUA Board proposed a new definition of a service facility for the purpose of the reasonable proximity analysis. The NCUA Board proposed that a wholly-owned ATM or a shared service facility in which a credit union has an ownership interest constitutes a credit union for the purpose of the

reasonable proximity analysis. Under the proposal, underserved areas still require a physical presence other than an ATM or shared service facility.

One hundred and thirty-four commenters agreed with the proposed change. Two commenters who supported expanding the definition of service facility also suggested eliminating the reasonable proximity requirement altogether. Eleven commenters did not agree with the use of an ATM for purposes of the reasonable proximity analysis. One of these commenters opposed the use of shared branch networks for the reasonable proximity analysis. Many of these commenters were concerned that such a definition would harm small credit unions.

Sixty-nine commenters supported the proposal, but recommended NCUA further expand the definition of service facility. Many of these commenters recommended that NCUA change "wholly owned" ATM to "branded" ATM and also include the web, telephone, and the United States mail as service facilities. A few of these commenters wrote that NCUA should also consider shared or network ATMs as service facilities.

The NCUA Board does not have the legal authority to eliminate the reasonable proximity requirement. The NCUA Board also believes an ownership interest is crucial in analyzing the reasonable proximity requirement for ATMs and shared service facilities. However, the NCUA Board is clarifying that services provided by an ATM are irrelevant to this analysis as long as it is wholly-owned by the credit union.

The NCUA Board believes that the proposed definition of a service facility for determining reasonable proximity is reasonable and is consistent with economic realities of the "clicks and windows" age. However, the NCUA Board is clarifying in the final rule that a service facility does not include a credit union's internet web site.

In response to some commenters, the NCUA Board is clarifying in the final rule that the requisite ownership interest can be in a shared service center, a shared service network, or similar organization. Therefore, as long as the credit union has an ownership interest in the service center, network, or similar organization, the credit union can expand around any of them. The credit union does not need to have an ownership interest in the specific service facility. This means, for example, that, if the credit union has an ownership interest in a CUSO, it can expand around any service center connected to the CUSO. This also would

allow a participating credit union with an ownership interest in the service facility to expand around other service facilities connected to the shared service network or similar organization.

## *3. Associational Common Bond*

The Chartering Manual defines what constitutes an associational common bond. Under the current definition the group must: (1) Hold meetings open to all members; (2) sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association; and (3) have an authoritative definition of who is eligible for membership. Other factors were also considered by the agency. The NCUA Board proposed that the three mandatory requirements be eliminated and merged into the list of factors to be considered by the agency. Under the proposal, a consideration of the totality of circumstances would determine whether an associational common bond exists. The NCUA Board also explicitly stated in the proposal that national associations in their entirety qualify for credit union service if the headquarters are within reasonable proximity to the credit union.

One hundred and seven commenters supported the proposed change. Four commenters opposed the proposal. The NCUA Board believes, for the reasons provided in the proposal, that a totality of the circumstances analysis is appropriate in determining an associational common bond and is adopting that approach in the final rule.

Eight commenters specifically approved of the clarification on national associations. Four commenters did not agree with the clarification. In response to concerns raised by some commenters, the NCUA Board is clarifying that current policy already permits a multiple group credit union to add national associations to its field of membership as long as the national association headquarters are within reasonable proximity to the credit union. If a multiple group credit union wishes to add just a chapter of the national association, the office of the chapter must be in reasonable proximity to the credit union. If a credit union is chartered to serve a single association, there is no reasonable proximity requirement. Therefore, the proposed clarification is adopted in the final rule.

The NCUA Board wants to reiterate that associations that are primarily based on client-customer relationships do not qualify as an associational common bond. Finally, the NCUA Board is making some technical wording changes in this section to eliminate possible ambiguities.