

providing an example in the final rule to demonstrate that a community charter can serve individuals and organizations that regularly conduct business in the community.

Twenty-two commenters requested that, if a credit union converts to a community charter, all groups outside the community boundary should continue to be served by the community credit union. The NCUA Board believes that such an interpretation is not permitted under CUMAA. However, as stated in this rule, and previous NCUA rules, groups obtained through an emergency merger or emergency purchase and assumption can continue to be served by the new community credit union.

One commenter believes credit unions should be able to serve multiple, noncontiguous communities, and another commenter believes NCUA should not restrict a credit union to a single charter type, but should permit credit unions to be hybrids of different charter types. Unfortunately, the Act does not specifically permit hybrid charters and does not generally permit a credit union to serve multiple noncontiguous communities. However, there are some exceptions to this rule, involving emergency mergers, underserved areas and the grandfathering of certain fields of memberships.

7. Common Bond Conversions

In the current Chartering Manual, the sections on federal charter conversions for occupational common bond credit unions, associational common bond credit unions, and multiple group common bond credit unions all contain a general three-year prohibition on converting to another type of charter, except to a community charter. This prohibition was originally established for operational and administrative reasons. The NCUA Board proposed the elimination of this prohibition since it unduly limits the flexibility needed for federal credit unions to serve their members and make well-reasoned business decisions.

Fifty-nine commenters specifically supported the proposal. One commenter specifically opposed the change. The NCUA Board has not been provided any compelling rationale to retain this prohibition so it is deleting this requirement and adopting the proposal in the final rule.

8. Charter Conversions

The NCUA Board clarified in the proposed rule that, if a State charter wants to convert to Federal charter and had previously obtained a group or area

through a procedure similar to NCUA's emergency merger provision, it can retain that field of membership when it converts to a Federal charter. Sixty-four commenters specifically supported this clarification. Two commenters specifically opposed it because of possible abuse.

The NCUA Board is adopting in the final rule the clarification that a State charter that converts to a Federal charter may retain any groups obtained through a State's emergency field of membership provision. Any subsequent expansions or amendments to the field of membership of the Federal charter must comply with Federal field of membership policies. The NCUA Board does not believe that adoption of this clarification will lead to any abuse because most State emergency provisions are not broader than those for Federal charters.

The NCUA Board requested comment on whether there was a compelling rationale to permit any type of State charters to retain their State fields of membership when converting to Federal charters. The NCUA Board also requested comment on other ways to streamline the procedure for converting from a State charter to Federal charter. Several commenters support streamlining the conversion process. Nine commenters requested that State charters converting to Federal charters should be able to retain all groups in their current fields of membership. Although some of these commenters provided good business reasons for adopting such a policy, no commenter provided a compelling justification for such a policy change. The NCUA Board will continue to review this issue in the future to determine if a change in policy is appropriate.

9. The Appeal Process

The NCUA Board proposed a change to the appeal process. The NCUA Board clarified that, if a credit union seeks a second reconsideration of an application, and it is still not approved by the region, it will be treated as an appeal and sent to the NCUA Board for a decision. Furthermore, Chapter Three of the Chartering Manual on underserved areas does not have a separate appeals section, so the NCUA Board proposed adding an appeal provision to this section.

Fifty commenters specifically supported the changes to the appeal process and only one commenter opposed it. The NCUA Board is adopting the proposed changes to the appeals process, with minor modifications, including the addition of an appeal process for underserved areas.

10. Miscellaneous Clarifications

The NCUA Board proposed three other amendments to conform to other proposals made by the NCUA Board or to clarify existing policy. First, the NCUA Board proposed a change to chapter 1, section XII to permit foreign branching by Federal credit unions. Any existing or proposed branches on United States military installations or United States embassies are unaffected by this change.

The few commenters that addressed the issue supported the proposed amendment. The NCUA Board is adopting this proposal in the final rule.

Second, the NCUA Board clarified how corporate accounts can be cited in a credit union's charter by adding them to the list of groups in "Other Persons Eligible for Credit Union Membership." Forty-three commenters supported the clarification and the NCUA Board is adopting this clarification in the final rule.

Third, the NCUA Board clarified that in a spin-off all members of the group to be spun off, regardless of how they voted, will be transferred if the spin-off is approved by the voting membership. Forty-three commenters supported the clarification. The NCUA Board believes that this treatment of members in a spin-off is consistent with CUMAA and is adopting this clarification in the final rule.

A couple of commenters recommended NCUA review its investment area definition; specifically, the definition of empowerment zones or enterprise communities used to add underserved areas. Before a Federal credit union can expand its field of membership to serve an underserved area, the area must, among other things, be classified as an investment area under section 103(16) of the Community Development Banking and Financial Institutions (CDFI) Act of 1994 (the CDFI Act), 12 U.S.C. 4703(16). The CDFI Act permits the U.S. Department of the Treasury's CDFI Fund to further define investment area.

NCUA has reviewed its investment area definition in response to these commenters and also because the CDFI Fund recently issued an interim final rule, revising its program, including its own investment area definition. 68 FR 5704, February 4, 2003 (to be codified at 12 CFR part 1805). The CDFI Fund has deleted the following criteria from its definition:

- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;