

Union Act, 12 U.S.C. 1788, that remains outstanding and unextinguished.

(2) In the case of an insured corporate credit union:

(i) A Federal credit union that has been assigned a 4 or 5 CAMEL rating by NCUA; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL rating by either NCUA, after an on-site contact, or its state supervisor; or

(iii) A Federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788, that remains outstanding and unextinguished.

*Unimpaired capital and surplus* means the same as “paid-in and unimpaired capital and surplus,” as defined in paragraph (f) of this section.

[36 FR 23794, Dec. 15, 1971]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 700.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

### Sec.

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APPENDIX A TO PART 701—FEDERAL CREDIT UNION BYLAWS

APPENDIX B TO PART 701—CHARTERING AND FIELD OF MEMBERSHIP MANUAL

AUTHORITY: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

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

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions, also known as the Chartering and Field of Membership Manual, are set forth in appendix B to this part and are available on-line at <http://www.ncua.gov>.

[ 75 FR 36263, June 25, 2010]

### § 701.2 Federal credit union bylaws.

(a) Federal credit unions must operate in accordance with their approved bylaws. The Federal Credit Union Bylaws are hereby published as appendix A to part 701 pursuant to 5 U.S.C. 552(a)(1) and accompanying regulations. Federal credit unions may adopt amendments to their bylaws as provided in the Bylaws, with the approval of the Board.

(b) Copies of the Federal Credit Union Bylaws may be obtained at <http://www.ncua.gov> or by request addressed to [ogc-mail@ncua.gov](mailto:ogc-mail@ncua.gov) or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

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(c) The National Credit Union Administration may issue revisions or amendments of the Federal Credit Union Bylaws from time to time. An historic file of amendments or revisions is maintained and made available for inspection at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

[72 FR 61500, Oct. 31, 2007]

### § 701.3 Member inspection of credit union books, records, and minutes.

(a) *Member inspection rights.* A group of members of a Federal credit union has the right, upon submission of a petition to the credit union as described in paragraph (b) of this section, to inspect and copy nonconfidential portions of the credit union's:

(1) Accounting books and records; and

(2) Minutes of the proceedings of the credit union's members, board of directors, and committees of directors.

(b) *Petition for inspection.* The petition must describe the particular records to be inspected and state a proper purpose for the inspection, that is, a purpose related to the protection of the members' financial interests in the credit union. The petition must state that the petitioners as a whole, or certain named petitioners, agree to pay the direct and reasonable costs associated with search and duplication of requested material. The petition must also state that the inspection is not desired for any purpose other than the stated purpose; that the members signing the petition will not sell or offer for sale any information obtained from the credit union; and that the members signing the petition have not within five years preceding the signature date sold or offered for sale any information acquired from the credit union or aided or abetted any person in procuring any information from the credit union for purposes of sale. The petition must name one member, and one alternate member, who will represent the petitioners on issues such as inspection procedures, costs, and potential disputes. At least one percent of the credit union's members, with a minimum of 20 members and a maximum of 500 members, must sign the petition. Each member who signs the petition must

have been a member of the credit union for at least 180 days at the time the petitioners submit the petition to the credit union.

(c) *Inspection procedures.* (1) A Federal credit union must respond to petitioners within 14 days of receiving a petition. In its response, a credit union must inform petitioners either that it will provide inspection of the requested material and, if so, when, or, if a credit union is going to withhold all or part of the requested material, it must inform petitioners what part of the requested material it intends to withhold and the reasons for withholding the requested material. As soon as possible after receiving a petition, a credit union must schedule inspection and copying of nonconfidential requested material it determines petitioners may inspect and copy.

(2) Inspection may be made in person or by agent or attorney and at any reasonable time or times. The credit union may, at its option, skip inspection and deliver copies of requested documents directly to the petitioners. Member inspection rights under this section are in addition to any other member inspection rights afforded by the credit union's charter or bylaws or other Federal law or Federal regulation.

(3) If the credit union denies inspection because the petitioners have failed to obtain the minimum number of valid signatures, the credit union must inform the petitioners which signatures were not valid and why.

(d) *Confidential books, records, and minutes.* Members do not have the right to inspect any portion of the books, records, or minutes of a Federal credit union if:

(1) Federal law or regulation prohibits disclosure of that portion;

(2) The publication of that portion could cause the credit union predictable and substantial financial harm;

(3) That portion contains nonpublic personal information as defined in 12 CFR 1016.3; or

(4) That portion contains information about credit union employees or officials the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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(e) *Costs.* A Federal credit union may charge petitioners the direct and reasonable costs associated with search and duplication. The credit union may not charge for other costs, including indirect costs or attorney's fees.

(f) *Dispute resolution.* (1) In the event of a dispute between a federal credit union and its members concerning a petition for inspection or the associated costs, either party may submit the dispute to the regional director. The regional director, after obtaining the views of both parties, will direct the credit union either to withhold the disputed materials or to make them available for member inspection and copying. The regional director may place conditions upon release. The decision of the regional director is a final agency decision and is not appealable to the Board.

(2) The regional director has the discretion to refer any dispute to the credit union's supervisory committee for review and resolution. If petitioners are not satisfied with the supervisory committee's response, they may resubmit the dispute to the regional director.

[72 FR 56253, Oct. 3, 2007, as amended at 78 FR 32544, May 31, 2013]

### § 701.4 General authorities and duties of Federal credit union directors.

(a) *General direction and control of a Federal credit union.* The board of directors is responsible for the general direction and control of the affairs of each Federal credit union. While a Federal credit union board of directors may delegate the execution of operational functions to Federal credit union personnel, the ultimate responsibility of each Federal credit union's board of directors for that Federal credit union's direction and control is non-delegable.

(b) *Duties of Federal credit union directors.* Each Federal credit union director has the duty to:

(1) Carry out his or her duties as a director in good faith, in a manner such director reasonably believes to be in the best interests of the membership of the Federal credit union as a whole, and with the care, including reasonable inquiry, as an ordinarily prudent per-

son in a like position would use under similar circumstances;

(2) Administer the affairs of the Federal credit union fairly and impartially and without discrimination in favor of or against any particular member;

(3) At the time of election or appointment, or within a reasonable time thereafter, not to exceed six months, have at least a working familiarity with basic finance and accounting practices, including the ability to read and understand the Federal credit union's balance sheet and income statement and to ask, as appropriate, substantive questions of management and the internal and external auditors; and

(4) Direct management's operations of the Federal credit union in conformity with the requirements set forth in the Federal Credit Union Act, this chapter, other applicable law, and sound business practices.

(c) *Authority regarding staff and outside consultants.* (1) In carrying out its duties and responsibilities, each Federal credit union's board of directors and all its committees have authority to retain staff and outside counsel, independent accountants, financial advisors, and other outside consultants at the expense of the Federal credit union.

(2) Federal credit union staff providing services to the board of directors or any committee of the board under paragraph (c)(1) of this section may be required by the board of directors or such committee to report directly to the board or such committee, as appropriate.

(3) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in paragraph (d).

(d) *Reliance.* A director may rely on:

(1) One or more officers or employees of the Federal credit union who the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

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(2) Legal counsel, independent public accountants, or other persons retained by the Federal credit union as to matters involving skills or expertise the director reasonably believes are matters:

(i) Within the particular person's professional or expert competence, and

(ii) As to which the particular person merits confidence; and

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

[75 FR 81385, Dec. 28, 2010]

### § 701.5 [Reserved]

### § 701.6 Fees paid by Federal credit unions.

(a) *Basis for assessment.* Each calendar year or as otherwise directed by the Board, each Federal credit union shall pay to the Administration for the current National Credit Union Administration fiscal year (January 1 to December 31) an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of December 31 of the preceding year or as otherwise determined pursuant to paragraph (b) of this section. The operating fee is determined based on total assets less the assets created on the books of a natural person Federal credit union by investments made in a corporate credit union under the Credit Union System Investment Program or the Credit Union Homeowners Affordability Relief Program.

(b) *Coverage.* The operating fee shall be paid by each Federal credit union engaged in operations as of January 1 of each calendar year, except as otherwise provided by this paragraph.

(1) *New charters.* A newly chartered Federal credit union will not pay an operating fee until the year following the first full calendar year after the date chartered.

(2) *Conversions.* A state chartered credit union that converts to Federal charter will pay an operating fee in the year following the conversion. Federal credit unions converting to state char-

ter will not receive a refund of the operating fee paid to the Administration in the year in which the conversion takes place.

(3) *Mergers.* A continuing Federal credit union that has merged with another credit union will pay an operating fee in the following year based on the combined total assets of the merged credit union and the continuing Federal credit union as of December 31 of the year in which the merger took place. For purposes of this requirement, a purchase and assumption transaction wherein the continuing Federal credit union purchases all or essentially all of the assets of another credit union shall be deemed a merger. Federal credit unions merging with other Federal or state credit unions will not receive a refund of the operating fee paid to the Administration in the year in which the merger took place.

(4) *Liquidations.* A Federal credit union placed in liquidation will not pay any operating fee after the date of liquidation.

(c) *Notification.* Each Federal credit union shall be notified at least 30 days in advance of the schedule of fees to be paid. A Federal credit union may submit written comments to the Board for consideration regarding the existing fee schedule. Any subsequent revision to the schedule shall be provided to each Federal credit union at least 15 days before payment is due.

(d) *Assessment of Administrative Fee and Interest for Delinquent Payment.* Each Federal credit union shall pay to the Administration an administrative fee, the costs of collection, and interest on any delinquent payment of its operating fee. A payment will be considered delinquent if it is postmarked later than the date stated in the notice to the credit union provided under § 701.6(c). The National Credit Union Administration may waive or abate charges or collection of interest if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount fixed from time to time by the National Credit Union Administration Board and based upon the administrative costs of such delinquent payments

to the Administration in the preceding year.

(2) The costs of collection shall be the actual hours expended by Administration personnel multiplied by the average hourly salary and benefits costs of such personnel as determined by the National Credit Union Administration Board.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

(4) If a credit union makes a combined payment of its operating fee and its share insurance deposit as provided in §741.4 of this chapter and such payment is delinquent, only one administrative fee will be charged and interest will be charged on the total combined payment.

[44 FR 27380, May 10, 1979, as amended at 50 FR 20745, May 20, 1985; 55 FR 1799, Jan. 19, 1990; 59 FR 33421, June 29, 1994; 60 FR 58503, Nov. 28, 1995; 74 FR 29936, June 24, 2009]

§§ 701.7–701.13 [Reserved]

**§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.**

(a) *Statement of scope and purpose.* Section 212 of the Federal Credit Union Act (12 U.S.C. 1790a) sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors, committee members or senior executive staff. The regulation only applies in cases of newly chartered credit unions and credit unions in troubled condition.

(b) *Definitions.* For the purposes of this section:

(1) *Committee member* means any individual who serves as an official of the credit union in the capacity of a credit committee member or supervisory committee member.

(2) *Senior executive officer* means a credit union’s chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial

officer (controller). The term “senior executive officer” also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation.

(3) In the case of an insured natural person credit union, *Troubled condition* means:

(i) A federal credit union that has been assigned a 4 or 5 CAMEL composite rating by NCUA; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL composite rating by either NCUA, after an on-site contact, or its state supervisor; or

(iii) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788, that remains outstanding and unextinguished.

(4) In the case of an insured corporate credit union, *Troubled condition* means:

(i) A Federal credit union that has been assigned a 4 or 5 CAMEL rating by NCUA; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL rating by either NCUA, after an on-site contact, or its state supervisor; or

(iii) A Federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788, that remains outstanding and unextinguished.

(c) *Procedures for Notice of Proposed Change in Official or Senior Executive Officer—(1) Prior Notice Requirement.* An insured credit union must give NCUA written notice at least 30 days before the effective date of any addition or replacement of a member of the board of directors or committee member or the employment or change in responsibilities of any individual to a position of senior executive officer if:

(i) The credit union has been chartered for less than two years; or

(ii) The credit union meets the definition of troubled condition in paragraph (b)(3) or (4) of this section.

(2) *Waiver of Prior Notice—(i) Waiver requests.* Parties may petition the appropriate Regional Director for a waiver of the prior notice required under

this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest.

(ii) *Automatic waiver.* In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, the prior 30-day notice is automatically waived and the individual may immediately begin serving, provided that a complete notice is filed with the appropriate Regional Director within 48 hours of the election. If NCUA disapproves a director or credit committee member, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent on NCUA approval.

(iii) *Effect on disapproval authority.* A waiver does not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver or within 30 days of any subsequent required notice.

(3) *Filing procedures—(i) Where to file.* Notices will be filed with the appropriate Regional Director or, in the case of a corporate credit union, with the Director of the Office of National Examinations and Supervision. All references to Regional Director will, for corporate credit unions, mean the Director of Office of National Examinations and Supervision. State-chartered federally insured credit unions will also file a copy of the notice with their state supervisor.

(ii) *Contents.* The notice must contain information about the competence, experience, character, or integrity of the individual on whose behalf the notice is submitted. The Regional Director or his or her designee may require additional information. The information submitted must include the identity, personal history, business background, and experience of the individual, including material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of the individual by a state or federal court. Each individual on whose behalf the notice is filed must attest to the validity of the informa-

tion filed. At the option of the individual, the information may be forwarded to the Regional Director by the individual; however, in such cases, the credit union must file a notice to that effect.

(iii) *Processing.* Within ten calendar days after receiving the notice, the Regional Director will inform the credit union either that the notice is complete or that additional, specified information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director will issue a written decision within 30 calendar days of receipt of the original notice plus the amount of time the credit union takes to provide the requested additional information. If the additional information is not submitted within 30 calendar days of the Regional Director's request, the Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved.

(d) *Commencement of Service.* A proposed director, committee member, or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (c)(3)(iii) of this section, unless the NCUA disapproves the notice before the end of the period.

(e) *Notice of disapproval.* NCUA may disapprove the individual's serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by, or associated with, the credit union. The Notice of Disapproval will

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advise the parties of their rights of appeal pursuant to 12 CFR part 747 subpart J, of NCUA's Regulations.

[55 FR 43086, Oct. 26, 1990, as amended at 59 FR 36042, July 15, 1994; 60 FR 31911, June 19, 1995; 64 FR 28717, May 27, 1999; 66 FR 65624, Dec. 20, 2001; 69 FR 62562, Oct. 27, 2004; 75 FR 34620, June 18, 2010; 78 FR 4029, Jan. 18, 2013; 78 FR 32544, May 31, 2013; 78 FR 77564, Dec. 24, 2013]

### §§ 701.15–701.18 [Reserved]

#### § 701.19 Benefits for employees of Federal credit unions.

(a) *General authority.* A federal credit union may provide employee benefits, including retirement benefits, to its employees and officers who are compensated in conformance with the Act and the bylaws, individually or collectively with other credit unions. The kind and amount of these benefits must be reasonable given the federal credit union's size, financial condition, and the duties of the employees.

(b) *Plan trustees and custodians.* Where a federal credit union is the benefit plan trustee or custodian, the plan must be authorized and maintained in accordance with the provisions of part 724 of this chapter. Where the benefit plan trustee or custodian is a party other than a federal credit union, the benefit plan must be maintained in accordance with applicable laws governing employee benefit plans, including any applicable rules and regulations issued by the Secretary of Labor, the Secretary of the Treasury, or any other federal or state authority exercising jurisdiction over the plan.

(c) *Investment authority.* A federal credit union investing to fund an employee benefit plan obligation is not subject to the investment limitations of the Act and part 703 or, as applicable, part 704, of this chapter and may purchase an investment that would otherwise be impermissible if the investment is directly related to the federal credit union's obligation or potential obligation under the employee benefit plan and the federal credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan.

(d) *Defined benefit plans.* Under paragraph (c) of this section, a federal credit union may invest to fund a defined

benefit plan if the investment meets the conditions provided in that paragraph. If a federal credit union invests to fund a defined benefit plan that is not subject to the fiduciary responsibility provisions of part 4 of the Employee Retirement Income Security Act of 1974, it should diversify its investment portfolio to minimize the risk of large losses unless it is clearly prudent not to do so under the circumstances.

(e) *Liability insurance.* No federal credit union may occupy the position of a fiduciary, as defined in the Employee Retirement Income Security Act of 1974 and the rules and regulations issued by the Secretary of Labor, unless it has obtained appropriate liability insurance as described and permitted by Section 410(b) of the Employee Retirement Income Security Act of 1974.

(f) *Definitions.* For this section, defined benefit plan has the same meaning as in 29 U.S.C. 1002(35) and employee benefit plan has the same meaning as in 29 U.S.C. 1002(3).

[68 FR 23027, Apr. 30, 2003]

#### § 701.20 Suretyship and guaranty.

(a) *Scope.* This section authorizes a federal credit union to enter into a suretyship or guaranty agreement as an incidental powers activity. This section does not apply to the guaranty of public deposits or the assumption of liability for member accounts.

(b) *Definitions.* A *suretyship* binds a federal credit union with its principal to pay or perform an obligation to a third person. Under a *guaranty* agreement, a federal credit union agrees to satisfy the obligation of the principal only if the principal fails to pay or perform. The *principal* is the person primarily liable, for whose performance of his obligation the surety or guarantor has become bound.

(c) *Requirements.* The suretyship or guaranty agreement must be for the benefit of a principal that is a member and is subject to the following conditions:

(1) The federal credit union limits its obligations under the agreement to a fixed dollar amount and a specified duration;

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(2) The federal credit union's performance under the agreement creates an authorized loan that complies with the applicable lending regulations, including the limitations on loans to one member or associated members or officials for purposes of §§ 701.21(c)(5), (d); 723.2 and 723.8; and

(3) The federal credit union obtains a segregated deposit from the member that is sufficient in amount to cover the federal credit union's total potential liability.

(d) *Collateral.* A segregated deposit under this section includes collateral:

(1) In which the federal credit union has perfected its security interest (for example, if the collateral is a printed security, the federal credit union must have obtained physical control of the security, and, if the collateral is a book entry security, the federal credit union must have properly recorded its security interest); and

(2) That has a market value, at the close of each business day, equal to 100 percent of the federal credit union's total potential liability and is composed of:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or banker's acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(3) That has a market value equal to 110 percent of the federal credit union's total potential liability and is composed of:

(i) Real estate, the value of which is established by a signed appraisal or evaluation in accordance with part 722 of this chapter. In determining the value of the collateral, the federal credit union must factor in the value of any existing senior mortgages, liens or other encumbrances on the property except those held by the principal to the suretyship or guaranty agreement; or

(ii) Marketable securities that the federal credit union is authorized to invest in. The federal credit union must ensure that the value of the security is 110 percent of the obligation at all

times during the term of the agreement.

[69 FR 8547, Feb. 25, 2004]

### § 701.21 Loans to members and lines of credit to members.

(a) *Statement of scope and purpose.* Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, § 701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans. Also, while § 701.21 generally applies to Federal credit unions only, certain provisions apply to loans made by federally insured, state-chartered credit unions as specified in § 741.203 of this chapter. Part 722 of this chapter sets forth requirements for appraisals for certain real estate secured loans made under § 701.21 and any other applicable lending authority. Finally, it is noted that § 701.21 does not apply to loans by Federal credit unions to other credit unions (although certain statutory limitations in section 107 of the Act apply), nor to loans to credit union organizations which are governed by section 107(5)(D) of the Act and part 712 of this chapter.

(b) *Relation to other laws—(1) Preemption of state laws.* Section 701.21 is promulgated pursuant to the NCUA Board's exclusive authority as set forth in section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) to regulate the rates, terms of repayment and other conditions of Federal credit union loans and lines of credit (including credit cards) to members. This exercise of the Board's authority preempts any state law purporting to limit or affect:

(1)(A) Rates of interest and amounts of finance charges, including:

(I) The frequency or the increments by which a variable interest rate may be changed;

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(2) The index to which a variable interest rate may be tied;

(3) The manner or timing of notifying the borrower of a change in interest rate;

(4) The authority to increase the interest rate on an existing balance;

(B) Late charges; and

(C) Closing costs, application, origination, or other fees;

(ii) Terms of repayment, including:

(A) The maturity of loans and lines of credit;

(B) The amount, uniformity, and frequency of payments, including the accrual of unpaid interest if payments are insufficient to pay all interest due;

(C) Balloon payments; and

(D) Prepayment limits;

(iii) Conditions related to:

(A) The amount of the loan or line of credit;

(B) The purpose of the loan or line of credit;

(C) The type or amount of security and the relation of the value of the security to the amount of the loan or line of credit;

(D) Eligible borrowers; and

(E) The imposition and enforcement of liens on the shares of borrowers and accommodation parties.

(2) *Matters not preempted.* Except as provided by paragraph (b)(1) of this section, it is not the Board's intent to preempt state laws that do not affect rates, terms of repayment and other conditions described above concerning loans and lines of credit, for example:

(i) Insurance laws;

(ii) Laws related to transfer of and security interests in real and personal property (see, however, paragraph (g)(6) of this section concerning the use and exercise of due-on-sale clauses);

(iii) Conditions related to:

(A) Collection costs and attorneys' fees;

(B) Requirements that consumer lending documents be in "plain language;" and

(C) The circumstances in which a borrower may be declared in default and may cure default.

(3) *Other Federal law.* Except as provided by paragraph (b)(1) of this section, it is not the Board's intent to preempt state laws affecting aspects of credit transactions that are primarily

regulated by Federal law other than the Federal Credit Union Act, for example, state laws concerning credit cost disclosure requirements, credit discrimination, credit reporting practices, unfair credit practices, and debt collection practices. Applicability of state law in these instances should be determined pursuant to the preemption standards of the relevant Federal law and regulations.

(4) *Examination and enforcement.* Except as otherwise agreed by the NCUA Board, the Board retains exclusive examination and administrative enforcement jurisdiction over Federal credit unions. Violations of Federal or applicable state laws related to the lending activities of a Federal credit union should be referred to the appropriate NCUA regional office.

(5) *Definition of State law.* For purposes of paragraph (b) of this section "state law" means the constitution, laws, regulations and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(c) *General rules—(1) Scope.* The following general rules apply to all loans to members and, where indicated, all lines of credit (including credit cards) to members, except as otherwise provided in the remaining provisions of §701.21.

(2) *Written policies.* The board of directors of each Federal credit union shall establish written policies for loans and lines of credit consistent with the relevant provisions of the Act, NCUA's regulations, and other applicable laws and regulations.

(3) *Credit applications and overdrafts.* Consistent with policies established by the board of directors, the credit committee or loan officer shall ensure that a credit application is kept on file for each borrower supporting the decision to make a loan or establish a line of credit. A credit union may advance money to a member to cover an account deficit without having a credit application from the borrower on file if the credit union has a written overdraft policy. The policy must: set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability

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to absorb losses; establish a time limit not to exceed forty-five calendar days for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft; limit the dollar amount of overdrafts the credit union will honor per member; and establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts.

(4) *Maturity.* The maturity of a loan to a member may not exceed 15 years. Lines of credit are not subject to a statutory or regulatory maturity limit. Amortization of line of credit balances and the type and amount of security on any line of credit shall be as determined by contract between the Federal credit union and the member/borrower.

(5) *Ten percent limit.* No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in an aggregate amount exceeding 10% of the credit union's total unimpaired capital and surplus. In the case of member business loans as defined in § 723.1 of this chapter, additional limitations apply as set forth in §§ 723.8 and 723.9 of this chapter.

(6) *Early payment.* A member may repay a loan, or outstanding balance on a line of credit, prior to maturity in whole or in part on any business day without penalty.

(7) *Loan interest rates—(i) General.* Except when the Board establishes a higher maximum rate, federal credit unions may not extend credit to members at rates exceeding 15 percent per year on the unpaid balance inclusive of all finance charges. Federal credit unions may use variable rates of interest but only if the effective rate over the term of a loan or line of credit does not exceed the maximum permissible rate.

(ii) *Temporary rates.* (A) At least every 18 months, the Board will determine if federal credit unions may extend credit to members at an interest rate exceeding 15 percent. After consultation with appropriate congressional committees, the Department of Treasury, and other federal financial institution regulatory agencies, the Board may establish a rate exceeding

the 15 percent per year rate, if it determines money market interest rates have risen over the preceding six-month period and prevailing interest rate levels threaten the safety and soundness of individual federal credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth.

(B) When the Board establishes a higher maximum rate, the Board will provide notice to federal credit unions of the adjusted rate by issuing a *Letter to Federal Credit Unions*, as well as providing information in other NCUA publications and in a statement for the press.

(C) Federal credit unions may continue to charge rates exceeding the established maximum rate only on existing loans or lines of credit made before the effective date of any lowering of the maximum rate.

(iii) *Short-term, small amount Loans (STS loans).* (A) Notwithstanding the provisions in § 701.21(c)(7)(ii), a Federal credit union may charge an interest rate of 1000 basis points above the maximum interest rate as established by the Board, provided the Federal credit union is making a closed-end loan in accordance with the following conditions:

(1) The principal of the loan is not less than \$200 or more than \$1000;

(2) The loan has a minimum maturity term of one month and a maximum maturity term of six months;

(3) The Federal credit union does not make more than three STS loans in any rolling six-month period to any one borrower and makes no more than one short-term, small amount loan at a time to a borrower;

(4) The Federal credit union must not roll-over any STS loan;

(A) The prohibition against roll-overs does not apply to an extension of the loan term within the maximum loan terms in paragraph (c)(7)(iii)(3) provided the Federal credit union does not charge any additional fees or extend any new credit.

(B) [Reserved]

(5) The Federal credit union fully amortizes the loan;

(6) The Federal credit union sets a minimum length of membership requirement of at least one month;

(7) The Federal credit union charges an application fee to all members applying for a new loan that reflects the actual costs associated with processing the application, but in no case may the application fee exceed \$20; and

(8) The Federal credit union includes, in its written lending policies, a limit on the aggregate dollar amount of loans made under this section of a maximum of 20% of net worth and implements appropriate underwriting guidelines to minimize risk; for example, requiring a borrower to verify employment by producing at least two recent pay stubs.

(B) *STS Loan Program Guidance and Best Practices.* In developing a successful STS loan program, a Federal credit union should consider how the program will help benefit a member's financial well-being while considering the higher degree of risk associated with this type of lending. The guidance and best practices are intended to help Federal credit unions minimize risk and develop a successful program, but are not an exhaustive checklist and do not guarantee a successful program with a low degree of risk.

(1) *Program Features.* Several features that may increase the success of an STS loan program and enhance member benefit include adding a savings component, financial education, reporting of members' payment of STS loans to credit bureaus, or electronic loan transactions as part of an STS program. In addition, although a Federal credit union cannot require members to authorize a payroll deduction, a Federal credit union should encourage or incentivize members to utilize payroll deduction.

(2) *Underwriting.* Federal credit unions need to develop minimum underwriting standards that account for a member's need for quickly available funds, while adhering to principles of responsible lending. Underwriting standards should address required documentation for proof of employment or income, including at least two recent paycheck stubs. FCUs should be able to use a borrower's proof of recurring income as the key criterion in developing standards for maturity lengths and loan amounts so a borrower can manage repayment of the loan. For mem-

bers with established accounts, FCUs should only need to review a member's account records and proof of recurring income or employment.

(3) *Risk Avoidance.* Federal credit unions need to consider risk avoidance strategies, including: requiring members to participate in direct deposit and conducting a thorough evaluation of the Federal credit union's resources and ability to engage in an STS loan program.

(8)(i) Except as otherwise provided herein, no official or employee of a Federal credit union, or immediate family member of an official or employee of a Federal credit union, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union.

(ii) For the purposes of this section:

*Compensation* includes non-monetary items, except those of nominal value.

*Immediate family member* means a spouse or other family member living in the same household.

*Loan* includes line of credit.

*Official* means any member of the board of directors or a volunteer committee.

*Person* means an individual or an organization.

*Senior management employee* means the credit union's chief executive officer (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager), and the chief financial officer (Comptroller).

*Volunteer official* means an official of a credit union who does not receive compensation from the credit union solely for his or her service as an official.

(iii) This section does not prohibit:

(A) Payment, by a Federal credit union, of salary to employees;

(B) Payment, by a Federal credit union, of an incentive or bonus to an employee based on the credit union's overall financial performance;

(C) Payment, by a Federal credit union, of an incentive or bonus to an employee, other than a senior management employee, in connection with a loan or loans made by the credit union,

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provided that the board of directors of the credit union establishes written policies and internal controls in connection with such incentive or bonus and monitors compliance with such policies and controls at least annually.

(D) Receipt of compensation from a person outside a Federal credit union by a volunteer official or non-senior-management employee of the credit union, or an immediate family member of a volunteer official or employee of the credit union, for a service or activity performed outside the credit union, provided that no referral has been made by the credit union or the official, employee, or family member.

(d) *Loans and lines of credit to officials*—(1) *Purpose*. Sections 107(5)(A) (iv) and (v) of the Act require the approval of the board of directors of the Federal credit union in any case where the aggregate of loans to an official and loans on which the official serves as endorser or guarantor exceeds \$20,000 plus pledged shares. This paragraph implements the requirement by establishing procedures for determining whether board of directors's approval is required. The section also prohibits preferential treatment of officials.

(2) *Official*. An "official" is any member of the board of directors, credit committee or supervisory committee.

(3) *Initial approval*. All applications for loans or lines of credit on which an official will be either a direct obligor or an endorser, cosigner or guarantor shall be initially acted upon by either the board of directors, the credit committee or a loan officer, as specified in the Federal credit union's bylaws.

(4) *Board of Directors' review*. The board of directors shall, in any case, review and approve or deny an application on which an official is a direct obligor, endorser, cosigner or guarantor if the following computation produces a total in excess of \$20,000:

(i) Add:

(A) The amount of the current application.

(B) The outstanding balances of loans, including the used portion of an approved line of credit, extended to or endorsed, cosigned or guaranteed by the official.

(C) The total unused portion of approved lines of credit extended to or

endorsed, cosigned or guaranteed by the official.

(ii) From the above total subtract:

(A) The amount of shares pledged by the official on loans or lines of credit extended to or endorsed, cosigned or guaranteed by the official.

(B) The amount of shares to be pledged by the official on the loan or line of credit applied for.

(5) *Nonpreferential treatment*. The rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by—

(i) An official,

(ii) An immediate family member of an official, or

(iii) Any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official

shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. "Immediate family member" means a spouse or other family member living in the same household.

(e) *Insured, Guaranteed and Advance Commitment Loans*. A loan secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government, a State government or any agency of either, may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided.

(f) *20-Year Loans*. (1) Notwithstanding the general 15-year maturity limit on loans to members, a federal credit union may make loans with maturities of up to 20 years in the case of:

(i) A loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, and the mobile home meets the requirements for the home mortgage interest deduction under the Internal Revenue Code,

(ii) A second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if

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the loan is secured by a residential dwelling which is the residence of the member-borrower, and

(iii) A loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

(2) For purposes of this paragraph (f), mobile home may include a recreational vehicle, house trailer or boat.

(3) Notwithstanding the general 20-year maturity limit on second mortgage loans, a federal credit union participating in the Department of the Treasury's Making Home Affordable Program may extend the term of a modified second mortgage to match the term of a modified first mortgage, in accordance with applicable program guidelines.

(g) *Long-Term Mortgage Loans*—(1) *Authority*. A federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph (g).

(2) *Statutory limits*. The loan shall be made on a one to four family dwelling that is or will be the principal residence of the member-borrower and the loan shall be secured by a perfected first lien in favor of the credit union on such dwelling (or a perfected first security interest in the case of either a residential cooperative or a leasehold or ground rent estate).

(3) *Loan application*. The loan application shall be a completed standard Federal Housing Administration, Veterans Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation/Federal National Mortgage Association application form. In lieu of use of a standard application the Federal credit union may have a current attorney's opinion on file stating that the forms in use meet the requirements of applicable Federal, state and local laws.

(4) *Security instrument and note*. The security instrument and note shall be executed on the most current version of the FHA, VA, FHLMC, FNMA, or FHLMC/FNMA Uniform Instruments

for the jurisdiction in which the property is located. No prepayment penalty shall be allowed, although a Federal credit union may require that any partial prepayments be made on the date monthly installments are due and be in the amount of that part of one or more monthly installments that would be applicable to principal. In lieu of use of a standard security instrument and note, the Federal credit union may have a current attorney's opinion on file stating that the security instrument and note in use meet the requirements of applicable Federal, state and local laws.

(5) *First lien, territorial limits*. The loan shall be secured by a perfected first lien or first security interest in favor of the credit union supported by a properly executed and recorded security instrument. No loan shall be secured by a residence located outside the United States of America, its territories and possessions, or the Commonwealth of Puerto Rico.

(6) *Due-on-sale clauses*. (i) Except as otherwise provided herein, the exercise of a due-on-sale clause by a Federal credit union is governed exclusively by section 341 of Pub. L. 97-320 and by any regulations issued by the Federal Home Loan Bank Board implementing section 341.

(ii) In the case of a contract involving a long-term (greater than fifteen years), fixed rate first mortgage loan which was made or assumed, including a transfer of the lien property subject to the loan, during the period beginning on the date a State adopted a constitutional provision or statute prohibiting the exercise of due-on-sale clauses, or the date on which the highest court of such state has rendered a decision (or if the highest court has not so decided, the date on which the next highest court has rendered a decision resulting in a final judgment if such decision applies statewide) prohibiting such exercise, and ending on October 15, 1982, a Federal credit union may exercise a due-on-sale clause in the case of a transfer which occurs on or after November 18, 1982, unless exercise of the due-on-sale clause would be based on any of the following:

(A) The creation of a lien or other encumbrance subordinate to the lender's

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security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of 3 years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become an owner of the property;

(G) A transfer resulting from a decree of a dissolution of marriage, a legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; or

(I) Any other transfer or disposition described in regulations promulgated by the Federal Home Loan Bank Board.

(7) *Assumption of real estate loans by nonmembers.* A Federal credit union may permit a nonmember to assume a member's mortgage loan in conjunction with the nonmember's purchase of the member's principal residence, provided that the nonmember assumes only the remaining unpaid balance of the loan, the terms of the loan remain unchanged, and there is no extension of the original maturity date specified in the loan agreement with the member. An assumption is impermissible if the original loan was made with the intent of having a nonmember assume the loan.

(h) *Third-party servicing of indirect vehicle loans.* (1) A federally-insured credit union must not acquire any vehicle loan, or any interest in a vehicle loan, serviced by a third-party servicer if the aggregate amount of vehicle loans and interests in vehicle loans serviced by that third-party servicer and its affiliates would exceed:

(i) 50 percent of the credit union's net worth during the initial thirty months

of that third-party servicing relationship; or

(ii) 100 percent of the credit union's net worth after the initial thirty months of that third-party servicing relationship.

(2) Regional directors may grant a waiver of the limits in paragraph (h)(1) of this section to permit greater limits upon written application by a credit union. In determining whether to grant or deny a waiver, a regional director will consider:

(i) The credit union's understanding of the third-party servicer's organization, business model, financial health, and the related program risks;

(ii) The credit union's due diligence in monitoring and protecting against program risks;

(iii) If contracts between the credit union and the third-party servicer grant the credit union sufficient control over the servicer's actions and provide for replacing an inadequate servicer; and

(iv) Other factors relevant to safety and soundness.

(3) A regional director will provide a written determination on a waiver request within 45 calendar days after receipt of the request; however, the 45-day period will not begin until the requesting credit union has submitted all necessary information to the regional director. If the regional director does not provide a written determination within the 45-day period the request is deemed denied. A credit union may appeal any part of the determination to the NCUA Board. Appeals must be submitted through the regional director within 30 days of the date of the determination.

(4) For purposes of paragraph (h) of this section:

(i) The term "third-party servicer" means any entity, other than a federally-insured depository institution or a wholly-owned subsidiary of a federally-insured depository institution, that receives any scheduled, periodic payments from a borrower pursuant to the terms of a loan and distributes payments of principal and interest and any other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan. The term also excludes any

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servicing entity that meets the following three requirements:

(A) Has a majority of its voting interests owned by federally-insured credit unions;

(B) Includes in its servicing agreements with credit unions a provision that the servicer will provide NCUA with complete access to its books and records and the ability to review its internal controls as deemed necessary by NCUA in carrying out NCUA’s responsibilities under the Act; and

(C) Has its credit union clients provide a copy of the servicing agreement to their regional directors.

(ii) The term “its affiliates,” as it relates to the third-party servicer, means any entities that:

(A) Control, are controlled by, or are under common control with, that third-party servicer; or

(B) Are under contract with that third-party servicer or other entity described in paragraph (h)(4)(ii)(A) of this section.

(iii) The term “vehicle loan” means any installment vehicle sales contract or its equivalent that is reported as an asset under generally accepted accounting principles. The term does not include:

(A) Loans made directly by a credit union to a member, or

(B) Loans in which neither the third-party servicer nor any of its affiliates are involved in the origination, underwriting, or insuring of the loan or the process by which the credit union acquires its interest in the loan.

(iv) The term “net worth” means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in §702.2(f) of this chapter.

(i) *Put option purchases in managing increased interest-rate risk for real estate loans produced for sale on the secondary market—*

(1) *Definitions.* For purposes of §701.21(i):

(i) *Financial options contract* means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement,

under terms and conditions established either by:

(A) A contract market designated for trading such contracts by the Commodity Futures Trading Commission, or

(B) By a Federal credit union and a primary dealer in Government securities that are counterparties in an over-the-counter transaction.

(ii) *FHLMC security* means obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 and 1455).

(iii) *FNMA security* means an obligation, participation, or any instrument of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association.

(iv) *GNMA security* means an obligation, participation, or any instrument of or issued by, or fully guaranteed as to principal and interest by, the Government National Mortgage Association.

(v) *Long position* means the holding of a financial options contract with the option to make or take delivery of a financial instrument.

(vi) *Primary dealer in Government securities* means:

(A) A member of the Association of Primary Dealers in United States Government Securities; or

(B) Any parent, subsidiary, or affiliated entity of such primary dealer where the member guarantees (to the satisfaction of the FCU’s board of directors) over-the-counter sales of financial options contracts by the parent, subsidiary, or affiliated entity to a Federal credit union.

(vii) *Put* means a financial options contract which entitles the holder to sell, entirely at the holder’s option, a specified quantity of a security at a specified price at any time until the stated expiration date of the contract.

(2) *Permitted options transactions.* A Federal credit union may, to manage risk of loss through a decrease in value of its commitments to originate real estate loans at specified interest rates, enter into long put positions on GNMA, FNMA, and FHLMC securities:

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(i) If the real estate loans are to be sold on the secondary market within ninety (90) days of closing;

(ii) If the positions are entered into:

(A) Through a contract market designated by the Commodity Futures Trading Commission for trading such contracts, or

(B) With a primary dealer in Government securities;

(iii) If the positions are entered into pursuant to written policies and procedures which are approved by the Federal credit union's board of directors, and include, at a minimum:

(A) The Federal credit union's strategy in using financial options contracts and its analysis of how the strategy will reduce sensitivity to changes in price or interest rates in its commitments to originate real estate loans at specified interest rates;

(B) A list of brokers or other intermediaries through which positions may be entered into;

(C) Quantitative limits (e.g., position and stop loss limits) on the use of financial options contracts;

(D) Identification of the persons involved in financial options contract transactions, including a description of these persons' qualifications, duties, and limits of authority, and description of the procedures for segregating these persons' duties,

(E) A requirement for written reports for review by the Federal credit union's board of directors at its monthly meetings, or by a committee appointed by the board on a monthly basis, of:

(1) The type, amount, expiration date, correlation, cost of, and current or projected income or loss from each position closed since the last board review, each position currently open and current gains or losses from such positions, and each position planned to be entered into prior to the next board review;

(2) Compliance with limits established on the policies and procedures; and

(3) The extent to which the positions described contributed to reduction of sensitivity to changes in prices or interest rates in the Federal credit union's commitments to originate real estate loans at a specified interest rate; and

(iv) If the Federal credit union has received written permission from the appropriate NCUA Regional Director to engage in financial options contracts transactions in accordance with this § 701.21(i) and its policies and procedures as written.

(3) *Recordkeeping and reporting.* (i) The reports described in § 701.21(i)(2)(iii)(E) for each month must be submitted to the appropriate NCUA Regional Office by the end of the following month. This monthly reporting requirement may be waived by the appropriate NCUA Regional Director on a case-by-case basis for those Federal credit unions with a proven record of responsible use of permitted financial options contracts.

(ii) The records described in § 701.21(i)(2)(iii)(E) must be retained for two years from the date the financial options contracts are closed.

(4) *Accounting.* A federal credit union must account for financial options contracts transactions in accordance with generally accepted accounting principles.

[49 FR 30685, Aug. 1, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 701.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### § 701.22 Loan participations.

This section applies only to loan participations as defined in paragraph (a) of this section. It does not apply to the purchase of an investment interest in a pool of loans. This section establishes the requirements a federally insured credit union must satisfy to purchase a participation in a loan. This section applies only to a federally insured credit union's purchase of a loan participation where the borrower is not a member of that credit union and where a continuing contractual obligation between the seller and purchaser is contemplated. Generally, a federal credit union's purchase of all or part of a loan made to one of its own members, subject to a limited exception for certain well capitalized federal credit unions in § 701.23(b)(2), where no continuing contractual obligation between the seller and purchaser is contemplated, is governed by § 701.23 of this part. Federally

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insured, state-chartered credit unions are required by § 741.225 of this chapter to comply with the loan participation requirements of this section. This section does not apply to corporate credit unions, as that term is defined in § 704.2 of this chapter.

(a) For purposes of this section, the following definitions apply:

*Associated borrower* means any borrower with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower. This includes guarantors, co-signors, major stakeholders, owners, investors, affiliates and other parties who have influence on the management, control, or operations of the borrower.

*Credit union* means any federal or state-chartered credit union.

*Credit union organization* means any credit union service organization meeting the requirements of part 712 of this chapter. This term does not include trade associations or membership organizations principally composed of credit unions.

*Eligible organization* means a credit union, credit union organization, or financial organization.

*Financial organization* means any federally chartered or federally insured financial institution; and any state or federal government agency and its subdivisions.

*Loan participation* means a loan where one or more eligible organizations participate pursuant to a written agreement with the originating lender, and the written agreement requires the originating lender's continuing participation throughout the life of the loan.

*Originating lender* means the participant with which the borrower initially or originally contracts for a loan and who, thereafter or concurrently with the funding of the loan, sells participations to other lenders.

(b) A federally insured credit union may purchase a participation interest in a loan from an eligible organization only if the loan is one the purchasing credit union is empowered to grant and the following additional conditions are satisfied:

(1) The purchase complies with all regulatory requirements to the same extent as if the purchasing federally in-

sured credit union had originated the loan, including, for example, the loans-to-one-borrower provisions in § 701.21(c)(5) of this part for federal credit unions and § 723.8 of the member business loans rule in part 723 of this chapter for all federally insured credit unions;

(2) The purchasing federally insured credit union has executed a written loan participation agreement with the originating lender and the agreement meets the minimum requirements for a loan participation agreement as described in paragraph (d) of this section;

(3) The originating lender retains an interest in each participated loan. If the originating lender is a federal credit union, the retained interest must be at least 10 percent of the outstanding balance of the loan through the life of the loan. If the originating lender is any other type of eligible organization, the retained interest must be at least 5 percent of the outstanding balance of the loan through the life of the loan, unless a higher percentage is required under applicable state law;

(4) The borrower becomes a member of one of the participating credit unions before the purchasing federally insured credit union purchases a participation interest in the loan; and

(5) The purchase complies with the purchasing federally insured credit union's internal written loan participation policy, which, at a minimum, must:

(i) Establish underwriting standards for loan participations;

(ii) Establish a limit on the aggregate amount of loan participations that may be purchased from any one originating lender, not to exceed the greater of \$5,000,000 or 100 percent of the federally insured credit union's net worth, unless this amount is waived by the appropriate regional director, and, in the case of a federally insured, state-chartered credit union, with prior written concurrence of the appropriate state supervisory authority;

(iii) Establish limits on the amount of loan participations that may be purchased by each loan type, not to exceed a specified percentage of the federally insured credit union's net worth; and

(iv) Establish a limit on the aggregate amount of loan participations

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that may be purchased with respect to a single borrower, or group of associated borrowers, not to exceed 15 percent of the federally insured credit union's net worth, unless waived by the appropriate regional director, and, in the case of a federally insured, state-chartered credit union, with prior written concurrence of the appropriate state supervisory authority.

(c) To seek a waiver from any of the limitations in paragraph (b) of this section, a federally insured credit union must submit a written request to its regional director with a full and detailed explanation of why it is requesting the waiver. Within 45 days of receipt of a completed waiver request, including all necessary supporting documentation and, if appropriate, any written concurrence, the regional director will provide the federally insured credit union a written response. The regional director's decision will be based on safety and soundness and other considerations; however, the regional director will not grant a waiver to a federally insured, state-chartered credit union without the prior written concurrence of the appropriate state supervisory authority. A federally insured credit union may appeal any part of the waiver determination to the NCUA Board. Appeals must be submitted through the regional director within 60 days of the date of the determination.

(d) A loan participation agreement must:

(1) Be properly executed by authorized representatives of all parties under applicable law;

(2) Be properly authorized by the federally insured credit union's board of directors or, if the board has so delegated in its policy, a designated committee or senior management official, under the federally insured credit union's bylaws and all applicable law;

(3) Be retained in the federally insured credit union's office (original or copies); and

(4) Include provisions which, at a minimum, address the following:

(i) Prior to purchase, the identification of the specific loan participation(s) being purchased, either directly in the agreement or through a docu-

ment which is incorporated by reference into the agreement;

(ii) The interest that the originating lender will retain in the loan to be participated. If the originating lender is a federal credit union, the retained interest must be at least 10 percent of the outstanding balance of the loan through the life of the loan. If the originating lender is any other type of eligible organization, the retained interest must be at least 5 percent of the outstanding balance of the loan through the life of the loan, unless a higher percentage is required under state law;

(iii) The location and custodian for original loan documents;

(iv) An explanation of the conditions under which parties to the agreement can gain access to financial and other performance information about a loan, the borrower, and the servicer so the parties can monitor the loan;

(v) An explanation of the duties and responsibilities of the originating lender, servicer, and participants with respect to all aspects of the participation, including servicing, default, foreclosure, collection, and other matters involving the ongoing administration of the loan; and

(vi) Circumstances and conditions under which participants may replace the servicer.

[78 FR 37956, June 25, 2013]

### § 701.23 Purchase, sale, and pledge of eligible obligations.

This section governs a federal credit union's purchase, sale, or pledge of all or part of a loan to one of its own members, subject to a limited exception for certain well capitalized federal credit unions, where no continuing contractual obligation between the seller and purchaser is contemplated. For purchases of eligible obligations, except as described in paragraph (b)(2) of this section, the borrower must be a member of the purchasing federal credit union before the purchase is made. A federal credit union may not purchase a non-member loan to hold in its portfolio.

(a) For purposes of this section:

(1) *Eligible obligation* means a loan or group of loans.

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(2) *Student loan* means a loan granted to finance the borrower’s attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the Federal Government, of a State government, or any agency of either.

(b) *Purchase*. (1) A Federal credit union may purchase, in whole or in part, within the limitations of the board of directors’ written purchase policies:

(i) Eligible obligations of its members, from any source, if either: (A) They are loans it is empowered to grant or (B) they are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant;

(ii) Eligible obligations of a liquidating credit union’s individual members, from the liquidating credit union;

(iii) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union’s packaging of a pool of such loans to be sold or pledged on the secondary market; and

(iv) Real estate-secured loans, from any source, if the purchaser is granting real estate-secured loans pursuant to § 701.21 on an ongoing basis and if the purchase will facilitate the purchasing credit union’s packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. A pool must include a substantial portion of the credit union’s members’ loans and must be sold promptly.

(2) *Purchase of obligations from a FICU*. A federal credit union that received a composite CAMEL rating of “1” or “2” for the last two (2) full examinations and maintained a net worth classification of “well capitalized” under Part 702 of this chapter for the six (6) immediately preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under Part 702 of this chapter, has remained “well capitalized” for the six (6) immediately preceding quarters after applying the applicable RBNW requirement may purchase and hold the following obliga-

tions, provided that it would be empowered to grant them:

(i) *Eligible obligations*. Eligible obligations without regard to whether they are obligations of its members, provided they are purchased from a federally-insured credit union and the obligations are either:

(A) Loans the purchasing credit union is empowered to grant; or

(B) Loans refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans the purchasing credit union is empowered to grant;

(ii) *Eligible obligations of a liquidating credit union*. Eligible obligations of a liquidating credit union without regard to whether they are obligations of the liquidating credit union’s members.

(iii) *Student loans*. Student loans provided they are purchased from a federally-insured credit union only;

(iv) *Real estate-secured loans*. Real estate-secured loans provided they are purchased from a federally-insured credit union only;

(3) A Federal credit union may make purchases in accordance with this paragraph (b), provided:

(i) The board of directors or investment committee approves the purchase;

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchasers office; and

(iii) For purchases under paragraph (b)(1)(ii) of this section, any advance written approval required by § 741.8 of this chapter is obtained before consummation of such purchase.

(4) The aggregate of the unpaid balance of eligible obligations purchased under paragraphs (b)(1) and (b)(2)(ii) of this section shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. The following can be excluded in calculating this 5 percent limitation:

(i) Student loans purchased in accordance with paragraph (b)(1)(iii) of this section;

(ii) Real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section;

(iii) Eligible obligations purchased in accordance with paragraph (b)(1)(i) of this section that are refinanced by the

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purchaser so that it is a loan it is empowered to grant;

(iv) An indirect lending or indirect leasing arrangement that is classified as a loan and not the purchase of an eligible obligation because the Federal credit union makes the final underwriting decision and the sales or lease contract is assigned to the Federal credit union very soon after it is signed by the member and the dealer or leasing company.

(5) *Grandfathered purchases.* Subject to safety and soundness considerations, a federal credit union may hold any of the loans described in paragraph (b)(2) of this section provided it was authorized to purchase the loan and purchased the loan before July 2, 2012.

(c) *Sale.* A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the limitations of the board of directors' written sale policies, *Provided:*

(1) The board of directors or investment committee approves the sale; and

(2) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(d) *Pledge.* (1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the limitations of the board of directors' written pledge policies, *Provided:*

(i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

(2) The pledge agreement shall identify the eligible obligations covered by the agreement.

(e) *Servicing.* A Federal credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

(f) *10 Percent limitation.* The total indebtedness owing to any Federal credit union by any person, inclusive of retained and reacquired interests, shall not exceed 10 percent of its unimpaired capital and surplus.

(g)(1) *Conflicts of interest.* No federal credit union official, employee, or their immediate family member may receive, directly or indirectly, any compensation in connection with that credit union's purchase, sale, or pledge of an eligible obligation under the provisions of § 701.23.

(2) *Permissible payments.* This section does not prohibit:

(i) A federal credit union's payment of salary to employees;

(ii) A federal credit union's payment of an incentive or bonus to an employee based on the credit union's overall financial performance;

(iii) A federal credit union's payment of an incentive or bonus to an employee, other than a senior management employee, in connection with that credit union's purchase, sale or pledge of an eligible obligation. This payment is permissible if the board of directors establishes a written policy and internal controls for the incentive or bonus program and monitors compliance with the policy and controls at least annually; and

(iv) Payment by a person other than the federal credit union of compensation to a volunteer official, non-senior management employee, or their immediate family member, for a service or activity performed outside the credit union provided that the federal credit union, the official, employee, or their immediate family member has not made a referral.

(3) *Business associates and family members.* All transactions under this section with business associates or family members not specifically prohibited by paragraph (g)(1) of this section must be conducted at arm's length and in the interest of the federal credit union.

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(4) *Definitions.* The definitions in § 701.21(c)(8)(ii) of this part apply to this section.

(h) *Additional authority.* (1) A federal credit union may submit a written request to its regional director seeking expanded authority to purchase loans described in paragraph (b)(2) of this section, if it is not otherwise authorized by this section. The written request must include the following:

- (i) A copy of the credit union's purchase policy;
- (ii) The types of eligible obligations under paragraph (b)(2) of this section that the credit union seeks to purchase;
- (iii) An explanation of the need for additional authority; and
- (iv) An analysis of the credit union's prior experience with the purchase of eligible obligations.

(2) *Approval process.* A regional director will provide a written determination on a request for expanded authority within 60 calendar days after receipt of the request; however, the 60-day period will not begin until the requesting credit union has submitted all necessary information to the regional director. The regional director will inform the requesting credit union, in writing, of the date the request was received and of any additional documentation that the regional director requires in support of the request. If the regional director approves the request, the regional director will establish a limit on loan purchases as appropriate and subject to the limitations in this section. If the regional director does not notify the credit union of the action taken on its request within 60 calendar days of the receipt of the request or the receipt of additional requested supporting information, whichever occurs later, the credit union may purchase loans it requested under paragraph (b)(2) of this section.

(3) *Appeal to NCUA Board.* A federal credit union may appeal any part of the determination made under this paragraph to the NCUA Board by submitting its appeal through the regional

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director within 30 days of the date of the determination.

[44 FR 27071, May 9, 1979, as amended at 46 FR 38680, July 29, 1981. Redesignated at 49 FR 30688, Aug. 1, 1984, and amended at 53 FR 4844, Feb. 18, 1988; 56 FR 15036, Apr. 15, 1991; 56 FR 35811, July 29, 1991; 60 FR 58504, Nov. 28, 1995; 63 FR 70998, Dec. 23, 1998; 72 FR 65442, Nov. 21, 2007; 77 FR 31990, May 31, 2012; 78 FR 37958, June 25, 2013]

### § 701.24 Refund of interest.

(a) The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period. Interest refunds may be made for a dividend period only if dividends on share accounts have been declared and paid for that period.

(b) The amount of interest refund to each member shall be determined as a percentage of the interest paid by the member. Such percentage may vary according to the type of extension of credit and the interest rate charged.

(c) The board of directors may exclude from an interest refund:

- (1) A particular type of extension of credit;
- (2) Any extension of credit made at a particular interest rate; and
- (3) Any extension of credit that is presently delinquent or has been delinquent within the period for which the refund is being made.

[53 FR 19747, May 31, 1988]

### § 701.25 [Reserved]

### § 701.26 Credit union service contracts.

A Federal credit union may act as a representative of and enter into a contractual agreement with one or more credit unions or other organizations for the purpose of sharing, utilizing, renting, leasing, purchasing, selling, and/or joint ownership of fixed assets or engaging in activities and/or services which relate to the daily operations of credit unions. Agreements must be in writing, and shall advise all parties subject to the agreement that the goods and services provided shall be

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subject to examination by the NCUA Board to the extent permitted by law.

[47 FR 30462, July 14, 1982, as amended at 63 FR 10756, Mar. 5, 1998]

### §§ 701.27–701.29 [Reserved]

#### § 701.30 Services for nonmembers within the field of membership.

Federal credit unions may provide the following services to persons within their fields of membership, regardless of membership status:

(a) Selling negotiable checks including travelers checks, money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act); and

(b) Cashing checks and money orders for a fee.

[71 FR 62876, Oct. 27, 2006, as amended at 76 FR 44762, July 27, 2011]

#### § 701.31 Nondiscrimination requirements.

(a) *Definitions.* As used in this part, the term:

(1) *Application* carries the meaning of that term as defined in 12 CFR 1002.2(f) (Regulation B), which is as follows:

An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested;

(2) *Dwelling* carries the meaning of that term as defined in 42 U.S.C. 3602(b) (Fair Housing Act), which is as follows: “Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof”; and

(3) *Real estate-related loan* means any loan for which application is made to finance or refinance the purchase, construction, improvement, repair, or maintenance of a dwelling.

(b) *Nondiscrimination in Lending.* (1) A Federal credit union may not deny a real estate-related loan, nor may it discriminate in setting or exercising its rights pursuant to the terms or condi-

tions of such a loan, nor may it discourage an application for such a loan, on the basis of the race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18) of:

(i) Any applicant or joint applicant;

(ii) Any person associated, in connection with a real estate-related loan application, with an applicant or joint applicant;

(iii) The present or prospective owners, lessees, tenants, or occupants of the dwelling for which a real estate-related loan is requested;

(iv) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling for which a real estate-related loan is requested.

(2) With regard to a real estate-related loan, a Federal credit union may not consider a lending criterion or exercise a lending policy which has the effect of discriminating on the basis of race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18). Guidelines concerning possible exceptions to this provision appear in paragraph (e)(1) of this section.

(3) Consideration of any of the following factors in connection with a real estate-related loan is not necessary to a Federal credit union's business, generally has a discriminatory effect, and is therefore prohibited:

(i) The age or location of the dwelling;

(ii) Zip code of the applicant's current residence;

(iii) Previous home ownership;

(iv) The age or location of dwellings in the neighborhood of the dwelling;

(v) The income level of residents in the neighborhood of the dwelling.

Guidelines concerning possible exceptions to this provision appear in paragraph (e)(2) of this section.

(c) *Nondiscrimination in appraisals.* (1) A Federal credit union may not rely upon an appraisal of a dwelling if it knows or should know that the appraisal is based upon consideration of the race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18) of:

(i) Any applicant or joint applicant;

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(ii) Any person associated, in connection with a real estate-related loan application, with an applicant or joint applicant;

(iii) The present or prospective owners, lessees, tenants, or occupants of the dwelling for which a real estate-related loan is requested;

(iv) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling for which a real estate-related loan is requested.

(2) With respect to a real-estate related loan, a Federal credit union may not rely upon an appraisal of a dwelling if it knows or should know that the appraisal is based upon consideration of a criterion which has the effect of discriminating on the basis of race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18). Guidelines concerning possible exceptions to this provision appear in paragraph (e)(1) of this section.

(3) A Federal credit union may not rely upon an appraisal that it knows or should know is based upon consideration of any of the following criteria, for such criteria generally have a discriminatory effect, and are not necessary to a Federal credit union's business:

(i) The age or location of the dwelling;

(ii) The age or location of dwellings in the neighborhood of the dwelling;

(iii) The income level of the residents in the neighborhood of the dwelling.

(4) Notwithstanding paragraph (c)(3) of this section, it is recognized that there may be factors concerning location of the dwelling which can be properly considered in an appraisal. If any such factor(s) is relied upon, it must be specifically documented in the appraisal, accompanied by a brief statement demonstrating the necessity of using such factor(s). Guidelines concerning the consideration of location factors appear in paragraph (e)(3) of this section.

(5) Each Federal credit union shall make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member's real estate-related loan application. The appraisal shall be avail-

able for a period of 25 months after the applicant has received notice from the Federal credit union of the action taken by the Federal credit union on the real estate-related loan application.

(d) *Nondiscrimination in advertising.* No federal credit union may engage in any form of advertising of real estate-related loans that indicates the credit union discriminates on the basis of race, color, religion, national origin, sex, handicap, or familial status in violation of the Fair Housing Act. Advertisements must not contain any words, symbols, models or other forms of communication that suggest a discriminatory preference or policy of exclusion in violation of the Fair Housing Act or the Equal Credit Opportunity Act.

(1) *Advertising notice of nondiscrimination compliance.* Any federal credit union that advertises real estate-related loans must prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format used, that the credit union makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status.

(i) With respect to written and visual advertisements, a credit union may satisfy the notice requirement by including in the advertisement a copy of the logotype, with the legend "Equal Housing Lender," from the poster described in paragraph (d)(3) of this section or a copy of the logotype, with the legend "Equal Housing Opportunity," from the poster described in § 110.25(a) of the United States Department of Housing and Urban Development's (HUD) regulations (24 CFR 110.25(a)).

(ii) With respect to oral advertisements, a credit union may satisfy the notice requirement by a spoken statement that the credit union is an "Equal Housing Lender" or an "Equal Opportunity Lender."

(iii) When an oral advertisement is used in conjunction with a written or visual advertisement, the use of either of the methods specified in paragraphs (d)(1)(i) or (ii) of this section will satisfy the notice requirement.

(iv) A credit union may use any other method reasonably calculated to satisfy the notice requirement.

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(2) *Lobby notice of nondiscrimination.* Every federal credit union that engages in real estate-related lending must display a notice of nondiscrimination. The notice must be placed in the public lobby of the credit union and in the public area of each office where such loans are made and must be clearly visible to the general public. The notice must incorporate either a facsimile of the logotype and language appearing in paragraph (d)(3) of this sec-

tion or the logotype and language appearing at 24 CFR 110.25(a). Posters containing the logotype and language appearing in paragraph (d)(3) of this section may be obtained from the regional offices of the National Credit Union Administration.

(3) *Logotype and notice of nondiscrimination compliance.* The logotype and text of the notice required in paragraph (d)(2) of this section shall be as follows:



# EQUAL HOUSING LENDER

We Do Business in Accordance With  
Federal Fair Lending Laws

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18), TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures or other terms or conditions of such a loan, or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity  
Department of Housing & Urban Development Washington,  
D.C. 20410

For processing under the Federal Fair Housing Act  
and to:

National Credit Union Administration  
Office of Consumer Protection  
Alexandria, VA 22314-3428

For processing under NCUA Regulations

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- On the basis of race, color, national origin, religion, sex, marital status, or age,
- Because income is from public assistance, or
- Because a right was exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

National Credit Union Administration  
Office of Consumer Protection  
Alexandria, VA 22314-3428

NCUA 1582  
(Revised 2/2012)

(e) *Guidelines.* (1) Compliance with the Fair Housing Act is achieved when each loan applicant's creditworthiness is evaluated on an individual basis, without presuming that the applicant has certain characteristics of a group.

If certain lending policies or procedures do presume group characteristics, they may violate the Fair Housing Act, even though the characteristics are not based upon race, color, sex, national origin, religion, handicap, or familial status. Such a violation occurs when otherwise facially nondiscriminatory lending procedures (either general lending policies or specific criteria used in reviewing loan applications) have the effect of making real estate-related loans unavailable or less available on the basis of race, color, sex, national origin, religion, handicap, or familial status. Note, however, that a policy or criterion which has a discriminatory effect is not a violation of the Fair Housing Act if its use achieves a legitimate business necessity which cannot be achieved by using less discriminatory standards. It is also important to note that the Equal Credit Opportunity Act and Regulation B prohibit discrimination, either per se or in effect, on the basis of the applicant's age, marital status, receipt of public assistance, or the exercise of any rights under the Consumer Credit Protection Act.

(2) Paragraph (b)(3) of this section prohibits consideration of certain factors because of their likely discriminatory effect and because they are not necessary to make sound real estate-related loans. For purposes of clarification, the prohibited use of location factors in this section is intended to prevent abandonment of areas in which a Federal credit union's members live or want to live. It is not intended to require loans in those areas that are geographically remote from the FCU's main or branch offices or that contravene the parameters of a Federal credit union's charter. Further, this prohibition does not preclude requiring a borrower to obtain flood insurance protection pursuant to the National Flood Insurance Act and part 760 of NCUA's Rules and Regulations, nor does it preclude involvement with Federal or state housing insurance programs which provide for lower interest rates for the purchase of homes in certain urban or rural areas. Also, the legitimate use of location factors in an appraisal does not constitute a violation of the provision of paragraph (b)(3)

of this section, which prohibits consideration of location of the dwelling. Finally, the prohibited use of prior home ownership does not preclude a Federal credit union from considering an applicant's payment history on a loan which was made to obtain a home. Such action entails consideration of the payment record on a previous loan in determining creditworthiness; it does not entail consideration of prior home ownership.

(3)(i) Paragraph (c)(3) of this section prohibits consideration of the age or location of a dwelling in a real estate-related loan appraisal. These restrictions are intended to prohibit the use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Appraisals should be based on the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan.

(ii) The term "age of the dwelling" does not encompass structural soundness. In addition, the age of the dwelling may be used by an appraiser as a basis for conducting further inspections of certain structural aspects of the dwelling. Paragraph (c)(3) of this section does, however, prohibit an unsubstantiated determination that a house over X years in age is not structurally sound.

(iii) With respect to location factors, paragraph (c)(4) of this section recognizes that there may be location factors which may be considered in an appraisal, and requires that the use of any such factors be specifically documented in the appraisal. These factors will most often be those location factors which may negatively affect the short range future value (up to 3-5 years) of a property. Factors which in some cases may cause the market value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not

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affect the market value of a property because the cause of abandonment is unrelated to high risk. Proper considerations include the condition and utility of the improvement and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults.

[54 FR 46223, Nov. 2, 1989, as amended at 59 FR 36041, July 15, 1994; 66 FR 48206, Sept. 19, 2001; 77 FR 16426, Mar. 21, 2012; 77 FR 71084, Nov. 29, 2012]

### § 701.32 Payment on shares by public units and nonmembers.

(a) *Authority.* A Federal credit union may, to the extent permitted under Section 107(6) of the Act and this section, receive payments on shares, (regular shares, share certificates, and share draft accounts) from public units and political subdivisions thereof (as those terms are defined in § 745.1) and nonmember credit unions, and to the extent permitted under the Act, this section and § 701.34, receive payments on shares (regular shares, share certificates, and share draft accounts) from other nonmembers.

(b) *Limitations.* (1) Unless a greater amount has been approved by the Regional Director, the maximum amount of all public unit and nonmember shares shall not, at any given time, exceed 20% of the total shares of the federal credit union or \$3 million, whichever is greater.

(2) Before accepting any public unit or nonmember shares in excess of 20% of total shares, the board of directors must adopt a specific written plan concerning the intended use of these shares and forward a copy of the plan to the Regional Director. The plan must include:

(i) A statement of the credit union's needs, sources and intended uses of public unit and nonmember shares;

(ii) Provision for matching maturities of public unit and nonmember shares with corresponding assets, or justification for any mismatch; and

(iii) Provision for adequate income spread between public unit and nonmember shares and corresponding assets.

(3) A federal credit union seeking an exemption from the limits of paragraph (b)(1) of this section must submit to the Regional Director a written request including:

(i) The new maximum level of public unit and nonmember shares requested, either as a dollar amount or a percentage of total shares;

(ii) The current plan adopted by the credit union's board of directors concerning the use of new public unit and nonmember shares;

(iii) A copy of the credit union's latest financial statement; and

(iv) A copy of the credit union's loan and investment policies.

(4) Where the financial condition and management of the credit union are sound and the credit union's plan for the funds is reasonable, there will be a presumption in favor of granting the request. When granted, exemptions will normally be for a two-year period. The Regional Director will provide a written explanation for an exemption that is granted for a lesser time period.

(5) The Regional Director will provide a written determination on an exemption request within 30 calendar days after receipt of the request. The 30 day period will not begin to run until all necessary information has been submitted to the Regional Director. All denials may be appealed to the NCUA Board in a timely manner. Appeals should be submitted through the Regional Director.

(6) Upon expiration of an exemption, nonmember shares currently in the credit union in excess of the limits established pursuant to (b)(1) of this section will continue to be insured by the National Credit Union Insurance Fund within applicable limits. No new shares in excess of the limits established pursuant to (b)(1) of this section shall be accepted. Existing share certificates in excess of the limits established pursuant to (b)(1) of this section may remain in the credit union only until maturity.

(c) The limitations herein do not apply to accounts maintained in accordance with § 701.37 (Treasury Tax and Loan Depositories; Depositories and Financial Agents of the Government) and matching funds required by

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§ 705.5(g) (Community Development Revolving Loan Program for Credit Unions). Once a loan granted pursuant to part 705 is repaid, nonmember share deposits accepted to meet the matching requirement are subject to this section.

[54 FR 31184, July 27, 1989, as amended at 54 FR 51384, Dec. 15, 1989; 55 FR 1794, Jan. 19, 1990; 58 FR 21645, Apr. 23, 1993; 59 FR 26102, May 19, 1994; 61 FR 3790, Feb. 2, 1996; 76 FR 67587, Nov. 2, 2011; 77 FR 31991, May 31, 2012]

### § 701.33 Reimbursement, insurance, and indemnification of officials and employees.

(a) *Official*. An *official* is a person who is or was a member of the board of directors, credit committee or supervisory committee, or other volunteer committee established by the board of directors.

(b) *Compensation*. (1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term *compensation* specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed, if the payment is determined by the board of directors to be necessary or appropriate in order to carry out the official business of the credit union, and is in accordance with written policies and procedures, including documentation requirements, established by the board of directors. Such payments may include the payment of travel costs for officials and one guest per official;

(ii) Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union: *Provided*, that such insurance protection must exclude life insurance; must

be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by reason of carrying out the duties or responsibilities of the official's credit union position; must cease immediately upon the insured person's leaving office, without providing residual benefits other than from pending claims, if any; except that a credit union must comply with federal and state laws providing departing officials the right to maintain health insurance coverage at their own expense and

(iii) Indemnification and related insurance consistent with paragraph (c) of this section.

(c) *Indemnification*. (1) A Federal credit union may indemnify its officials and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.

(2) Indemnification shall be consistent either with the standards applicable to credit unions generally in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act. A Federal credit union that elects to provide indemnification shall specify whether it will follow the relevant state law or the Model Business Corporation Act. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with the procedural requirements of the applicable state law or the Model Business Corporation Act, as specified. A charter or bylaw amendment must be approved by the National Credit Union Administration.

(3) A Federal credit union may purchase and maintain insurance on behalf of its officials and employees against any liability asserted against them and expenses incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

(4) Notwithstanding paragraphs (c)(1) through (3) of this section, a federal credit union may not indemnify a dual

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employee for duties performed for any employer other than the federal credit union. For purposes of this subsection, a dual employee is a federal credit union employee who also performs work functions for another entity as part of a sharing arrangement between the federal credit union and the other entity.

(5) Notwithstanding paragraphs (c)(1) through (3) of this section, a Federal credit union may not indemnify an official or employee for personal liability related to any decision made by that individual on a matter significantly affecting the fundamental rights and interests of the Federal credit union's members where the decision giving rise to the claim for indemnification is determined by a court to have constituted gross negligence, recklessness, or willful misconduct. Matters affecting the fundamental rights and interests of Federal credit union members include charter and share insurance conversions and terminations.

(6) A Federal credit union may, before final disposition of a proceeding referred to in paragraph (c)(5) of this section, advance funds to pay for or reimburse the expenses, including legal fees, reasonably incurred in connection with the proceeding by an official or employee who is a party to the proceeding because that individual is or was an official or employee of the credit union if:

(i) The disinterested members of the credit union's board of directors (or in the event there are fewer than two disinterested directors, the supervisory committee), in good faith, determine in writing after due investigation and consideration that the official or employee acted in good faith and in a manner he or she reasonably believed to be in the best interests of the credit union's members;

(ii) The disinterested members of the credit union's board of directors (or the supervisory committee, as the case may be), in good faith, determine in writing after due investigation and consideration that the payment or reimbursement of the expenses will not materially adversely affect the credit union's safety and soundness; and

(iii) The official or employee provides:

(A) A written affirmation of the individual's reasonable good faith belief that the relevant standard of conduct described in § 701.4(b) of this chapter has been met by the individual; and

(B) A written undertaking to repay the credit union for any funds advanced or reimbursed, to the extent not covered by payments from insurance, if the official or employee is not entitled to indemnification under paragraph (c)(5) of this section.

(7) To the extent a Federal credit union has elected to follow State law or the Model Business Corporation Act in accordance with paragraph (c)(2) of this section, the credit union must substitute the phrase "in the best interests of the members" for any language indicating that fiduciary duties are owed to persons or entities other than the members of the credit union, including, but not limited to, language such as "in the best interests of the credit union" or "in the best interests of the corporation."

[53 FR 29642, Aug. 8, 1988, as amended at 57 FR 54503, Nov. 19, 1992; 66 FR 65629, Dec. 20, 2001; 72 FR 30246, May 31, 2007; 75 FR 81386, Dec. 28, 2010]

### **§ 701.34 Designation of low income status; Acceptance of secondary capital accounts by low-income designated credit unions.**

(a) *Designation of low-income status.*

(1) Based on data obtained through examinations, NCUA will notify a federal credit union that it qualifies for designation as a low-income credit union if a majority of its membership qualifies as low-income members. A federal credit union that wishes to receive the designation must notify NCUA in writing within 90 days of receipt of any NCUA notifications.

(2) Low-income members are those members whose family income is 80% or less than the median family income for the metropolitan area where they live or national metropolitan area, whichever is greater, or those members who earn 80% or less than the total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater. NCUA will use the statewide

or national, non-metropolitan area median family income instead of the metropolitan area or national metropolitan area median family income for members living outside a metropolitan area. Member earnings will be estimated based on data reported by the U.S. Census Bureau for the geographic area where the member lives. The term "low-income members" also includes those members enrolled as students in a college, university, high school, or vocational school.

(3) Federal credit unions that do not receive notification that they qualify for a low-income credit union designation but believe they qualify may submit information to NCUA to demonstrate they qualify for a low-income credit union designation. For example, federal credit unions may provide actual member income from loan applications or surveys to demonstrate a majority of their membership is low-income members. Actual member income data must be compared to a like category of statistical data, for example, actual individual member income may only be compared to total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater. A Federal credit union may rely on a sample of membership income data drawn from loan files or a member survey provided the Federal credit union can demonstrate the sample is a statistically valid, random sample by submitting with its data a narrative describing its sampling technique and evidence supporting the validity of the analysis, including the actual data set used in the analysis. The random sample must be representative of the membership, must be sufficient in both number and scope on which to base conclusions, and must have a minimum confidence level of 95% and a confidence interval of 5%. A Federal credit union must draw the sample either entirely from loan files or entirely from the survey, and must not combine a loan file review with a survey. NCUA will provide a response to the Federal credit union within 60 days of its submission.

(4) If NCUA determines a low-income designated federal credit union no longer meets the criteria for the des-

ignation, NCUA will notify the federal credit union in writing, and the federal credit union must, within five years, meet the criteria for the designation or come into compliance with the regulatory requirements applicable to federal credit unions that do not have a low-income designation. The designation will remain in effect during the five-year period. If a federal credit union does not requalify and has secondary capital or nonmember deposit accounts with a maturity beyond the five-year period, NCUA may extend the time for a federal credit union to come into compliance with regulatory requirements to allow the federal credit union to satisfy the terms of any account agreements. A federal credit union may appeal NCUA's determination that the credit union no longer meets the criteria for a low-income designation to the Board within 60 days of the date of the notice from NCUA. An appeal must be submitted through NCUA.

(5) Any credit union with a low-income credit union designation on January 1, 2009 will have five years from that date to meet the criteria for low-income designation under paragraph (a)(1) of this section, unless NCUA determines a longer time is required to allow the low-income credit union to satisfy the terms of a secondary capital or nonmember deposit account agreement.

(6) *Definitions.* The following definitions apply to this section:

*Median family income* and *total median earnings for individuals* are income statistics reported by the U.S. Census Bureau. The applicable income data can be obtained via the American FactFinder on the Census Bureau's webpage at [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en).

*Metropolitan area* means an area designated by the Office of Management and Budget pursuant to 31 U.S.C. 1104(d), 44 U.S.C. 3504(c), and Executive Order 10253, 16 FR 5605 (June 13, 1951) (as amended).

(b) *Acceptance of secondary capital accounts by low-income designated credit unions.* A federal credit union having a designation of low-income status pursuant to paragraph (a) of this section may accept secondary capital accounts

from nonnatural person members and nonnatural person nonmembers subject to the following conditions:

(1) *Secondary capital plan.* Before accepting secondary capital, a low-income credit union (“LICU”) shall adopt, and forward to NCUA for approval, a written “Secondary Capital Plan” that, at a minimum:

(i) States the maximum aggregate amount of uninsured secondary capital the LICU plans to accept;

(ii) Identifies the purpose for which the aggregate secondary capital will be used, and how it will be repaid;

(iii) Explains how the LICU will provide for liquidity to repay secondary capital upon maturity of the accounts;

(iv) Demonstrates that the planned uses of secondary capital conform to the LICU’s strategic plan, business plan and budget; and

(v) Includes supporting pro forma financial statements, including any off-balance sheet items, covering a minimum of the next two years.

(2) *Decision on plan.* If a LICU is not notified within 45 days of receipt of a Secondary Capital Plan that the plan is approved or disapproved, the LICU may proceed to accept secondary capital accounts pursuant to the plan.

(3) *Nonshare account.* The secondary capital account must be established as an uninsured secondary capital account or other form of non-share account.

(4) *Minimum maturity.* The maturity of the secondary capital account must be a minimum of five years.

(5) *Uninsured account.* The secondary capital account will not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.

(6) *Subordination of claim.* The secondary capital account investor’s claim against the LICU must be subordinate to all other claims including those of shareholders, creditors and the National Credit Union Share Insurance Fund.

(7) *Availability to cover losses.* Funds deposited into a secondary capital account, including interest accrued and paid into the secondary capital account, must be available to cover operating losses realized by the LICU that exceed its net available reserves (exclu-

sive of secondary capital and allowance accounts for loan and lease losses), and to the extent funds are so used, the LICU must not restore or replenish the account under any circumstances. The LICU may, in lieu of paying interest into the secondary capital account, pay accrued interest directly to the investor or into a separate account from which the secondary capital investor may make withdrawals. Losses must be distributed pro-rata among all secondary capital accounts held by the LICU at the time the losses are realized. In instances where a LICU accepted secondary capital from the United States Government or any of its subdivisions under the Community Development Capital Initiative of 2010 (“CDCI secondary capital”) and matching funds were required under the Initiative and are on deposit in the form of secondary capital at the time a loss is realized, a LICU must apply either of the following pro-rata loss distribution procedures to its secondary capital accounts with respect to the loss:

(i) If not inconsistent with any agreements governing other secondary capital on deposit at the time a loss is realized, the CDCI secondary capital may be excluded from the calculation of the pro-rata loss distribution until all of its matching secondary capital has been depleted, thereby causing the CDCI secondary capital to be held as senior to all other secondary capital until its matching secondary capital is exhausted. The CDCI secondary capital should be included in the calculation of the pro-rata loss distribution and is available to cover the loss only after all of its matching secondary capital has been depleted.

(ii) Regardless of any agreements applicable to other secondary capital, the CDCI secondary capital and its matching secondary capital may be considered a single account for purposes of determining a pro-rata share of the loss and the amount determined as the pro-rata share for the combined account must first be applied to the matching secondary capital account, thereby causing the CDCI secondary capital to be held as senior to its matching secondary capital. The CDCI secondary capital is available to cover

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the loss only after all of its matching secondary capital has been depleted.

(8) *Security.* The secondary capital account may not be pledged or provided by the account investor as security on a loan or other obligation with the LICU or any other party.

(9) *Merger or dissolution.* In the event of merger or other voluntary dissolution of the LICU, other than merger into another LICU, the secondary capital accounts will be closed and paid out to the account investor to the extent they are not needed to cover losses at the time of merger or dissolution.

(10) *Contract agreement.* A secondary capital account contract agreement must be executed by an authorized representative of the account investor and of the LICU reflecting the terms and conditions mandated by this section and any other terms and conditions not inconsistent with this section.

(11) *Disclosure and acknowledgement.* An authorized representative of the LICU and of the secondary capital account investor each must execute a “Disclosure and Acknowledgment” as set forth in the appendix to this section at the time of entering into the account agreement. The LICU must retain an original of the account agreement and the “Disclosure and Acknowledgment” for the term of the agreement, and a copy must be provided to the account investor.

(12) *Prompt corrective action.* As provided in §§ 702.204(b)(11), 702.304(b) and 702.305(b) of this chapter, the NCUA Board may prohibit a LICU classified “critically undercapitalized” or, if “new,” as “moderately capitalized”, “marginally capitalized”, “minimally capitalized” or “uncapitalized”, as the case may be, from paying principal, dividends or interest on its uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest will continue to accrue under the terms of the account to the extent permitted by law.

(c) *Accounting treatment; Recognition of net worth value of accounts—(1) Equity account.* A LICU that issues secondary capital accounts pursuant to paragraph (b) of this section must record the funds on its balance sheet in an equity

account entitled “uninsured secondary capital account.”

(2) Schedule for recognizing net worth value. The LICU’s reflection of the net worth value of the accounts in its financial statement may never exceed the full balance of the secondary capital on deposit after any early redemptions and losses. For accounts with remaining maturities of less than five years, the LICU must reflect the net worth value of the accounts in its financial statement in accordance with the lesser of:

(i) The remaining balance of the accounts after any redemptions and losses; or

(ii) The amounts calculated based on the following schedule:

Remaining maturity	Net worth value of original balance (percent)
Four to less than five years .....	80
Three to less than four years .....	60
Two to less than three years .....	40
One to less than two years .....	20
Less than one year .....	0

(3) *Financial statement.* The LICU must reflect the full amount of the secondary capital on deposit in a footnote to its financial statement.

(d) *Redemption of secondary capital.* With the written approval of NCUA, secondary capital that is not recognized as net worth under paragraph (c)(2) of this section (“discounted secondary capital” recategorized as subordinated debt) may be redeemed according to the remaining maturity schedule in paragraph (d)(3) of this section.

(1) *Request to redeem secondary capital.* A request for approval to redeem discounted secondary capital may be submitted in writing at any time, must specify the increment(s) to be redeemed and the schedule for redeeming all any part of each eligible increment, and must demonstrate to the satisfaction of NCUA that:

(i) The LICU will have a post-redemption net worth classification of “adequately capitalized” under part 702 of this chapter;

(ii) The discounted secondary capital has been on deposit at least two years;

(iii) The discounted secondary capital will not be needed to cover losses prior to final maturity of the account;

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(iv) The LICU’s books and records are current and reconciled;

(v) The proposed redemption will not jeopardize other current sources of funding, if any, to the LICU; and

(vi) The request to redeem is authorized by resolution of the LICU’s board of directors.

(2) *Decision on request.* A request to redeem discounted secondary capital may be granted in whole or in part. If a LICU is not notified within 45 days of receipt of a request for approval to redeem secondary capital that its request is either granted or denied, the LICU may proceed to redeem secondary capital accounts as proposed.

(3) *Schedule for redeeming secondary capital.*

Remaining maturity	Redemption limit as percent of original balance
Four to less than five years .....	20
Three to less than four years .....	40
Two to less than three years .....	60
One to less than two years .....	80

(4) *Early redemption exception.* Subject to the written approval of NCUA obtained pursuant to the requirements of paragraphs (d)(1) and (2) of this section, a LICU can redeem all or part of secondary capital accepted from the United States Government or any of its subdivisions at any time after the secondary capital has been on deposit for two years. If the secondary capital was accepted under conditions that required matching secondary capital from a source other than the Federal Government, the matching secondary capital may also be redeemed in the manner set forth in the preceding sentence. For purposes of obtaining NCUA’s approval, all secondary capital a LICU accepts from the United States Government or any of its subdivisions, as well as its matching secondary capital, if any, is eligible for early redemption regardless of whether any part of the secondary capital has been discounted pursuant to paragraph (c)(2) of this section.

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A LICU that is authorized to accept uninsured secondary capital accounts and each investor in such an account shall execute and date the following “Disclosure and Ac-

knowledgment” form, a signed original of which must be retained by the credit union:

DISCLOSURE AND ACKNOWLEDGMENT

[Name of CU] and [Name of investor] hereby acknowledge and agree that [Name of investor] has committed [amount of funds] to a secondary capital account with [name of credit union] under the following terms and conditions:

1. *Term.* The funds committed to the secondary capital account are committed for a period of \_\_\_ years.

2. *Redemption prior to maturity.* Subject to the conditions set forth in 12 CFR 701.34, the funds committed to the secondary capital account are redeemable prior to maturity only at the option of the LICU and only with the prior approval of NCUA.

3. *Uninsured, non-share account.* The secondary capital account is not a share account and the funds committed to the secondary capital account are not insured by the National Credit Union Share Insurance Fund or any other governmental or private entity.

4. *Prepayment risk.* Redemption of U.S.C. prior to the account’s original maturity date may expose the account investor to the risk of being unable to reinvest the repaid funds at the same rate of interest for the balance of the period remaining until the original maturity date. The investor acknowledges that it understands and assumes responsibility for prepayment risk associated with the [name of credit union]’s redemption of the investor’s U.S.C. account prior to the original maturity date.

5. *Availability to cover losses.* The funds committed to the secondary capital account and any interest paid into the account may be used by [name of credit union] to cover any and all operating losses that exceed the credit union’s net worth exclusive of allowance accounts for loan losses, and in the event the funds are so used, (name of credit union) will under no circumstances restore or replenish those funds to [name of institutional investor]. Dividends are not considered operating losses and are not eligible to be paid out of secondary capital.

6. *Accrued interest.* By initialing below, [name of credit union] and [name of institutional investor] agree that accrued interest will be:

- Paid into and become part of the secondary capital account;
- Paid directly to the investor;
- Paid into a separate account from which the investor may make withdrawals; or
- Any combination of the above provided the details are specified and agreed to in writing.

7. *Subordination of claims.* In the event of liquidation of [name of credit union], the funds committed to the secondary capital

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account will be subordinate to all other claims on the assets of the credit union, including claims of member shareholders, creditors and the National Credit Union Share Insurance Fund.

8. *Prompt Corrective Action.* Under certain net worth classifications (see 12 CFR 702.204(b)(11), 702.304(b) and 702.305(b), as the case may be), the NCUA Board may prohibit [name of credit union] from paying principal, dividends or interest on its uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest will continue to accrue under the terms of the account to the extent permitted by law.

ACKNOWLEDGED AND AGREED TO this \_\_\_\_\_ day of [month and year] by:

\_\_\_\_\_  
[name of investor's official]  
[title of official]  
[name of investor]  
[address and phone number of investor]  
[investor's tax identification number]

\_\_\_\_\_  
[name of credit union official]  
[title of official]

[61 FR 3790, Feb. 2, 1996, as amended at 61 FR 50695, 50697, Sept. 27, 1996; 64 FR 72270, Dec. 27, 1999; 65 FR 21131, Apr. 20, 2000; 71 FR 4238, Jan. 26, 2006; 73 FR 71912, Nov. 26, 2008; 75 FR 7342, Feb. 19, 2010; 75 FR 47172, Aug. 5, 2010; 75 FR 57843, Sept. 23, 2010; 76 FR 36979, June 24, 2011; 76 FR 80227, Dec. 23, 2011; 78 FR 4032, Jan. 18, 2013]

### § 701.35 Share, share draft, and share certificate accounts.

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with section 107(6) of the Act (12 U.S.C. 1757(6)) and the board of directors may declare dividends on such accounts as provided in section 117 of the Act (12 U.S.C. 1763).

(b) A Federal credit union shall accurately represent the terms and conditions of its share, share draft, and share certificate accounts in all advertising, disclosures, or agreements, whether written or oral.

(c) A Federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to federal credit unions.

(d) For purposes of this section, "state law" means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

[47 FR 17979, Apr. 27, 1982, as amended at 50 FR 4637, Feb. 1, 1985; 59 FR 50445, Sept. 27, 1993]

### § 701.36 Federal credit union ownership of fixed assets.

(a) *Scope.* (1) Section 107(4) of the Federal Credit Union Act (12 U.S.C. 1757(4)) authorizes a federal credit union to purchase, hold, and dispose of property necessary or incidental to its operations. This section interprets and implements that provision and it:

(i) Limits investments in fixed assets;

(ii) Establishes occupancy, planning, and disposal requirements for acquired and abandoned premises; and

(iii) Prohibits certain transactions.

(2) This section applies only to federal credit unions.

(b) *Definitions.* For purposes of this section:

*Abandoned premises* means real property previously used to transact credit union business but no longer used for that purpose. It also means real property originally acquired for future credit union expansion but no longer intended for that purpose.

*Fixed assets* means premises and furniture, fixtures, and equipment.

*Furniture, fixtures, and equipment* means all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.

*Immediate family member* means a spouse or other family member living in the same household.

*Investments in fixed assets* means:

(1) Any investment in improved or unimproved real property which a federal credit union is using, or intends to use, as premises;

(2) Any leasehold improvement on premises;

(3) The aggregate of all capital and operating lease payments on fixed assets, without discounting commitments for future payments to present value; or

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(4) Any investment in furniture, fixtures, and equipment.

*Partially occupy* means occupation, on a full-time basis, of a portion of the premises that is:

(1) Consistent with the federal credit union's usage plan for the premises;

(2) Significant enough that the federal credit union is deriving practical utility from the occupied portion, relative to the scope of the usage plan; and

(3) Sufficient to show that the federal credit union will fully occupy the premises within a reasonable time.

*Premises* means any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the federal credit union transacts or will transact business.

*Retained earnings* means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, and other appropriations from undivided earnings as designated by the federal credit union's management or NCUA.

*Senior management employee* means the federal credit union's chief executive officer, any assistant chief executive officers, and the chief financial officer. For example, these individuals typically hold the title of President or Treasurer/Manager, Assistant President, Vice President or Assistant Treasurer/Manager, and Comptroller.

*Shares* means regular shares, share drafts, share certificates, or other savings.

*Unimproved land or unimproved real property* means:

(1) Raw land or land without development, significant buildings, structures, or site preparation;

(2) Land that has never had improvements;

(3) Land that was improved at one time but has functionally reverted to its unimproved state; or

(4) Land that has been improved, but the improvements serve no purpose for the federal credit union's planned use of the property.

(c) *Limits on investment in fixed assets.* If a federal credit union has \$1,000,000 or more in assets, the aggregate of all its investments in fixed assets must not exceed five percent of its shares

and retained earnings. NCUA may waive this aggregate limit.

(1) To seek a waiver, a federal credit union must submit a written request to its Regional Office. The request must:

(i) Describe the proposed investment;

(ii) Indicate the approximate aggregate amount of fixed assets the federal credit union would hold after the investment (as a percentage of shares and retained earnings); and

(iii) Fully explain why the federal credit union needs the waiver.

(2) The Regional Director will inform the federal credit union, in writing, of the date its request was received and of any additional documentation needed.

(3) Within 45 days of the receipt of the federal credit union's waiver request or all necessary documentation, whichever is later, the Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(4) If a waiver is approved, the Regional Director will set an alternative limit on the federal credit union's aggregate investments in fixed assets, either as a dollar limit or as a percentage of its shares and retained earnings. Unless the Regional Director specifies otherwise, the federal credit union's future investments in fixed assets must not exceed an additional one percent of its shares and retained earnings over the amount approved.

(5) If the Regional Director does not respond in writing within the timeframe specified in paragraph (c)(3) of this section, the federal credit union may proceed with its proposed investment. However, the federal credit union's investment in fixed assets, and any such future investments, must not exceed the aggregate limit it requested.

(d) *Premises not currently used to transact credit union business.* (1) If a federal credit union acquires premises for future expansion and does not fully occupy them within one year, it must have a board resolution in place by the end of that year with definitive plans for full occupation. Premises are fully occupied when the federal credit union (or the federal credit union and a credit

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union service organization or a vendor) uses the entire space on a full-time basis. Credit union service organizations and vendors must use the space primarily to support the federal credit union or to serve the federal credit union's members. The federal credit union must make its plans for full occupation available to NCUA upon request.

(2) If a federal credit union acquires premises for future expansion, it must partially occupy them within a reasonable period, but no later than three years after the date of acquisition. If the premises are unimproved land or unimproved real property, however, the three-year partial occupation requirement is extended to six years. NCUA may waive the partial occupation requirements. To seek a waiver, a federal credit union must submit a written request to its Regional Office within 30 months after the property is acquired and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(3) A federal credit union must make diligent efforts to dispose of abandoned premises and any other real property it does not intend to use in transacting business. The federal credit union must seek fair market value for the property, and record its efforts to dispose of abandoned premises. After premises have been abandoned for four years, the federal credit union must publicly advertise the property for sale. The federal credit union must complete the sale within five years of abandonment, unless NCUA waives this requirement. To seek a waiver, a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(e) *Prohibited transactions.* (1) A federal credit union must not acquire, or lease for one year or longer, premises

from any of the following, unless NCUA waives this prohibition:

(i) A member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual;

(ii) A corporation in which a member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual, is an officer or director, or has a stock interest of 10 percent or more; or

(iii) A partnership, limited liability company, or other entity in which a member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual, is a general partner, or a limited partner or entity member with an interest of 10 percent or more.

(2) A federal credit union must not lease for one year or longer premises from any of its employees if the employee is directly involved in investments in fixed assets, unless the federal credit union's board of directors determines the employee's involvement is not a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this section must be conducted at arm's length and in the interest of the federal credit union.

(4) To seek a waiver from any of the prohibitions in this paragraph (e), a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. Within 45 days of the receipt of the waiver request or all necessary documentation, whichever is later, the Regional Director will provide the federal credit union a written response, either approving or disapproving its request. The Regional Director's decision will be based on safety and soundness considerations and a determination as to whether a conflict of interest exists.

[78 FR 57252, Sept. 18, 2013]

**§ 701.37 Treasury tax and loan depositaries; depositaries and financial agents of the Government.**

(a) *Definitions.* (1) *Treasury Tax and Loan (TT&L) Remittance Account* means a nondividend-paying account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations under United States Treasury Department regulations.

(2) *TT&L Note Account* means an account subject to the right of immediate call, evidencing funds held by depositaries electing the note option under United States Treasury Department regulations.

(3) *Treasury General Account* means an account, established under United States Treasury Department regulations, in which a zero balance may be maintained and from which the entire balance may be withdrawn by the depositor immediately under all circumstances except closure of the credit union.

(4) *U.S. Treasury Time Deposit—Open Account* means a nondividend-bearing account, established under United States Treasury Department regulations, which generally may not be withdrawn until the expiration of 14 days after the date of the United States Treasury Department's written notice of intent to withdraw.

(b) Subject to regulation of the United States Treasury Department, a Federal credit union may serve as a Treasury tax and loan depositary, a depositary of Federal taxes, a depositary of public money, and a financial agent of the United States Government. In serving in these capacities, a Federal credit union may maintain the accounts defined in subsection (a), pledge collateral, and perform the services described under United States Treasury Department regulations for institutions acting in these capacities.

(c) Funds held in a TT&L Remittance Account, a TT&L Note Account, a Treasury General Account, and a U.S. Treasury Time Deposit—Open Account shall be considered deposits of public funds. Funds held in a TT&L Remittance Account and a TT&L Note Account shall be added together and insured up to a maximum of \$250,000 in

the aggregate. Funds held in a Treasury General Account and a U.S. Treasury Time Deposit—Open Account shall be added together and insured up to a maximum of \$250,000 in the aggregate.

(d) Funds held in a TT&L Remittance Account, a TT&L Note Account, a Treasury General Account, and U.S. Treasury Time Deposit—Open Account are not subject to the 60-day notice requirement of Article III, section 5(a) of the Federal Credit Union Bylaws.

[54 FR 18471, May 1, 1989, as amended at 78 FR 4030, Jan. 18, 2013]

**§ 701.38 Borrowed funds from natural persons.**

(a) Federal credit unions may borrow from a natural person, provided:

(1) The borrowing is evidenced by a signed promissory note which sets forth the terms and conditions regarding maturity, prepayment, interest rate, method of computation, and method of payment;

(2) The promissory note and any advertisement for such funds contains conspicuous language indicating that:

(i) The note represents money borrowed by the credit union;

(ii) The note does not represent shares and, therefore, is *not* insured by the National Credit Union Share Insurance Fund.

(b) Federal credit unions must comply with the maximum borrowing authority of § 741.2 of this chapter.

[45 FR 29271, May 2, 1980, as amended at 47 FR 17979, Apr. 27, 1982; 72 FR 30246, May 31, 2007]

**§ 701.39 Statutory lien.**

(a) *Definitions.* Within this section, each of the following terms has the meaning prescribed below:

(1) *Except as otherwise provided by law* or *except as otherwise provided by federal law* is a qualifying phrase referring to a federal and/or state law, as the case may be, which supersedes a requirement of this section. It is the responsibility of the credit union to ascertain whether such statutory or case law exists and is applicable;

(2) *Impress* means to attach to a member's account and is the act which makes the lien enforceable against that account;

(3) *Member* means any member who is primarily, secondarily or otherwise responsible for an outstanding financial obligation to the credit union, including without limitation an obligor, maker, co-maker, guarantor, co-signer, endorser, surety or accommodation party;

(4) *Notice* means written notice to a member disclosing, in plain language, that the credit union has the right to impress and enforce a statutory lien against the member's shares and dividends in the event of failure to satisfy a financial obligation, and may enforce the right without further notice to the member. Such notice must be given at the time, or at any time before, the member incurs the financial obligation;

(5) *Statutory lien* means the right granted by section 107(11) of the Federal Credit Union Act, 12 U.S.C. 1757(11), to a federal credit union to establish a right in or claim to a member's shares and dividends equal to the amount of that member's outstanding financial obligation to the credit union, as that amount varies from time to time.

(b) *Superior claim*. Except as otherwise provided by law, a statutory lien gives the federal credit union priority over other creditors when claims are asserted against a member's account(s).

(c) *Impressing a statutory lien*. Except as otherwise provided by federal law, a credit union can impress a statutory lien on a member's account(s)—

(1) *Account records*. By giving notice thereof in the member's account agreement(s) or other account opening documentation; or

(2) *Loan documents*. In the case of a loan, by giving notice thereof in a loan document signed or otherwise acknowledged by the member(s); or

(3) *By-Law or policy*. Through a duly adopted credit union by-law or policy of the board of directors, of which the member is given notice.

(d) *Enforcing a statutory lien*—(1) *Application of funds*. Except as otherwise provided by federal law, a federal credit union may enforce its statutory lien against a member's account(s) by debiting funds in the account and applying them to the extent of any of the mem-

ber's outstanding financial obligations to the credit union.

(2) *Default required*. A federal credit union may enforce its statutory lien against a member's account(s) only when the member fails to satisfy an outstanding financial obligation due and payable to the credit union.

(3) *Neither judgment nor set-off required*. A federal credit union need not obtain a court judgment on the member's debt, nor exercise the equitable right of set-off, prior to enforcing its statutory lien against the member's account.

[64 FR 56956, Oct. 22, 1999]

#### APPENDIX A TO PART 701—FEDERAL CREDIT UNION BYLAWS

##### INTRODUCTION

*A. Effective date*. After consideration of public comment, the National Credit Union Administration (NCUA) Board adopted these Bylaws and incorporated them as appendix A to Part 701 of NCUA's regulations on November 30, 2007. Unless a federal credit union has adopted bylaws before November 30, 2007, it must adopt these revised bylaws.

*B. Adoption of all or part of these bylaws*. Although federal credit unions may retain any previously approved version of the bylaws, the NCUA Board encourages federal credit unions to adopt the revised bylaws because it believes they provide greater clarity and flexibility for credit unions and their officials and members. Federal credit unions may also adopt portions of the revised bylaws and retain the remainder of previously approved bylaws, but the NCUA Board cautions federal credit unions to be extremely careful. Federal credit unions must be careful because they run the risk of having inconsistent or conflicting provisions because of the various options the revised bylaws provide as well as other revisions in the text.

*C. Bylaw amendments*. 1. The FCU Bylaws contain several provisions allowing FCU boards to select from an option or range of options and fill in a blank. Changes to "fill-in-the-blank" provisions are, in fact, changes to the FCU's bylaws and require a two-thirds vote of the board. As long as the FCU selects from the permissible options for completing the blank, the FCU need not submit the change for NCUA approval using the process outlined below.

2. Federal credit unions continue to have the flexibility to request other bylaw amendments if the need arises. NCUA must approve any bylaw amendments; federal credit unions may no longer adopt amendments from the "Standard Bylaw Amendments"

booklet because the 1999 revisions to the bylaws included sufficient flexibility to make the separate list of standard bylaw amendments superfluous. Thus, NCUA no longer differentiates between “standard” and “non-standard” bylaw amendments.

3. The procedure for approval of bylaw amendments is as follows:

a. The federal credit union wishing to adopt a bylaw amendment must file a request with its regional director.

b. The request must include the section of the bylaws to be amended; the reason for or purpose of the amendment, including an explanation of why the amendment is desirable and what it will accomplish for the credit union; and the specific, proposed wording of the amendment.

c. After review by the regional director and consultation within the agency, the regional director will advise the credit union if a proposed amendment is approved.

4. Federal credit unions considering an amendment may find it useful to review the bylaws section of the agency Web site, which includes Office of General Counsel opinions about proposed bylaw amendments. Opinions issued after April 2006 will include the language of approved amendments. Even if an amendment has been previously approved, the credit union must submit a proposed amendment to NCUA for review under the procedure listed above to ensure the amendment is identical. Credit unions requesting previously approved amendments will receive notice of the regional office’s decision within 15 business days of the receipt of the request.

*D. The nature of the bylaws.* 1. The Federal Credit Union Act requires the NCUA Board to prepare bylaws for federal credit unions. 12 U.S.C. 1758. The bylaws address a broad range of matters concerning a credit union’s organization and governance, the relationship of the credit union to its members, and the procedures and rules a credit union follows. The bylaws supplement the broad provisions of: A federal credit union’s charter, which establishes the existence of a federal credit union; the Federal Credit Union Act, which establishes the powers of federal credit unions; and NCUA regulations, which implement the Federal Credit Union Act. As a legal matter, a federal credit union’s bylaws must conform to and cannot be inconsistent with any provision of its charter, the Federal Credit Union Act, NCUA regulations or other laws or regulations applicable to its operations.

2. NCUA expects federal credit unions and their members will make every effort to resolve bylaw disputes using the credit union’s internal member complaint resolution process. If a bylaw dispute cannot be resolved internally, however, credit union officials or members should contact the regional office

with jurisdiction for the credit union for assistance in resolving the dispute.

3. NCUA has discretion to take administrative actions when a credit union is not in compliance with its bylaws. If a potential violation is identified, NCUA will carefully consider all of the facts and circumstances in deciding whether to take enforcement action. NCUA will not take action against minor or technical violations, but emphasizes that it retains discretion to enforce the bylaws in appropriate cases, such as safety and soundness concerns or threats to fundamental, material credit union member rights.

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BYLAWS

FEDERAL CREDIT UNION, CHARTER  
 No. \_\_\_\_\_

(A corporation chartered under the laws of the United States)

ARTICLE I. NAME—PURPOSES

Section 1. Name. The name of this credit union is as stated in Section 1 of the charter (approved organization certificate) of this credit union.

Section 2. Purposes. This credit union is a member-owned, democratically operated, not-for-profit organization managed by a volunteer board of directors, with the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means. The purpose of this credit union is to promote thrift among its members by affording them an opportunity to accumulate their savings and to create for them a source of credit for provident or productive purposes. *The credit union may add*

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*business as one of its purposes by placing a comma after "provident" and inserting "business."*

### ARTICLE II. QUALIFICATIONS FOR MEMBERSHIP

Section 1. *Field of membership.* The field of membership of this credit union is limited to that stated in Section 5 of its charter.

Section 2. *Membership application procedures.* Applications for membership from persons eligible for membership under Section 5 of the charter must be signed by the applicant on forms approved by the board. The applicant is admitted to membership after approval of an application by a majority of the directors, a majority of the members of a duly authorized executive committee, or by a membership officer, and after subscription to at least one share of this credit union and the payment of the initial installment, and the payment of a uniform entrance fee if required by the board. If a person whose membership application is denied makes a written request, the credit union must explain the reasons for the denial in writing.

Section 3. *Maintenance of membership share required.* A member who withdraws all shareholdings or fails to comply with the time requirements for restoring his or her account balance to par value in Article III, Section 3, ceases to be a member. By resolution, the board may require persons readmitted to membership to pay another entrance fee.

Section 4. *Continuation of membership.* Once a member becomes a member that person may remain a member until the person or organization chooses to withdraw or is expelled in accordance with the Act and Article XIV of these bylaws. A member who is disruptive to credit union operations may be subject to limitations on services and access to credit union facilities. *A credit union that wishes to restrict services to members no longer within the field of membership should specify the restrictions in this section.*

Staff commentary on qualifications for membership:

*Entrance fee*—FCUs may not vary the entrance fee among different classes of members because the Act requires a uniform fee. FCUs may, however, eliminate the entrance fee for all applicants.

### ARTICLE III. SHARES OF MEMBERS

Section 1. *Par value.* The par value of each share will be \$ \_\_\_\_\_. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$ \_\_\_\_\_ per month.

Section 2. *Cap on shares held by one person.* The board may establish, by resolution, the maximum amount of shares that any one member may hold.

Section 3. *Time periods for payment and maintenance of membership share.* A member who fails to complete payment of one share

within \_\_\_\_\_ of admission to membership, or within \_\_\_\_\_ from the increase in the par value of shares, or a member who reduces the share balance below the par value of one share and does not increase the balance to at least the par value of one share within \_\_\_\_\_ of the reduction will be terminated from membership.

Section 4. *Transferability.* Shares may only be transferred from one member to another by an instrument in a form as the board may prescribe. Shares that accrue credits for unpaid dividends retain those credits when transferred.

Section 5. *Withdrawals.* Money paid in on shares or installments of shares may be withdrawn as provided in these bylaws or regulation on any day when payment on shares may be made, provided, however, that;

(a) The board has the right, at any time, to require members to give up to 60 days written notice of intention to withdraw the whole or any part of the amounts paid in by them.

(b) Reserved.

(c) No member may withdraw any shareholdings below the amount of the member's primary or contingent liability to the credit union if the member is delinquent as a borrower, or if borrowers for whom the member is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer. Coverage of overdrafts under an overdraft protection policy does not constitute delinquency for purposes of this paragraph. Shares issued in an irrevocable trust as provided in Section 6 of this article are not subject to withdrawal restrictions except as stated in the trust agreement.

(d) The share account of a deceased member (other than one held in joint tenancy with another member) may be continued until the close of the dividend period in which the administration of the deceased's estate is completed.

(e) The board will have the right, at any time, to impose a fee for excessive share withdrawals from regular share accounts. The number of withdrawals not subject to a fee and the amount of the fee will be established by board resolution and will be subject to regulations applicable to the advertising and disclosure of terms and conditions on member accounts.

Section 6. *Trusts.* Shares may be issued in a revocable or irrevocable trust, subject to the following:

When shares are issued in a revocable trust, the settlor must be a member of this credit union in his or her own right. When shares are issued in an irrevocable trust, either the settlor or the beneficiary must be a member of this credit union. The name of the beneficiary must be stated in both a revocable and irrevocable trust. For purposes of

this section, shares issued pursuant to a pension plan authorized by the rules and regulations will be treated as an irrevocable trust unless otherwise indicated in the rules and regulations.

Section 7. *Joint accounts and membership requirements. Select one option and check the box corresponding to that option.*

— *Option A—Separate account not required to establish membership*

Owners of a joint account may both be members of the credit union without opening separate accounts. For joint membership, both owners are required to fulfill all of the membership requirements including each member purchasing and maintaining at least one share in the account.

— *Option B—Separate account required to establish membership*

Each member must purchase and maintain at least one share in a share account that names the member as the sole or primary owner. Being named as a joint owner of a joint account is insufficient to establish membership.

Staff commentary on shares:

*i. Installments*—FCUs may insert zero for the number of installments. The FCU Act allows membership upon the payment of the initial installment of a membership share, but NCUA no longer views this provision as requiring FCUs to offer the option of paying for the membership share in installments.

*ii. Par value*—FCUs may establish differing par values for different classes of members or types of accounts, provided this action does not violate any federal, state or local antidiscrimination laws. For example, an FCU may want to establish a higher par value for recent credit union members, without requiring long-time members to bring their accounts up to the new par value. A differing par value may also be permissible for different types of accounts, such as requiring a higher par value for a member with only a share draft account. If a credit union adopts differing par values, all of the possible par values should be stated in Section 1.

*iii. Reduction in share balance below par value*—When a member's account balance falls below the par value, Section 3 requires FCUs to allow members a minimum time period to restore their account balance to the par value before membership is terminated. FCUs may not delete this requirement or delete references to this requirement in Article II, Section 3.

#### ARTICLE IV. MEETINGS OF MEMBERS

Section 1. *Annual meeting.* The annual meeting of the members must be held [insert time for annual meeting, for example, “during the month of March/on the third Saturday of April/ no later than March 31”], in the county in which any office of the credit union is located or within a radius of 100

miles of an office, at the time and place as the board determines and announces in the notice of the annual meeting.

Section 2. *Notice of meetings required.* a. At least 30 but no more than 75 days before the date of any annual meeting or at least 7 days before the date of any special meeting of the members, the secretary must give written notice to each member. Notice may be by written notice delivered in person or by mail to the member's address, or, for members who have opted to receive statements and notices electronically, by electronic mail. Notice of the annual meeting may be given by posting the notice in a conspicuous place in the office of this credit union where it may be read by the members, at least 30 days before the meeting, if the annual meeting is to be held during the same month as that of the previous annual meeting and if this credit union maintains an office that is readily accessible to members where regular business hours are maintained. Any meeting of the members, whether annual or special, may be held without prior notice, at any place or time, if all the members entitled to vote, who are not present at the meeting, waive notice in writing, before, during, or after the meeting.

b. Notice of any special meeting must state the purpose for which it is to be held, and no business other than that related to this purpose may be transacted at the meeting.

Section 3. *Special meetings.* a. Special meetings of the members may be called by the chair or the board of directors upon a majority vote, or by the supervisory committee as provided in these bylaws. The chair must call a special meeting, meaning the meeting must be held, within 30 days of the receipt of a written request of 25 members or 5% of the members as of the date of the request, whichever number is larger. However, a request of no more than 750 members may be required to call a special meeting.

b. The notice of a special meeting must be given as provided in Section 2 of this article. Special meetings may be held at any location permitted for the annual meeting.

Section 4. *Items of business for annual meeting and rules of order for annual and special meetings.* The suggested order of business at annual meetings of members is—

(a) Ascertainment that a quorum is present.

(b) Reading and approval or correction of the minutes of the last meeting.

(c) Report of directors, if there is one. For credit unions participating in the Community Development Revolving Loan Program, the directors must report on the credit union's progress on providing needed community services, if required by NCUA Regulations.

(d) Report of the financial officer or the chief management official.

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(e) Report of the credit committee, if there is one.

(f) Report of the supervisory committee, as required by Section 115 of the Act.

(g) Unfinished business.

(h) New business other than elections.

(i) Elections, as required by Section 111 of the Act.

(j) Adjournment.

(k) To the extent consistent with these bylaws, all meetings of the members will be conducted according to \_\_\_\_\_. The order of business for the annual meeting may vary from the suggested order, provided it includes all required items and complies with the rules of procedure adopted by the credit union.

*The credit union must fill in the blank with one of the following authorities, noting the edition to be used: Democratic Rules of Order, The Modern Rules of Order, Robert's Rules of Order, or Sturgis' Standard Code of Parliamentary Procedure.*

Section 5. *Quorum.* Except as otherwise provided, 15 members constitute a quorum at annual or special meetings. If no quorum is present, an adjournment may be taken to a date at least 7 but not more than 14 days thereafter. The members present at any adjourned meeting will constitute a quorum, regardless of the number of members present. The same notice must be given for the adjourned meeting as is prescribed in Section 2 of this article for the original meeting, except that the notice must be given at least 5 days before the date of the meeting as fixed in the adjournment.

### ARTICLE V. ELECTIONS

*The Credit Union must select one of the four voting options. This may be done by printing the credit union's bylaws with the option selected or retaining this copy and checking the box of the option selected. All options continue with Section 3 of this article.*

#### *Option A1—In-Person Elections; Nominating Committee and Nominations From Floor*

Section 1. *Nomination procedures.* At least 30 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

Section 2. *Election procedures.* After the nominations of the nominating committee have been placed before the members, the chair calls for nominations from the floor. When nominations are closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and

the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for the office.

#### *Option A2—In-Person Elections; Nominating Committee and Nominations by Petition*

Section 1. *Nomination procedures.* a. At least 120 days before each annual meeting the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

b. The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

c. The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date that the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition, along with those of the nominating committee, are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. *Election procedures.* a. All persons nominated by either the nominating committee or by petition must be placed before the members. When nominations are closed, the chair appoints the tellers, ballots

are distributed, the vote is taken and tallied by the tellers, and the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for each position to be filled.

b. If sufficient nominations are made by the nominating committee or by petition to provide at least as many nominees as positions to be filled, nominations cannot be made from the floor. In the event nominations from the floor are permitted and result in more nominees than positions to be filled, when nominations have been closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. When the number of nominees equals the number of positions to be filled, the chair may take a voice vote or declare each nominee elected by general consent or acclamation at the annual meeting.

*Option A3—Election by Ballot Boxes or Voting Machine; Nominating Committee and Nomination by Petition*

Section 1. *Nomination procedures.* a. At least 120 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

b. The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

c. The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list

of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition along with those of the nominating committee are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. *Election procedures.* All elections are determined by plurality vote. The election will be conducted by ballot boxes or voting machines, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more nominees than positions to be filled, the secretary, at least 10 days before the annual meeting, will cause ballot boxes and printed ballots, or voting machines, to be placed in conspicuous locations, as determined by the board of directors with the names of the candidates posted near the boxes or voting machines. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(c) After the members have been given 24 hours to vote at conspicuous locations as determined by the board of directors, the ballot boxes or voting machines will be opened, the vote tallied by the tellers, the tallies placed in the ballot boxes, and the ballot boxes resealed. The tellers are responsible at all times for the ballot boxes or voting machines and the integrity of the vote. A record must be kept of all persons voting and the tellers must assure themselves that each person voting is entitled to vote; and

(d) The tellers will take the ballot boxes to the annual meeting. At the annual meeting, printed ballots will be distributed to those in attendance who have not voted and their votes will be deposited in the ballot boxes placed by the tellers, before the beginning of the meeting, in conspicuous locations with the names of the candidates posted near them. After those members have been given an opportunity to vote at the annual meeting, balloting will be closed, the ballot boxes opened, the vote tallied by the tellers and added to the previous count, and the chair will announce the result of the vote.

*Option A4—Election by Electronic Device (Including But Not Limited To Telephone and Electronic Mail) or Mail Ballot; Nominating Committee and Nominations by Petition*

Section 1. *Nomination procedures.* a. At least 120 days before each annual meeting,

the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

b. The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

c. The notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition, along with those of the nominating committee, are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. *Election procedures.* All elections are determined by plurality vote. All elections will be by electronic device or mail ballot, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more nominees than positions to be filled, the secretary, at least 30 days before the annual meeting, will cause either a printed ballot or notice of ballot to be mailed to all members eligible to vote. Electronic mail may be used to provide the no-

tice of ballot to members who have opted to receive notices or statements electronically;

(c) If the credit union is conducting its elections electronically, the secretary will cause the following materials to be transmitted to each eligible voter and the following procedures will be followed:

(1) One notice of balloting stating the names of the candidates for the board of directors and the candidates for other separately identified offices or committees. The name of each candidate must be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors. Electronic mail may be used to provide the notice of ballot to members who have opted to receive notices or statements electronically.

(2) One mail ballot that conforms to Section 2(d) of this article and one instruction sheet stating specific instructions for the electronic election procedure, including how to access and use the system, and the period of time in which votes will be taken. The instruction will state that members without the requisite electronic device necessary to vote on the system may vote by submitting the enclosed mail ballot and specify the date the mail ballot must be received by the credit union. For members who have opted to receive notices or statements electronically, the mail ballot is not required and electronic mail may be used to provide the instructions for the electronic election procedure.

(3) It is the duty of the tellers of election to verify, or cause to be verified the name of the voter and the credit union account number as they are registered in the electronic balloting system. It is the duty of the teller to test the integrity of the balloting system at regular intervals during the election period.

(4) Ballots must be received no later than midnight, 5 calendar days before the annual meeting.

(5) The vote will be tallied by the tellers. The result must be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

(6) In the event of malfunction of the electronic balloting system, the board of directors may in its discretion order elections be held by mail ballot only. The mail ballots must conform to Section 2(d) of this article and must be mailed once more to all eligible members 30 days before the annual meeting. The board may make reasonable adjustments to the voting time frames above, or postpone the annual meeting when necessary, to complete the elections before the annual meeting.

(d) If the credit union is conducting its election by mail ballot, the secretary will cause the following materials to be mailed to each member and the following procedures will be followed:

(1) One ballot, clearly identified as the ballot on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees are printed in random order. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(2) One ballot envelope clearly marked with instructions that the completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, following instructions provided with the mailing envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

(5) When properly designed with features that preserve the secrecy of the ballot, one form can be printed that represents a combined ballot and identification form, and postage prepaid and preaddressed return envelope;

(6) It is the duty of the tellers to verify, or cause to be verified, the name and credit union account number of the voter as appearing on the identification form; to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote; in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved;

(7) Ballots mailed to the tellers must be received by the tellers no later than midnight 5 days before the date of the annual meeting;

(8) The vote will be tallied by the tellers. The result will be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

*All Options Continue Here*

Section 3. *Order of nominations.* Nominations may be in the following order:

(a) Nominations for directors.

(b) Nominations for credit committee members, if applicable. Elections may be by separate ballots following the same order as the above nominations or, if preferred, may be by one ballot for all offices.

Section 4. *Proxy and agent voting.* Members cannot vote by proxy. A member other than a natural person may vote through an agent designated in writing for the purpose.

Section 5. *One vote per member.* Irrespective of the number of shares, no member has more than one vote.

Section 6. *Submission of information regarding credit union officials to NCUA.* The names and addresses of members of the board, board

officers, executive committee, and members of the credit committee, if applicable, and supervisory committees must be forwarded to the Administration in accordance with the Act and regulations in the manner as may be required by the Administration.

Section 7. *Minimum age requirement.* Members must be at least \_\_\_ years of age by the date of the meeting (or for appointed offices, the date of appointment) in order to vote at meetings of the members, hold elective or appointive office, sign nominating petitions, or sign petitions requesting special meetings.

*The Credit Union's board should adopt a resolution inserting an age no greater than 18, or the age of majority under the state law applicable to the credit union, in the blank space.*

*The Credit Union may select the absentee ballot provision in conjunction with the voting procedure it has selected. This may be done by printing the credit union's bylaws with this provision or by retaining this copy and checking the box.*

Section 8. *Absentee ballots.* The board of directors may authorize the use of absentee ballots in conjunction with the other procedures authorized in this article, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more than one nominee for any position to be filled, the secretary, at least 30 days before the annual meeting, will cause printed ballots to be mailed to all members of the credit union who are eligible to vote and who have submitted a written or electronic request for an absentee ballot;

(c) The secretary will cause the following materials to be mailed to each eligible voter who has submitted a written or electronic request for an absentee ballot:

(1) One ballot, clearly identified as the ballot on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees are printed in random order. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(2) One ballot envelope clearly marked with instructions that the completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, pursuant to instructions provided with the envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

(5) When properly designed with features that preserve the secrecy of the ballot, one form can be printed that represents a combined ballot and identification form, and postage prepaid and preaddressed return envelope;

(d) It is the duty of the election tellers to verify, or cause to be verified, the name and credit union account number of the voter as appearing on the identification form; to place the verified identification and the sealed ballot envelope in a place of safe-keeping pending the count of the vote; in the case of a questionable or challenged identification form, to retain the identification form and the sealed ballot envelope together until the verification or challenge has been resolved; and in the event that more than one voting procedure is used, to verify that no eligible voter has voted more than one time;

(e) Ballots mailed to the tellers must be received by the tellers no later than midnight 5 days before the date of the annual meeting;

(f) Absentee ballots will be deposited in the ballot boxes to be taken to the annual meeting or included in a precount in accordance with procedures specified in Article V, Section 2; and

(g) If a member has chosen to receive statements and notices electronically, the credit union may provide notices required in this section by email and provide instructions for voting via electronic means instead of mail ballots.

Staff commentary on the election process:

*i. Eligibility Requirements:* The Act and the FCU Bylaws contain the only eligibility requirements for membership on an FCU's board of directors, which are as follows:

(a) The individual must be a member of the FCU before distribution of ballots;

(b) the individual cannot have been convicted of a crime involving dishonesty or breach of trust unless the NCUA Board has waived the prohibition for the conviction; and

(c) the individual meets the minimum age requirement established under Article V, Section 7 of the FCU Bylaws.

Anyone meeting the three eligibility requirements may run for a seat on the board of directors if properly nominated. It is the nominating committee's duty to ascertain that all nominated candidates, including those nominated by petition, meet the eligibility requirements.

*ii. Nomination Criteria for Nominating Committee:* The FCU Act and the FCU Bylaws do not prohibit a board of directors from establishing reasonable criteria, in addition to the eligibility requirements, for a nominating committee to follow in making its nominations, such as financial experience, years of membership, or conflict of interest provisions. The board's nomination criteria, however, applies only to individuals nominated

by the nominating committee; they cannot be imposed on individuals who meet the eligibility requirements and are properly nominated from the floor or by petition.

*iii. Candidates' Names on Ballots:* When producing an election ballot, the FCU's secretary may order the names of the candidates on the ballot using any method for selection provided it is random and used consistently from year to year so as to avoid manipulation or favoritism.

*iv. Secret Ballots:* An FCU must establish an election process that assures members their votes remain confidential and secret from all interested parties. If the election process does not separate the member's identity from the ballot, FCUs should use a third-party teller that has sole control over completed ballots. If the ballots are designed so that members' identities remain secret and are not disclosed on the ballot, FCUs may use election tellers from the FCU. In any case, FCU employees, officials, and members must not have access to ballots identifying members or to information that links members' votes to their identities.

*v. Plurality Voting:* At least one nominee must be nominated for each vacant seat. When there are more nominees than seats open for election, the nominees who receive the greatest number of votes are elected to the vacant seats.

*vi. Minimum Age Requirement:* The age the board selects may not be greater than the age of majority under the state law applicable to the credit union.

#### ARTICLE VI. BOARD OF DIRECTORS

Section 1. *Number of members.* The board consists of \_\_\_\_\_ members, all of whom must be members of this credit union. The number of directors may be changed to an odd number not fewer than 5 nor more than 15 by resolution of the board. No reduction in the number of directors may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of directors must be filed with the official copy of the bylaws of this credit union.

Section 2. *Composition of board.* \_\_\_\_\_ (Fill in the number, which may be zero) directors or committee members may be a paid employee of the credit union. \_\_\_\_\_ (Fill in the number, which may be zero) immediate family members of a director or committee member may be a paid employee of the credit union. In no case may employees, family members, or employees and family members constitute a majority of the board. The board may appoint a management official who \_\_\_\_\_ (may or may not) be a member of the board and one or more assistant management officials who \_\_\_\_\_ (may or may not) be

a member of the board. If the management official or assistant management official is permitted to serve on the board, he or she may not serve as the chair.

Section 3. *Terms of office.* Regular terms of office for directors must be for periods of either 2 or 3 years as the board determines. All regular terms must be for the same number of years and until the election and qualification of successors. Regular terms must be fixed at the first meeting, or upon any increase or decrease in the number of directors, so that approximately an equal number of regular terms must expire at each annual meeting.

Section 4. *Vacancies.* Any vacancy on the board, credit committee, if applicable, or supervisory committee will be filled as soon as possible by vote of a majority of the directors then holding office. If all director positions become vacant simultaneously, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3. Directors and credit committee members appointed to fill a vacancy will hold office only until the next annual meeting, at which any unexpired terms will be filled by vote of the members, and until the qualification of their successors. Members of the supervisory committee appointed to fill a vacancy will hold office until the first regular meeting of the board following the next annual meeting of members, at which the regular term expires, and until the appointment and qualification of their successors.

Section 5. *Regular and special meetings.* A regular meeting of the board must be held each month at the time and place fixed by resolution of the board. One regular meeting each calendar year must be conducted in person. If a quorum is present in person for the annual in person meeting, the remaining board members may participate using audio or video teleconference methods. The other regular meetings may be conducted using audio or video teleconference methods. The chair, or in the chair's absence the ranking vice chair, may call a special meeting of the board at any time and must do so upon written request of a majority of the directors then holding office. Unless the board prescribes otherwise, the chair, or in the chair's absence the ranking vice chair, will fix the time and place of special meetings. Notice of all meetings will be given in the manner the board may from time to time by resolution prescribe. Special meetings may be conducted using audio or video teleconference methods.

Section 6. *Board responsibilities.* The board has the general direction and control of the affairs of this credit union and is responsible for performing all the duties customarily performed by boards of directors. This includes but is not limited to the following:

(a) Directing the affairs of the credit union in accordance with the Act, these bylaws, the rules and regulations and sound business practices.

(b) Establishing programs to achieve the purposes of this credit union as stated in Article I, Section 2, of these bylaws.

(c) Establishing a loan collection program and authorizing the chargeoff of uncollectible loans.

(d) Establishing a policy to address training for newly elected and incumbent directors and volunteer officials, in areas such as ethics and fiduciary responsibility, regulatory compliance, and accounting and determining that all persons appointed or elected by this credit union to any position requiring the receipt, payment or custody of money or other property of this credit union, or in its custody or control as collateral or otherwise, are properly bonded in accordance with the Act and regulations.

(e) Performing additional acts and exercising additional powers as may be required or authorized by applicable law.

*If the credit union has an elected credit committee, you do not need to check a box. If the credit union has no credit committee check Option 1 and if it has an appointed credit committee check Option 2.*

*Option 1 No Credit Committee.*

(f) Reviewing denied loan applications of members who file written requests for review.

(g) Appointing one or more loan officers and delegating to those officers the power to approve or disapprove loans, lines of credit or advances from lines of credit.

(h) In its discretion, appointing a loan review committee to review loan denials and delegating to the committee the power to overturn denials of loan applications. The committee will function as a mid-level appeal committee for the board. Any denial of a loan by the committee must be reviewed by the board upon written request of the member. The committee must consist of three members and the regular term of office of the committee member will be for two years. Not more than one member of the committee may be appointed as a loan officer.

*Option 2. Appointed Credit Committee.*

(f) Appointing an odd number of credit committee members as provided in Article VIII of these bylaws.

Section 7. *Quorum.* A majority of the number of directors, including any vacant positions, constitutes a quorum for the transaction of business at any meeting, except that vacancies may be filled by a quorum consisting of a majority of the directors holding office as provided in Section 4 of this article. Fewer than a quorum may adjourn from time to time until a quorum is in attendance.

Section 8. *Attendance and removal.* a. If a director or a credit committee member, if applicable, fails to attend regular meetings of the board or credit committee, respectively, for 3 consecutive months, or 4 meetings within a calendar year, or otherwise fails to perform any of the duties as a director or a credit committee member, the office may be declared vacant by the board and the vacancy filled as provided in the bylaws.

b. The board may remove any board officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and opportunity to be heard.

When any board officer, membership officer, executive committee member or investment committee member is absent, disqualified, or otherwise unable to perform the duties of the office, the board may by resolution designate another member of this credit union to fill the position temporarily. The board may also, by resolution, designate another member or members of this credit union to act on the credit committee when necessary in order to obtain a quorum.

Section 9. *Suspension of supervisory committee members.* Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members of this credit union will decide, at a special meeting held not fewer than 7 nor more than 14 days after any suspension, whether the suspended committee member will be removed from or restored to the supervisory committee.

#### ARTICLE VII. BOARD OFFICERS, MANAGEMENT OFFICIALS AND EXECUTIVE COMMITTEE

Section 1. *Board officers.* The board officers of this credit union are comprised of a chair, one or more vice chairs, a financial officer, and a secretary, all of whom are elected by the board and from their number. The board determines the title and rank of each board officer and records them in the addendum to this article. One board officer, the \_\_\_\_\_, may be compensated for services as determined by the board. If more than one vice chair is elected, the board determines their rank as first vice chair, second vice chair, and so on. The offices of the financial officer and secretary may be held by the same person. If a management official or assistant management official is permitted to serve on the board, he or she may not serve as the chair. Unless removed as provided in these bylaws, the board officers elected at the first meeting of the board hold office until the first meeting of the board following the first annual meeting of the members and until the election and qualification of their respective successors.

Section 2. *Election and term of office.* Board officers elected at the meeting of the board next following the annual meeting of the members, which must be held not later than 7 days after the annual meeting, hold office

for a term of 1 year and until the election and qualification of their respective successors: provided, however, that any person elected to fill a vacancy caused by the death, resignation, or removal of an officer is elected by the board to serve only for the unexpired term of that officer and until a successor is duly elected and qualified.

Section 3. *Duties of Chair.* The chair presides at all meetings of the members and at all meetings of the board, unless disqualified through suspension by the supervisory committee. The chair also performs other duties customarily assigned to the office of the chair or duties he or she is directed to perform by resolution of the board not inconsistent with the Act and regulations and these bylaws.

Section 4. *Approval required.* The board must approve all individuals who are authorized to sign all notes of this credit union and all checks, drafts and other orders for disbursement of credit union funds.

Section 5. *Vice chair.* The ranking vice chair has and may exercise all the powers, authority, and duties of the chair during the chair's absence or inability to act.

Section 6. *Duties of financial officer.* i. The financial officer manages this credit union under the control and direction of the board unless the board has appointed a management official to act as general manager. Subject to limitations, controls and delegations the board may impose, the financial officer will:

(a) Have custody of all funds, securities, valuable papers and other assets of this credit union.

(b) Provide and maintain full and complete records of all the assets and liabilities of this credit union in accordance with forms and procedures prescribed in regulations and other guidance approved by the Administration, including, for small credit unions, the Accounting Manual for Federal Credit Unions.

(c) Within 20 days after the close of each month, ensure that a financial statement showing the condition of this credit union as of the end of the month, including a summary of delinquent loans is prepared and submitted to the board and post a copy of the statement in a conspicuous place in the office of the credit union where it will remain until replaced by the financial statement for the next succeeding month.

(d) Ensure that financial and other reports the Administration may require are prepared and sent.

(e) Within standards and limitations prescribed by the board, employ tellers, clerks, bookkeepers, and other office employees, and have the power to remove these employees.

(f) Perform other duties customarily assigned to the office of the financial officer or duties he or she is directed to perform by

resolution of the board not inconsistent with the Act, regulations and these bylaws.

ii. The board may employ one or more assistant financial officers, none of whom may also hold office as chair or vice chair, and may authorize them, under the direction of the financial officer, to perform any of the duties devolving on the financial officer, including the signing of checks. When designated by the board, any assistant financial officer may also act as financial officer during the financial officer's temporary absence or temporary inability to act.

Section 7. *Duties of management official and assistant management official.* The board may appoint a management official who is under the direction and control of the board or of the financial officer as determined by the board. The management official may be assigned any or all of the responsibilities of the financial officer described in Section 6 of this article. The board will determine the title and rank of each management official and record them in the addendum to this article. The board may employ one or more assistant management officials. The board may authorize assistant management officials under the direction of the management official, to perform any of the duties devolving on the management official, including the signing of checks. When designated by the board, any assistant management official may also act as management official during the management official's temporary absence or temporary inability to act.

Section 8. *Board powers regarding employees.* The board employs, fixes the compensation, and prescribes the duties of employees as necessary, and has the power to remove employees, unless it has delegated these powers to the financial officer or management official. Neither the board, the financial officer, nor the management official has the power or duty to employ, prescribe the duties of, or remove necessary clerical and auditing assistance employed or used by the supervisory committee and, if there is a credit committee, the power or duty to employ, prescribe the duties of, or remove any loan officer appointed by the credit committee.

Section 9. *Duties of secretary.* The secretary prepares and maintains full and correct records of all meetings of the members and of the board, which records will be prepared within 7 days after the respective meetings. The secretary must promptly inform the Administration in writing of any change in the address of the office of this credit union or the location of its principal records. The secretary will give or cause to be given, in the manner prescribed in these bylaws, proper notice of all meetings of the members, and perform other duties he or she may be directed to perform by resolution of the board not inconsistent with the Act, regulations and these bylaws. The board may employ one or more assistant secretaries, none of whom

may also hold office as chair, vice chair, or financial officer, and may authorize them under direction of the secretary to perform any of the duties assigned to the secretary.

Section 10. *Executive committee.* As authorized by the Act, the board may appoint an executive committee of not fewer than three directors to serve at its pleasure, to act for it with respect to the board's specifically delegated functions. When making delegations to the executive committee, the board must be specific with regard to the committee's authority and limitations related to the particular delegation. The board may also authorize any of the following to approve membership applications under conditions the board and these bylaws may prescribe: an executive committee; a membership officer(s) appointed by the board from the membership, other than a board member paid as an officer; the financial officer; any assistant to the paid officer of the board or to the financial officer; or any loan officer. No executive committee member or membership officer may be compensated as such.

Section 11. *Investment committee.* The board may appoint an investment committee composed of not less than two, to serve at its pleasure to have charge of making investments under rules and procedures established by the board. No member of the investment committee may be compensated as such. Addendum: The board must list the positions of the board officers and management officials of this credit union. They are as follows:

*Select Option 1 if the credit union has a credit committee and Option 2 if it does not have a credit committee.*

#### ARTICLE VIII. OPTION 1 CREDIT COMMITTEE

Section 1. *Credit committee members.* The credit committee consists of \_\_\_\_\_ members. All the members of the credit committee must be members of this credit union. The number of members of the credit committee must be an odd number and may be changed to not fewer than 3 nor more than 7 by resolution of the board. No reduction in the number of members may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of committee members must be filed with the official copy of the bylaws of this credit union.

Section 2. *Terms of office.* Regular terms of office for elected credit committee members are for periods of either 2 or 3 years as the board determines: provided, however, that all regular terms are for the same number of years and until the election and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee

members, that approximately an equal number of regular terms expire at each annual meeting. Regular terms of office for appointed credit committee members are for periods as determined by the board and as noted in the board's minutes.

Section 3. *Officers of credit committee.* The credit committee chooses from their number a chair and a secretary. The secretary of the committee prepares and maintains full and correct records of all actions taken by it, and those records must be prepared within 3 days after the action. The offices of the chair and secretary may be held by the same person.

Section 4. *Credit committee powers.* The credit committee may, by majority vote of its members, appoint one or more loan officers to serve at its pleasure, and delegate to them the power to approve application for loans or lines of credit, share withdrawals, releases and substitutions of security, within limits specified by the committee and within limits of applicable law and regulations. Not more than one member of the committee may be appointed as a loan officer. Each loan officer must furnish to the committee a record of each approved or not approved transaction within 7 days of the date of the filing of the application or request, and this record becomes a part of the records of the committee. All applications or requests not approved by a loan officer must be acted upon by the committee. No individual may disburse funds of this credit union for any application or share withdrawal which the individual has approved as a loan officer.

Section 5. *Credit committee meetings.* The credit committee holds meetings as the business of this credit union may require, and not less frequently than once a month. Notice of meetings will be given to members of the committee in a manner as the committee may from time to time, by resolution, prescribe.

Section 6. *Credit committee duties.* For each loan or line of credit, the credit committee or loan officer must inquire into the character and financial condition of the applicant and the applicant's sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The credit committee and its appointed loan officers should endeavor diligently to assist applicants in solving their financial problems.

Section 7. *Unapproved loans prohibited.* No loan or line of credit may be made unless approved by the committee or a loan officer in accordance with applicable law and regulations.

Section 8. *Lending procedures.* Subject to the limits imposed by applicable law and regulations, these bylaws, and the general policies of the board, the credit committee,

or a loan officer, determines the security, if any, required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference should be given, in all cases, to the smaller applications if the need and credit factors are nearly equal.

#### ARTICLE VIII. OPTION 2 LOAN OFFICERS (NO CREDIT COMMITTEE)

Section 1. *Records of loan officer; prohibition on loan officer disbursing funds.* Each loan officer must maintain a record of each approved or not approved transaction within 7 days of the filing of the application or request, and that record becomes a part of the records of the credit union. No individual may disburse funds of this credit union for any application or share withdrawal which the individual has approved as a loan officer.

Section 2. *Duties of loan officer.* For each loan or line of credit, the loan officer must inquire into the character and financial condition of the applicant and the applicant's sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The loan officers should endeavor diligently to assist applicants in solving their financial problems.

Section 3. *Unapproved loans prohibited.* No loan or line of credit may be made unless approved by a loan officer in accordance with applicable law and regulations.

Section 4. *Lending procedures.* Subject to the limits imposed by law and regulations, these bylaws, and the general policies of the board, a loan officer determines the security if any required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference should be given, in all cases, to the applications for lesser amounts if the need and credit factors are nearly equal.

#### ARTICLE IX. SUPERVISORY COMMITTEE

Section 1. *Appointment and membership.* The supervisory committee is appointed by the board from among the members of this credit union, one of whom may be a director other than the financial officer or the compensated officer of the board. The board determines the number of members on the committee, which may not be fewer than 3 nor more than 5. No member of the credit committee, if applicable, or any employee of this credit union may be appointed to the committee. Regular terms of committee members are for

periods of 1, 2, or 3 years as the board determines: Provided, however, that all regular terms are for the same number of years and until the appointment and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee members, so that approximately an equal number of regular terms expires at each annual meeting.

Section 2. *Officers of supervisory committee.* The supervisory committee members choose from among their number a chair and a secretary. The secretary of the supervisory committee prepares, maintains, and has custody of full and correct records of all actions taken by it. The offices of chair and secretary may be held by the same person.

Section 3. *Duties of supervisory committee.* a. The supervisory committee makes, or causes to be made, the audits, and prepares and submits the written reports required by the Act and regulations. The committee may employ and use clerical and auditing assistance required to carry out its responsibilities prescribed by this article, and may request the board to provide compensation for this assistance. It will prepare and forward to the Administration required reports.

b. If all director positions become vacant simultaneously, the supervisory committee immediately assumes the role of the board of directors. The supervisory committee acting as the board must generally call and hold a special meeting to elect a board that will serve until the next annual meeting. The special meeting must occur at least 7 but no more than 14 days after all director positions became vacant, and candidates for the board at the special meeting may be nominated by petition or from the floor. However, if the next annual meeting has been scheduled and will occur within 45 days after all the director positions become vacant, the supervisory committee may decide to forego the special meeting and continue serving as the board until the election of new directors at the annual meeting.

c. If the next annual meeting has not been scheduled, but the month and day of the previous year's meeting plus 7 days falls within 45 days after all the director positions become vacant, the supervisory committee acting as the board may decide to forego the special meeting to elect new directors. In this case, the supervisory committee must schedule the annual meeting within 7 days before or after the month and day of the previous annual meeting and continue to serve as the board until directors are elected at the annual meeting.

d. The supervisory committee acting as the board may not act on policy matters. However, directors elected at a special meeting have the same powers as directors elected at the annual meeting.

Section 4. *Verification of accounts.* The supervisory committee will cause the verification of the accounts of members with the records of the financial officer from time to time and not less frequently than as required by the Act and regulations. The committee must maintain a record of this verification.

Section 5. *Powers of supervisory committee—removal of directors and credit committee members.* By unanimous vote, the supervisory committee may suspend until the next meeting of the members any director, board officer, or member of the credit committee. In the event of any suspension, the supervisory committee must call a special meeting of the members to act on the suspension, which meeting must be held not fewer than 7 nor more than 14 days after the suspension. The chair of the committee acts as chair of the meeting unless the members select another person to act as chair.

Section 6. *Powers of supervisory committee—special meetings.* By the affirmative vote of a majority of its members, the supervisory committee may call a special meeting of the members to consider any violation of the provisions of the Act, the regulations, or of the charter or the bylaws of this credit union, or to consider any practice of this credit union which the committee deems to be unsafe or unauthorized.

#### ARTICLE X. ORGANIZATION MEETING

Section 1. *Initial meeting.* When application is made for a federal credit union charter, the subscribers to the organization certificate must meet for the purpose of electing a board of directors and a credit committee, if applicable. Failure to commence operations within 60 days following receipt of the approved organization certificate is cause for revocation of the charter unless a request for an extension of time has been submitted to and approved by the Regional Director.

Section 2. *Election of directors and credit committee.* The subscribers elect a chair and a secretary for the meeting. The subscribers then elect from their number, or from those eligible to become members of this credit union, a board of directors and a credit committee, if applicable, all to hold office until the first annual meeting of the members and until the election and qualification of their respective successors. If not already a member, every person elected under this section or appointed under Section 3 of this article, must qualify within 30 days by becoming a member. If any person elected as a director or committee member or appointed as a supervisory committee member does not qualify as a member within 30 days of election or appointment, the office will automatically become vacant and be filled by the board.

Section 3. *Election of board officers.* Promptly following the elections held under the provisions of Section 2 of this article, the board

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must meet and elect the board officers who will hold office until the first meeting of the board of directors following the first annual meeting of the members and until the election and qualification of their respective successors. The board also appoints a supervisory committee at this meeting as provided in Article IX, Section 1, of these bylaws and a credit committee, if applicable. The members so appointed hold office until the first regular meeting of the board following the first annual meeting of the members and until the appointment and qualification of their respective successors.

### ARTICLE XI. LOANS AND LINES OF CREDIT TO MEMBERS

Section 1. *Loan purposes.* Loans may only be made to members and for provident or productive purposes in accordance with applicable law and regulations.

*The credit union may add business as one of its purposes by placing a comma after "provident" and inserting "business."*

Section 2. *Delinquency.* Any member whose loan is delinquent may be required to pay a late charge as determined by the board of directors.

### ARTICLE XII. DIVIDENDS

Section 1. *Power of board to declare dividends.* The board establishes dividend periods and declares dividends as permitted by the Act and applicable regulations.

### ARTICLE XIII. RESERVED

### ARTICLE XIV. EXPULSION AND WITHDRAWAL

Section 1. *Expulsion procedure; expulsion or withdrawal does not affect members' liability or shares.* A member may be expelled by a two-thirds vote of the members present at special meeting called for that purpose, but only after the member has been given the opportunity to be heard. A member also may be expelled under a nonparticipation policy adopted by the board of directors and provided to each member in accordance with the Act. Expulsion or withdrawal will not operate to relieve a member of any liability to this credit union. All amounts paid in on shares by expelled or withdrawing members, before their expulsion or withdrawal, will be paid to them in the order of their withdrawal or expulsion, but only as funds become available and only after deducting any amounts due to this credit union.

### ARTICLE XV. MINORS

Section 1. *Minors permitted to own shares.* Shares may be issued in the name of a minor. State law governs the rights of minors to transact business with this credit union.

### ARTICLE XVI. GENERAL

Section 1. *Compliance with law and regulation.* All power, authority, duties, and functions of the members, directors, officers, and employees of this credit union, pursuant to the provisions of these bylaws, must be exercised in strict conformity with the provisions of applicable law and regulations, and of the charter and the bylaws of this credit union.

Section 2. *Confidentiality.* The officers, directors, members of committees and employees of this credit union must hold in confidence all transactions of this credit union with its members and all information respecting their personal affairs, except when permitted by state or federal law.

Section 3. *Removal of directors and committee members.* Notwithstanding any other provisions in these bylaws, any director or committee member of this credit union may be removed from office by the affirmative vote of a majority of the members present at a special meeting called for the purpose, but only after an opportunity has been given to be heard. If member votes at a special meeting result in the removal of all directors, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

Section 4. *Conflicts of interest prohibited.* No director, committee member, officer, agent, or employee of this credit union may participate in any manner, directly or indirectly, in the deliberation upon or the determination of any question affecting his or her pecuniary or personal interest or the pecuniary interest of any corporation, partnership, or association (other than this credit union) in which he or she is directly or indirectly interested. In the event of the disqualification of any director respecting any matter presented to the board for deliberation or determination, that director must withdraw from the deliberation or determination; and if the remaining qualified directors present at the meeting plus the disqualified director or directors constitute a quorum, the remaining qualified directors may exercise with respect to this matter, by majority vote, all the powers of the board. In the event of the disqualification of any member of the credit committee, if applicable, or the supervisory committee, that committee member must withdraw from the deliberation or determination.

Section 5. *Records.* Copies of the organization certificate of this credit union, its bylaws and any amendments to the bylaws, and any special authorizations by the Administration must be preserved in a place of safekeeping. Copies of the organization certificate and field of membership amendments should be attached as an appendix to these

bylaws. Returns of nominations and elections and proceedings of all regular and special meetings of the members and directors must be recorded in the minute books of this credit union. The minutes of the meetings of the members, the board, and the committees must be signed by their respective chairmen or presiding officers and by the persons who serve as secretaries of those meetings.

Section 6. *Availability of credit union records.* All books of account and other records of this credit union must be available at all times to the directors and committee members of this credit union provided they have a proper purpose for obtaining the records. The charter and bylaws of this credit union must be made available for inspection by any member and, if the member requests a copy, it will be provided for a reasonable fee.

Section 7. *Member contact information.* Members must keep the credit union informed of their current address.

Section 8. *Indemnification.* (a) Subject to the limitations in §701.33(c)(5) through (c)(7) of the regulations, the credit union may elect to indemnify to the extent authorized by (check one)

- Law of the State of \_\_\_\_\_;  
 Model Business Corporation Act:

the following individuals from any liability asserted against them and expenses reasonably incurred by them in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties (check as appropriate).

- Current officials  
 Former officials  
 Current employees  
 Former employees

(b) The credit union may purchase and maintain insurance on behalf of the individuals indicated in (a) above against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable State law or the Model Business Corporation Act.

(c) The term “official” in this bylaw means a person who is a member of the board of directors, credit committee, supervisory committee, other volunteer committee (including elected or appointed loan officers or membership officers), established by the board of directors.

#### ARTICLE XVII. AMENDMENTS OF BYLAWS AND CHARTER

Section 1. *Amendment procedures.* Amendments of these bylaws may be adopted and amendments of the charter requested by the affirmative vote of two-thirds of the authorized number of members of the board at any duly held meeting of the board if the mem-

bers of the board have been given prior written notice of the meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of these bylaws or of the charter may become effective, however, until approved in writing by the NCUA Board.

#### ARTICLE XVIII. DEFINITIONS

Section 1. *General definitions.* When used in these bylaws the terms:

“Act” means the Federal Credit Union Act, as amended.

“Administration” means the National Credit Union Administration.

“Applicable law and regulations” means the Federal Credit Union Act and rules and regulations issued thereunder or other applicable federal and state statutes and rules and regulations issued thereunder as the context indicates (such as The Higher Education Act of 1965).

“Board” means board of directors of the federal credit union.

“Immediate family member” means spouse, child, sibling, parent, grandparent, grandchild, stepparents, stepchildren, stepsiblings, and adoptive relationships.

“NCUA Board” means the Board of the National Credit Union Administration.

“Regulation” or “regulations” means rules and regulations issued by the NCUA Board.

“Share” or “shares” means all classes of shares and share certificates that may be held in accordance with applicable law and regulations.

[72 FR 61500, Oct. 31, 2007, as amended at 75 FR 34620, June 18, 2010; 75 FR 81386, Dec. 28, 2010]

#### APPENDIX B TO PART 701—CHARTERING AND FIELD OF MEMBERSHIP MANUAL

##### CHAPTER 1

##### FEDERAL CREDIT UNION CHARTERING

##### I—GOALS OF NCUA CHARTERING POLICY

The National Credit Union Administration’s (NCUA) chartering and field of membership policies are directed toward achieving the following goals:

- To encourage the formation of credit unions;
- To uphold the provisions of the Federal Credit Union Act;
- To promote thrift and credit extension;
- To promote credit union safety and soundness; and
- To make quality credit union service available to all eligible persons.

NCUA may grant a charter to single occupational/associational groups, multiple groups, or communities if:

- The occupational, associational, or multiple groups possess an appropriate common

bond or the community represents a well-defined local community, neighborhood, or rural district;

- The subscribers are of good character and are fit to represent the proposed credit union; and
- The establishment of the credit union is economically advisable.

Generally, these are the primary criteria that NCUA will consider. In unusual circumstances, however, NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved.

Unless otherwise noted, the policies outlined in this manual apply only to federal credit unions.

## II—TYPES OF CHARTERS

The Federal Credit Union Act recognizes three types of federal credit union charters—single common bond (occupational and associational), multiple common bond (more than one group each having a common bond of occupation or association), and community.

The requirements that must be met to charter a federal credit union are described in Chapter 2. Special rules for credit unions serving low-income groups are described in Chapter 3.

If a federal credit union charter is granted, Section 5 of the charter will describe the credit union's field of membership, which defines those persons and entities eligible for membership. Generally, federal credit unions are only able to grant loans and provide services to persons within the field of membership who have become members of the credit union.

## III—SUBSCRIBERS

Federal credit unions are generally organized by persons who volunteer their time and resources and are responsible for determining the interest, commitment, and economic advisability of forming a federal credit union. The organization of a successful federal credit union takes considerable planning and dedication.

Persons interested in organizing a federal credit union should contact one of the credit union trade associations or the NCUA regional office serving the state in which the credit union will be organized. Lists of NCUA offices and credit union trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

While anyone may organize a credit union, a person with training and experience in chartering new federal credit unions is generally the most effective organizer. However, extensive involvement by the group desiring credit union service is essential.

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 proposed members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons—the “subscribers”—present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union;
- The location of the proposed federal credit union and the territory in which it will operate;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares;
- The detailed proposed field of membership; and
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on any of the required documentation filed in obtaining a federal credit union charter may be grounds for federal criminal prosecution.

## IV—ECONOMIC ADVISABILITY

### IV.A—General

Before chartering a federal credit union, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. Economic advisability, which is a determination that a potential charter will have a reasonable opportunity to succeed, is essential in order to qualify for a credit union charter.

NCUA will conduct an independent on-site investigation of each charter application to ensure that the proposed credit union can be successful. In general, the success of any credit union depends on: (a) The character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

### IV.B—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to ensure that the subscribers are of good “general character and fitness.” Prospective officials and employees will be the subject of credit and background investigations. The investigation report must demonstrate each applicant's ability to effectively handle financial matters. Employees

and officials should also be competent, experienced, honest and of good character. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of fraud and dishonesty. Further, factors such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

NCUA also needs reasonable 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 proposed federal credit union a success.

Section 701.14 of NCUA's Rules and Regulations sets forth the procedures for NCUA approval of officials of newly chartered credit unions. If the application of a prospective official or employee to serve is not acceptable to the regional director, the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the regional director's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an acceptable new applicant must be provided before the charter can be approved.

#### *IV.C—Member Support*

Economic advisability is a major factor in determining whether the credit union will be chartered. An important consideration is the degree of support from the field of membership. The charter applicant must be able to demonstrate that membership support is sufficient to ensure viability.

NCUA has not set a minimum field of membership size for chartering a federal credit union. Consequently, groups of any size may apply for a credit union charter and be approved if they demonstrate economic advisability. However, it is important to note that often the size of the group is indicative of the potential for success. For that reason, a charter application with fewer than 3,000 primary potential members (e.g., employees of a corporation or members of an association) may not be economically advisable. Therefore, a charter applicant with a proposed field of membership of fewer than 3,000 primary potential members may have to provide more support than an applicant with a larger field of membership. For example, a small occupational or associational group may be required to demonstrate a commitment for long-term support from the sponsor.

#### *IV.D—Present and Future Market Conditions—Business Plan*

The ability to provide effective service to members, compete in the marketplace, and

to adapt to changing market conditions are key to the survival of any enterprise. Before NCUA will charter a credit union, a business plan based on realistic and supportable projections and assumptions must be submitted.

The business plan should contain, at a minimum, the following elements:

- Mission statement;
- Analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and other economic data;
- Evidence of member support;
- Goals for shares, loans, and for number of members;
- Financial services needed/desired;
- Financial services to be provided to members of all segments within the field of membership;
- How/when services are to be implemented;
- Organizational/management plan addressing qualification and planned training of officials/employees;
- Continuity plan for directors, committee members and management staff;
- Operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;
- Type of record keeping and data processing system;
- Detailed semiannual pro forma financial statements (balance sheet, income and expense projections) for 1st and 2nd year, including assumptions—e.g., loan and dividend rates;
- Plans for operating independently;
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);
- Source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and
- Evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.

While the business plan may be prepared with outside assistance, the subscribers and proposed officials must understand and support the submitted business plan.

### V—STEPS IN ORGANIZING A FEDERAL CREDIT UNION

#### *V.A—Getting Started*

Following the guidance contained throughout this policy, the organizers should submit wording for the proposed field of membership (the persons, organizations and other legal entities the credit union will serve) to NCUA early in the application process for written

preliminary approval. The proposed field of membership must meet all common bond or community requirements.

Once the field of membership has been given preliminary approval, and the organizer is satisfied the application has merit, the organizer should conduct an organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at these meetings.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

#### *V.B—Charter Application Documentation*

##### V.B.1—General

As discussed previously in this Chapter, the organizer of a federal credit union charter must, at a minimum, provide evidence that:

- The group(s) possess an appropriate common bond or the geographical area to be served is a well-defined local community, neighborhood, or rural district;
- The subscribers, prospective officials, and employees are of good character and fitness; and
- The establishment of the credit union is economically advisable.

As part of the application process, the organizer must submit the following forms, which are available in appendix 4 of this Manual:

- Federal Credit Union Investigation Report, NCUA 4001;
- Organization Certificate, NCUA 4008;
- Report of Official and Agreement To Serve, NCUA 4012;
- Application and Agreements for Insurance of Accounts, NCUA 9500; and
- Certification of Resolutions, NCUA 9501.

Each of these forms is described in more detail in the following sections.

##### V.B.2—Federal Credit Union Investigation Report, NCUA 4001

The application for a new federal credit union will be submitted on NCUA 4001. State-chartered credit unions applying for conversion to a federal charter will use NCUA 4000. (See Chapter 4 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request.

##### V.B.3—Organization Certificate, NCUA 4008

This document, which must be completed by the subscribers, includes the seven criteria established by the Federal Credit Union Act. NCUA staff assigned to the case will assist in the proper completion of this document.

##### V.B.4—Report of Official and Agreement To Serve, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official and employee must complete and sign this form. The organizer must review each of the NCUA 4012s for elements that would prevent the prospective official or employee from serving. Further, such factors as serious, unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

##### V.B.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. The document must be completed and signed by both the chief executive officer and chief financial officer. A federal credit union must qualify for federal share insurance.

##### V.B.6—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for NCUSIF insurance of member accounts and has authorized the chief executive officer and recording officer to execute the Application and Agreements for Insurance of Accounts. Both the chief executive officer and recording officer of the proposed federal credit union must sign this form.

#### VI—NAME SELECTION

It is the responsibility of the federal credit union organizers or officials of an existing credit union to ensure that the proposed federal credit union name or federal credit union name change does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the credit union's name:

- Is not already being officially used by another federal credit union;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and

- Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be “Federal Credit Union.”

The word “community,” while not required, can only be included in the name of federal credit unions that have been granted a community charter.

## VII—NCUA REVIEW

### VII.A—General

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizer. At some point during the review process, a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union.

NCUA staff will review the application package and verify its accuracy and reasonableness. A staff member will inquire into the financial management experience and the suitability and commitment of the proposed officials and employees, and will make an assessment of economic advisability. The staff member will also provide guidance to the subscribers in the proper completion of the Organization Certificate, NCUA 4008.

Credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizer and subscribers to reduce the likelihood of delays in the chartering process.

The staff member will analyze the prospective credit union’s business plan for realistic projections, attainable goals, adequate service to all segments of the field of membership, sufficient start-up capital, and time commitment by the proposed officials and employees. Any concerns will be reviewed with the organizer and discussed with the prospective credit union’s officials. Additional on-site contacts by NCUA staff may be necessary. The organizer and subscribers will be expected to take the steps necessary to resolve any issues or concerns. Such resolution efforts may delay processing the application.

NCUA staff will then make a recommendation to the regional director regarding the charter application. The recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective officials to adhere to certain operational guidelines. Generally, the agreement is for a limited term of two to four years. A sample Letter of Understanding and Agreement is found in appendix 2.

### VII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and standard bylaws

from the regional director. Additionally, the officials will be advised of the name of the examiner assigned responsibility for supervising and examining the credit union.

### VII.C—Regional Director Disapproval

When a regional director disapproves any charter application, in whole or in part, the organizer will be informed in writing of the specific reasons for the disapproval. Where applicable, the regional director will provide information concerning options or suggestions that the applicant could consider for gaining approval or otherwise acquiring credit union service. The letter of denial will include the procedures for appealing the decision.

### VII.D—Appeal of Regional Director Decision

If the regional director denies a charter application, in whole or in part, that decision may be appealed to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reasons for denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal with a recommendation to the NCUA Board.

Before appealing, the prospective group may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

### VII.E—Commencement of Operations

Assistance in commencing operations is generally available through the various credit union trade organizations listed in appendix 5.

All new federal credit unions are also encouraged to establish a mentor relationship with a knowledgeable, experienced credit union individual or an existing, well-operated credit union. The mentor should provide guidance and assistance to the new credit union through attendance at meetings and general oversight. Upon request, NCUA will provide assistance in finding a qualified mentor.

## VIII—FUTURE SUPERVISION

Each federal credit union will be examined regularly by NCUA to determine that it remains in compliance with applicable laws and regulations and to determine that it

does not pose undue risk to the NCUSIF. 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).

The examiner will be responsible for monitoring the progress of the credit union and providing the necessary advice and guidance to ensure it is in compliance with applicable laws and regulations. The examiner will also monitor compliance with the terms of any required Letter of Understanding and Agreement. Typically, the examiner will require the credit union to submit copies of monthly board minutes and financial statements.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any new board member, credit or supervisory committee member, or senior executive officer. Section 701.14 of the NCUA Rules and Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change.

NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual indicates it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union. If a Notice of Disapproval is issued, the credit union may appeal the decision to the NCUA Board.

#### IX—CORPORATE FEDERAL CREDIT UNIONS

A corporate federal credit union is one that is operated primarily for the purpose of serving other credit unions. Corporate federal credit unions operate under and are administered by the NCUA Office of National Examinations and Supervision.

#### X—GROUPS SEEKING CREDIT UNION SERVICE

NCUA will attempt to assist any group in chartering a credit union or joining an existing credit union. If the group is not eligible for federal credit union service, NCUA will refer the group to the appropriate state supervisory authority where different requirements may apply.

#### XI—FIELD OF MEMBERSHIP DESIGNATIONS

NCUA will designate a credit union based on the following criteria:

**Single Occupational:** If a credit union serves a single occupational sponsor, such as ABC Corporation, it will be designated as an occupational credit union. A single occupational common bond credit union may also

serve a trade, industry, or profession (TIP), such as all teachers.

**Single Associational:** If a credit union serves a single associational sponsor, such as the Knights of Columbus, it will be designated as an associational credit union.

**Multiple Common Bond:** If a credit union serves more than one group, each of which has a common bond of occupation and/or association, it will be designated as a multiple common bond credit union.

**Community:** All community credit unions will be designated as such, followed by a description of their geographic boundaries (*e.g.*, city or county).

Credit unions desiring to confirm or submit an application to change their designations should contact the appropriate NCUA regional office.

#### XII—FOREIGN BRANCHING

Federal credit unions are permitted to serve foreign nationals within their fields of membership wherever they reside provided they have the ability, resources, and management expertise to serve such persons. Before a credit union opens a branch outside the United States, it must submit an application to do so and have prior written approval of the regional director. A federal credit union may establish a service facility on a United States military installation or United States embassy without prior NCUA approval.

#### CHAPTER 2

#### FIELD OF MEMBERSHIP REQUIREMENTS FOR FEDERAL CREDIT UNIONS

#### I—INTRODUCTION

##### *I.A.1—General*

As set forth in Chapter 1, the Federal Credit Union Act provides for three types of federal credit union charters—single common bond (occupational or associational), multiple common bond (multiple groups), and community. Section 109 (12 U.S.C. 1759) of the Federal Credit Union Act sets forth the membership criteria for each of these three types of credit unions.

The field of membership, which is specified in Section 5 of the charter, defines those persons and entities eligible for membership. A single common bond federal credit union consists of one group having a common bond of occupation or association. A multiple common bond federal credit union consists of more than one group, each of which has a common bond of occupation or association. A community federal credit union consists of persons or organizations within a well-defined local community, neighborhood, or rural district.

Once chartered, a federal credit union can amend its field of membership; however, the

same common bond or community requirements for chartering the credit union must be satisfied. Since there are differences in the three types of charters, special rules, which are fully discussed in the following sections of this Chapter, may apply to each.

#### *I.A.2—Special Low-Income Rules*

Generally, federal credit unions can only grant loans and provide services to persons who have joined the credit union. The Federal Credit Union Act states that one of the purposes of federal credit unions is “to serve the productive and provident credit needs of individuals of modest means.” Although field of membership requirements are applicable, special rules set forth in Chapter 3 may apply to low-income designated credit unions and those credit unions assisting low-income groups or to a federal credit union that adds an underserved community to its field of membership.

### II—OCCUPATIONAL COMMON BOND

#### *II.A.1—General*

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person’s membership eligibility in a single occupational common bond group to be established in five ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond;
- Employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, Section III.A.1); or
- Employment in the same Trade, Industry, or Profession (TIP) (see Chapter 2, Section II.A.2).

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served may be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami,

Florida for ABC Corporation and subsidiaries;

- Employees of ABC Corporation who are paid from \* \* \*;
- Employees of ABC Corporation who are supervised from \* \* \*;
- Employees of ABC Corporation who are headquartered in \* \* \*; and/or
- Employees of ABC Corporation who work in the United States.

The corporation or other legal entity (i.e., the employer) may also be included in the common bond—e.g., “ABC Corporation.” The corporation or legal entity will be defined in the last clause in Section 5 of the credit union’s charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of single occupational common bonds are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of MMLLJS contractor who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);
- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship);
- Employees of and students attending Georgetown University. (common bond—same occupation);
- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer); or
- All licensed nurses in Fairfax County, Virginia. (occupational common bond TIP).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor; overly broad TIP);
- Persons employed or working in Chicago, Illinois. (no occupational common bond).

#### *II.A.2—Trade, Industry, or Profession*

A common bond based on employment in a trade, industry, or profession can include employment at any number of corporations or other legal entities that—while not under common ownership—have a common bond by virtue of producing similar products, providing similar services, or participating in the same type of business.

While proposed or existing single common bond credit unions have some latitude in defining a trade, industry, or profession occupational common bond, it cannot be defined so broadly as to include groups in fields which are not closely related. For example, the manufacturing industry, energy industry, communications industry, retail industry, or entertainment industry would not qualify as a TIP because each industry lacks the necessary commonality. However, textile workers, realtors, nurses, teachers, police officers, or U.S. military personnel are closely related and each would qualify as a TIP.

The common bond relationship must be one that demonstrates a narrow commonality of interests within a specific trade, industry, or profession. If a credit union wants to serve a physician TIP, it can serve all physicians, but that does not mean it can also serve all clerical staff in the physicians' offices. However, if the TIP is based on the health care industry, then clerical staff would be able to be served by the credit union because they work in the same industry and have the same commonality of interests.

If a credit union wants to include the airline services industry, it can serve airline and airport personnel but not passengers. Clients or customers of the TIP are not eligible for credit union membership (e.g., patients in hospitals). Any company that is involved in more than one industry cannot be included in an industry TIP (e.g., a company that makes tobacco products, food products, and electronics). However, employees of these companies may be eligible for membership in a variety of trade/profession occupational common bond TIPs.

Since a TIP must be narrowly defined, it cannot include third party vendors and other suppliers. For example, the steel suppliers to the automobile industry would not be part of the automobile industry TIP. However, the automobile industry includes manufacturers and their automobile dealerships.

In general, except for credit unions currently serving a national field of membership or operating in multiple states, a geo-

graphic limitation is required for a TIP credit union. The geographic limitation will be part of the credit union's charter and generally correspond to its current or planned operational area. More than one federal credit union may serve the same trade, industry, or profession, even if both credit unions are in the same geographic location.

This type of occupational common bond is only available to single common bond credit unions. A TIP cannot be added to a multiple common bond or community field of membership.

To obtain a TIP designation, the proposed or existing credit union must submit a request to the regional director. New charter applicants must follow the documentation requirements in Chapter 1. New charter applicants and existing credit unions must submit a business plan on how the credit union will serve the group with the request to serve the TIP. The business plan also must address how the credit union will verify the TIP. Examples of such verification include state licenses, professional licenses, organizational memberships, pay statements, union membership, or employer certification. The regional director must approve this type of field of membership before a credit union can serve a TIP. Credit unions converting to a TIP can retain members of record but cannot add new members from its previous group or groups, unless it is part of the TIP.

Section II.B on Occupational Common Bond Amendments does not apply to a TIP common bond. Removing or changing a geographical limitation will be processed as a housekeeping amendment. If safety and soundness concerns are present, the regional director may require additional information before the request can be processed.

Section II.H, on Other Persons Eligible for Credit Union Membership, applies to TIP based credit unions except for the corporate account provision which only applies to industry based TIPs. Credit unions with industry based TIPs may include corporations as members because they have the same commonality of interests as all employees in the industry. For example, an airline service TIP (industry) can serve an airline carrier (corporate account); however, a nurses TIP (profession) could not serve a hospital (corporate account) because not everyone working in the hospital shares the same profession.

If a TIP designated credit union wishes to convert to a different TIP or employer-based occupational common bond, or different charter type, it only retains members of record after the conversion. The regional director, for safety and soundness reasons, may approve a TIP designated credit union to convert to its original field of membership.

II.B—OCCUPATIONAL COMMON BOND  
AMENDMENTS

*II.B.1—General*

Section 5 of every single occupational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a group sharing the credit union's common bond is added to the field of membership. This may occur through various ways including agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, if the entire field of membership is acquired by another corporation, the credit union can serve the employees of the new corporation and any subsidiaries after receiving NCUA approval.

Third, a federal credit union qualifies to change its common bond from:

- A single occupational common bond to a single associational common bond;
- A single occupational common bond to a community charter; or
- A single occupational common bond to a multiple common bond.

Fourth, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or because a portion of the group is no longer in existence.

An existing single occupational common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the occupational common bond requirement has been met. The regional director must approve all amendments to an occupational common bond credit union's field of membership.

*II.B.2—Corporate Restructuring*

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

*II.B.3—Economic Advisability*

Prior to granting a common bond expansion, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

*II.B.4—Documentation Requirements*

A federal credit union requesting a common bond expansion must submit an Application for Field of Membership Amendment (NCUA 4015-EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

II.C—NCUA'S PROCEDURES FOR AMENDING  
THE FIELD OF MEMBERSHIP

*II.C.1—General*

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

*II.C.2—Regional Director's Decision*

NCUA staff will review all amendment requests in order to ensure compliance with NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. NCUA will carefully consider the economic advisability of expanding the field of membership of a credit union with financial or operational problems.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of

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the members and will not increase the risk to the NCUSIF.

### *II.C.3—Regional Director Approval*

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

### *II.C.4—Regional Director Disapproval*

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

### *II.C.5—Appeal of Regional Director Decision*

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

## II.D—MERGERS, PURCHASE AND ASSUMPTIONS, AND SPIN-OFFS

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single occupational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

### *II.D.1—Mergers*

Generally, the requirements applicable to field of membership expansions found in this chapter apply to mergers where the continuing credit union has a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single occupational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

### *II.D.2—Emergency Mergers*

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent recordkeeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take 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 federal credit union without regard to any common bond restrictions. Under this authority, therefore, a single occupational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even

though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is also an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's original single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

#### *II.D.3—Purchase and Assumption (P&A)*

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

#### *II.D.4—Spin-Offs*

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have a common bond (applies only to single occupational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

### **II.E—OVERLAPS**

#### *II.E.1—General*

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single occupational federal credit unions to overlap any other charter without performing an overlap analysis.

#### *II.E.2—Organizational Restructuring*

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership

if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership.

If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union or it converts to a multiple common bond charter.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

#### II.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

#### II.F—CHARTER CONVERSION

A single occupational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single occupational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

#### II.G—REMOVAL OF GROUPS FROM THE FIELD OF MEMBERSHIP

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union desires to remove the group. If the regional director concurs with the request, membership will continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

#### II.H—OTHER PERSONS ELIGIBLE FOR CREDIT UNION MEMBERSHIP

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. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

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

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as “once a member, always a member.” The “once a member, always a member” provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

### III—ASSOCIATIONAL COMMON BOND

#### III.A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) 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 they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition and can operate nationally. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds should include a definition of the group that may be served based on the association’s charter, by-laws, and any other equivalent documentation.

The common bond for an associational group cannot be established simply on the basis that the association exists. In deter-

mining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, which includes:

- Whether members pay dues;
  - Whether members participate in the furtherance of the goals of the association;
  - Whether the members have voting rights.
- To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members’ interests;
- Whether the association maintains a membership list;
  - Whether the association sponsors other activities;
  - The association’s membership eligibility requirements; and
  - The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Each class of member will be evaluated based on the totality of the circumstances. Individuals or honorary members who only make donations to the association are not eligible to join the credit union.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups may constitute associational common bonds.

Student groups (e.g., students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter.

The terminology “Alumni of Jacksonville State University” is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Homeowner associations, tenant groups, consumer groups, and other groups of persons having an “interest in” a particular cause and certain consumer cooperatives may also qualify as an association.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an

associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—e.g., “Sprocket Association”—and will be shown in the last clause of the field of membership.

#### *III.A.2—Subsequent Changes to Association's Bylaws*

If the association's membership or geographical definitions in its charter and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration and approval prior to serving members of the association added as a result of the change.

#### *III.A.3—Sample Single Associational Common Bonds*

Some examples of associational common bonds are:

- Regular members of Locals 10 and 13, IBEW, in Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 2001;
- Members of the Hoosier Farm Bureau in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1997;
- Members of the Shalom Congregation in Chevy Chase, Maryland;
- Regular members of the Corporate Executives Association, located in Westchester, New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1997;
- Members of the University of Wisconsin Alumni Association, located in Green Bay, Wisconsin;
- Members of the Marine Corps Reserve Officers Association; or
- Members of St. John's Methodist Church and St. Luke's Methodist Church, located in Toledo, Ohio.

Some examples of insufficiently defined single associational common bonds are:

- All Lutherans in the United States (too broadly defined); or
- Veterans of U.S. military service (group is too broadly defined; no formal association of all members of the group).

Some examples of unacceptable single associational common bonds are:

- Alumni of Amos University (no formal association);
- Customers of Fleetwood Insurance Company (policyholders or primarily customer/client relationships do not meet associational standards);
- Employees of members of the Reston, Virginia, Chamber of Commerce (not a sufficiently close tie to the associational common bond); or
- Members of St. John's Lutheran Church and St. Mary's Catholic Church located in Anniston, Alabama (churches are not of the same denomination).

### III.B—ASSOCIATIONAL COMMON BOND AMENDMENTS

#### *III.B.1—General*

Section 5 of every associational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons who, or legal entities that, join the credit union and are specified in the field of membership can be served. There are three instances in which Section 5 must be amended by NCUA.

First, a group that shares the credit union's common bond is added to the field of membership. This may occur through various ways including agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its common bond from:

- A single associational common bond to a single occupational common bond;
- A single associational common bond to a community charter; or
- A single associational common bond to a multiple common bond.

Third, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or a portion of the group that is no longer in existence.

An existing single associational federal credit union that submits a request to amend its charter must provide documentation to establish that the associational common bond requirement has been met. The regional director must approve all amendments to an associational common bond credit union's field of membership.

#### *III.B.2—Organizational Restructuring*

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event requiring a change to the credit union's field of membership. NCUA may not permit a single associational credit union to

maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

#### *III.B.3—Economic Advisability*

Prior to granting a common bond expansion, NCUA will examine the amendment's likely impact on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

#### *III.B.4—Documentation Requirements*

A federal credit union requesting a common bond expansion must submit an Application for Field of Membership Amendment (NCUA 4015-EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

### III.C—NCUA PROCEDURES FOR AMENDING THE FIELD OF MEMBERSHIP

#### *III.C.1—General*

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

#### *III.C.2—Regional Director's Decision*

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other oper-

ational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

#### *III.C.3—Regional Director Approval*

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

#### *III.C.4—Regional Director Disapproval*

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

#### *III.C.5—Appeal of Regional Director Decision*

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

### III.D—MERGERS, PURCHASE AND ASSUMPTIONS, AND SPIN-OFFS

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single

associational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

#### *III.D.1—Mergers*

Generally, the requirements applicable to field of membership expansions found in this section apply to mergers where the continuing credit union is a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single associational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

#### *III.D.2—Emergency Mergers*

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take 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 ad-

versely 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 federal credit union without regard to any common bond restrictions. Under this authority, therefore, a single associational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

#### *III.D.3—Purchase and Assumption (P&A)*

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director

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of the purchased and/or assumed credit union and, as applicable, the state regulators.

### *III.D.4—Spin-Offs*

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have the same common bond (applies only to single associational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

### *III.E—OVERLAPS*

#### *III.E.1—General*

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single

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associational federal credit unions to overlap any other charters without performing an overlap analysis.

### *III.E.2—Organizational Restructuring*

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership. If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union or it converts to a multiple common bond.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

### *III.E.3—Exclusionary Clauses*

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

### *III.F—CHARTER CONVERSIONS*

A single associational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single associational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond

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group, must be done in accordance with multiple common bond policy.

### III.G—REMOVAL OF GROUPS FROM THE FIELD OF MEMBERSHIP

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union desires to remove the group. If the regional director concurs with the request, membership will continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

### III.H—OTHER PERSONS ELIGIBLE FOR CREDIT UNION MEMBERSHIP

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. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers;
- Members of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family

member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. One example is volunteers working at a church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

### IV—MULTIPLE OCCUPATIONAL/ ASSOCIATIONAL COMMON BONDS

#### IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot include a TIP or expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility for multiple common bond credit unions is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile

branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network if either: (1) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include the credit union's Internet Web site.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's "paid from" or "supervised from" location is within the service area.

#### *IV.A.2—Sample Multiple Common Bond Field of Membership*

An example of a multiple common bond field of membership is:

"The field of membership of this federal credit union shall be limited to the following:

1. Employees of Teltex Corporation who work in Wilmington, Delaware;
2. Partners and employees of Smith & Jones, Attorneys at Law, who work in Wilmington, Delaware;
3. Members of the M&L Association in Wilmington, Delaware, who qualify for membership in accordance with its charter and by-laws in effect on December 31, 1997."

### IV.B—MULTIPLE COMMON BOND AMENDMENTS

#### *IV.B.1—General*

Section 5 of every multiple common bond federal credit union's charter defines the field of membership and select groups the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new select group is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its charter from:

- A single occupational or associational charter to a multiple common bond charter;
- A multiple common bond to a single occupational or associational charter;
- A multiple common bond to a community charter; or

- A community to a multiple common bond charter.

Third, a federal credit union removes a group from its field of membership through agreement with the group, a spin-off, or because the group no longer exists.

#### *IV.B.2—Numerical Limitation of Select Groups*

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. The regional director must approve all amendments to a multiple common bond credit union's field of membership.

NCUA will approve groups to a credit union's field of membership if the agency determines in writing that the following criteria are met:

- The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;
- The credit union is "adequately capitalized." NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement. For any other credit union, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level;
- The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;
- Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and
- If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a

group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

#### *IV.B.3—Documentation Requirements*

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015 or NCUA 4015-EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

The NCUA 4015-EZ (for groups less than 3,000 potential members) must be accompanied by the following:

- A letter, or equivalent documentation, from the group requesting credit union service. This letter must indicate:
  - That the group wants to be added to the applicant federal credit union's field of membership;
  - The number of persons currently included within the group to be added and their locations; and
  - The group's proximity to credit union's nearest service facility.
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015 (for groups of 3,000 or more primary potential members) must be accompanied by the following:

- A letter, or equivalent documentation, from the group requesting credit union service. This letter must indicate:
  - That the group wants to be added to the federal credit union's field of membership;
  - Whether the group presently has other credit union service available;
  - The number of persons currently included within the group to be added and their locations;
  - The group's proximity to credit union's nearest service facility, and
  - Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. A credit union need not address every item on the list, simply those issues that are relevant to its particular request:

Member location—whether the membership is widely dispersed or concentrated in a central location.

Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.

Market competition—the availability of other financial services.

Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.

Sponsor subsidies—the availability of operating subsidies.

The desire of the sponsor—the extent of the sponsor's interest in supporting a credit union charter.

Employee interest—the extent of the employees' interest in obtaining a credit union charter.

Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.

Administrative capacity to provide services—will the group have the management expertise to provide the services requested.

- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

#### *IV.B.4—Corporate Restructuring*

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold, spun-off, or merged select group to which it has been providing service. This type of amendment to the credit union's charter is not considered an expansion; therefore, the criteria relating to adding new groups are not applicable.

When two groups merge and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged group, subject to any existing geographic limitation and without regard to any overlap provisions. However, the credit unions cannot serve the other multiple groups that may be in the field of membership of the other credit union.

### **IV.C—NCUA'S PROCEDURES FOR AMENDING THE FIELD OF MEMBERSHIP**

#### *IV.C.1—General*

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

#### *IV.C.2—Regional Director's Decision*

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site

review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. An expanded field of membership may provide the basis for reversing adverse trends. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's adverse trends. The applicant credit union must clearly establish that the approval of the expanded field of membership meets the requirements of Section IV.B.2 of this Chapter and will not increase the risk to the NCUSIF.

#### *IV.C.3—Regional Director Approval*

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

#### *IV.C.4—Regional Director Disapproval*

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

#### *IV.C.5—Appeal of Regional Director Decision*

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

#### IV.D—MERGERS, PURCHASE AND ASSUMPTIONS, AND SPIN-OFFS

In general, other than the addition of select groups, there are three additional ways a multiple common bond federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership of another credit union through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

#### *IV.D.1—Voluntary Mergers*

##### a. All Select Groups in the Merging Credit Union's Field of Membership Have Less Than 3,000 Primary Potential Members

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

##### b. One or More Select Groups in the Merging Credit Union's Field of Membership Has 3,000 or More Primary Potential Members

If the merging credit unions serve the same group, and the group consists of 3,000 or more primary potential members, then the ability to form a separate credit union analysis is not required for that group. If the merging credit union has any other groups consisting of 3,000 or more primary potential members, special requirements apply. NCUA will analyze each group of 3,000 or more primary potential members, except as noted above, to determine whether the formation of a separate credit union by such a group is practical. If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

##### c. Merger of a Single Common Bond Credit Union Into a Multiple Common Bond Credit Union

A financially healthy single common bond credit union with a primary potential membership of 3,000 or more cannot merge into a multiple common bond credit union, absent supervisory reasons, unless the continuing credit union already serves the same group.

## d. Merger Approval

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state-chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

*IV.D.2—Supervisory Mergers*

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of insolvency for NCUA to use this statutory authority. Examples constituting appropriate reasons for using this authority are: abandonment of the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances.

*IV.D.3—Emergency Mergers*

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take 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 federal credit union without regard to any field of membership restrictions including numerical limitation requirements. Under this authority, any single occupational or associational common bond, multiple common bond, or community charter may merge into a multiple common bond credit union and that credit union can continue to serve the merging credit union's field of membership. Subsequent field of membership expansions of the continuing multiple common bond credit union must be consistent with multiple common bond policies.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

*IV.D.4—Purchase and Assumption (P&A)*

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to field of membership expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied. Specified loans, shares, and certain other designated assets and liabilities, without regard to field of membership restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments. Subsequent field of membership expansions must be consistent with multiple common bond policies.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

*IV.D.5—Spin-Offs*

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of

membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new charter or goes to an existing federal charter.

The request for approval of a spun-off group must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

#### IV.E—OVERLAPS

##### *IV.E.1—General*

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an expansion request if the group has 3,000 or more primary potential members. If cases arise where the assurance given to a regional director concerning the unavailability of cred-

it union service is inaccurate, the misinformation may be grounds for removal of the group from the federal credit union's charter.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will approve an overlap if the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- The view of the overlapped credit union(s);
- Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- Whether there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time;
- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

##### *IV.E.2—Overlap Issues as a Result of Organizational Restructuring*

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union

may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership through a housekeeping amendment.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership. When two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions. This is accomplished through a housekeeping amendment.

Credit unions must submit to NCUA documentation explaining the restructuring and provide information regarding the new organizational structure.

#### IV.E.3—*Exclusionary Clauses*

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

#### IV.F—CHARTER CONVERSION

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue

to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter, which do not qualify in the new charter, cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion.

#### IV.G—REMOVAL OF GROUPS FROM THE FIELD OF MEMBERSHIP

A credit union may request removal of a group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support;
- The group initiates action to be removed from the field of membership; or
- The federal credit union wishes to convert to a single common bond.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union desires to remove the group. If the regional director concurs with the request, membership will continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

#### IV.H—OTHER PERSONS ELIGIBLE FOR CREDIT UNION MEMBERSHIP

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. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of the immediate family or household;
- Organizations of such persons; and

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- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an “immediate family or household” of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person’s immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

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

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as “once a member, always a member.” The “once a member, always a member” provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

**V—COMMUNITY CHARTER REQUIREMENTS**

*V.A.1—General*

There are two types of community charters. One is based on a single, geographically well-defined local community or neighborhood; the other is a rural district. More than one credit union may serve the same community.

NCUA recognizes four types of affinity on which both a community charter and a rural district can be based—persons who live in, worship in, attend school in, or work in the community or rural district. Businesses and other legal entities within the community boundaries or rural district may also qualify for membership.

NCUA has established the following requirements for community charters:

- The geographic area’s boundaries must be clearly defined; and
- The area is a well-defined local community or a rural district.

**V.A.2—DEFINITION OF WELL-DEFINED LOCAL COMMUNITY AND RURAL DISTRICT**

In addition to the documentation requirements in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

An applicant has the burden of demonstrating to NCUA that the proposed community area meets the statutory requirements of being: (1) well-defined, and (2) a local community or rural district.

“Well-defined” means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (single, multiple, or portions of a county) or their political equivalent, school districts, or a clearly identifiable neighborhood. Although congressional districts and state boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community or rural district.

The well-defined local community requirement is met if:

- **Single Political Jurisdiction**—The area to be served is in a recognized single political jurisdiction, *i.e.*, a city, county, or their political equivalent, or any contiguous portion thereof.
- **Statistical Area**—
  - The area is a designated Core Based Statistical Area (CBSA) or allowing part thereof, or in the case of a CBSA with Metropolitan Divisions, the area is a Metropolitan Division or part thereof; and
  - The CBSA or Metropolitan Division must have a population of 2.5 million or less people.

The rural district requirement is met if:

- **Rural District**—
  - The district has well-defined, contiguous geographic boundaries;
  - More than 50% of the district’s population resides in census blocks or other geographic areas that are designated as rural by the United State Census Bureau; and
  - The total population of the district does not exceed the greater of 250,000 people or three percent of the population of the state in which the majority of the district is located; *or*
  - The district has well-defined, contiguous geographic boundaries;
  - The district does not have a population density in excess of 100 people per square mile; and
  - The total population of the district does not exceed the greater of 250,000 people or three percent of the population of the state in which the majority of the district is located.

The affinities that apply to rural districts are the same as those that apply to well defined local communities. The OMB definitions of CBSA and Metropolitan Division may be found at 65 FR82238 (Dec. 27, 2000). They are incorporated herein by reference. Access to these definitions is available through the main page of the FEDERAL REGISTER Web site at <http://www.gpoaccess.gov/fr/index.html> and on NCUA's Web site at <http://www.ncua.gov>.

The requirements in Chapter 2, Sections V.A.4 through V.G. also apply to a credit union that serves a rural district.

#### V.A.3—PREVIOUSLY APPROVED COMMUNITIES

If prior to July 26, 2010 NCUA has determined that a specific geographic area is a well defined local community, then a new applicant need not reestablish that fact as part of its application to serve the exact area. The new applicant must, however, note NCUA's previous determination as part of its overall application. An applicant applying for an area after that date that is not exactly the same as the previously approved well defined local community must comply with the current criteria in place for determining a well defined local community.

#### V.A.4—BUSINESS PLAN REQUIREMENTS FOR A COMMUNITY CREDIT UNION

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development and promotion of savings programs and in the collection of loans. Accordingly, to support an application for a community charter, an applicant Federal credit union must develop a business plan incorporating the following data:

- Pro forma financial statements for a minimum of 24 months after the proposed conversion, including the underlying assumptions and rationale for projected member, share, loan, and asset growth;
- Anticipated financial impact on the credit union, including the need for additional employees and fixed assets, and the associated costs;
- A description of the current and proposed office/branch structure, including a general description of the location(s); parking availability, public transportation availability, drive-through service, lobby capacity, or any

other service feature illustrating community access;

- A marketing plan addressing how the community will be served for the 24-month period after the proposed conversion to a community charter, including detailing: how the credit union will implement its business plan; the unique needs of the various demographic groups in the proposed community; how the credit union will market to each group, particularly underserved groups; which community-based organizations the credit union will target in its outreach efforts; the credit union's marketing budget projections dedicating greater resources to reaching new members; and the credit union's timetable for implementation, not just a calendar of events;

- Details, terms and conditions of the credit union's financial products, programs, and services to be provided to the entire community; and

- Maps showing the current and proposed service facilities, ATMs, political boundaries, major roads, and other pertinent information.

An existing Federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership, but outside the new community credit union's boundaries, may not be included in the new community charter. Therefore, the credit union must notify groups that will be removed from the field of membership as a result of the conversion. Members of record can continue to be served.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the credit union will be viable and capable of providing services to its members.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plans submitted with their applications. Additionally, NCUA will follow-up with an FCU every year for three years after the FCU has been granted a new or expanded community charter, and at any other intervals NCUA believes appropriate, to determine if the FCU is satisfying the terms of its marketing and business plans. An FCU failing to satisfy those terms will be subject to supervisory action. As part of this review process, the regional office will report to the NCUA Board instances where an FCU is failing to satisfy the terms of its marketing and business plan and indicate what supervisory actions the region intends to take.

#### V.A.5—COMMUNITY BOUNDARIES

The geographic boundaries of a community Federal credit union are the areas defined in its charter. The boundaries can usually be

defined using political borders, streets, rivers, railroad tracks, or other static geographical feature.

A community that is a recognized legal entity may be stated in the field of membership—for example, “Gus Township, Texas,” “Isabella City, Georgia,” or “Fairfax County, Virginia.”

A community that is a recognized CBSA must state in the field of membership the political jurisdiction(s) that comprise the CBSA.

#### V.A.6—SPECIAL COMMUNITY CHARTERS

A community field of membership may include persons who work or attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

#### V.A.7—SAMPLE COMMUNITY FIELDS OF MEMBERSHIP

A community charter does not have to include all four affinities (*i.e.*, live, work, worship, or attend school in a community). Some examples of community fields of membership are:

- Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
  - Persons who live or work in Green County, Maine;
  - Persons who live, worship, work (or regularly conduct business in), or attend school on the University of Dayton campus, in Dayton, Ohio;
  - Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York;
  - Persons who live, work, or worship in the Binghamton, New York, CBSA, consisting of Broome and Tioga Counties, New York (a qualifying CBSA in its entirety);
  - Persons who live, work, worship, or attend school in the portion of the Oklahoma City, OK MSA that includes Canadian and Oklahoma counties, Oklahoma (two contiguous counties in a portion of a qualifying CBSA that has seven counties in total); or
  - Persons who live, work, worship, or attend school in Uinta County or Lincoln County, Wyoming, a rural district.
- Some examples of insufficiently defined local communities, neighborhoods, or rural districts are:
- Persons who live or work within and businesses located within a ten-mile radius of Washington, DC (using a radius does not establish a well-defined area);
  - Persons who live or work in the industrial section of New York, New York. (not a

well-defined neighborhood, community, or rural district); or

- Persons who live or work in the greater Boston area. (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

- Persons who live or work in the State of California. (does not meet the definition of local community, neighborhood, or rural district).
- Persons who live in the first congressional district of Florida. (does not meet the definition of local community, neighborhood, or rural district).

#### V.B—FIELD OF MEMBERSHIP AMENDMENTS

A community credit union may amend its field of membership by adding additional affinities or removing exclusionary clauses. This can be accomplished with a house-keeping amendment.

A community credit union also may expand its geographic boundaries. Persons who live, work, worship, or attend school within the proposed well-defined local community, neighborhood or rural district must have common interests and/or interact. The credit union must follow the requirements of Section V.A.3 of this chapter.

#### V.C—NCUA PROCEDURES FOR AMENDING THE FIELD OF MEMBERSHIP

##### V.C.1—General

All requests for approval to amend a community credit union’s charter must be submitted to the appropriate regional director. If a decision cannot be made within a reasonable period of time, the regional director will notify the credit union.

##### V.C.2—NCUA’s Decision

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of

membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

#### *V.C.3—NCUA Approval*

If the requested amendment is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

#### *V.C.4—NCUA Disapproval*

When NCUA disapproves any application to amend the field of membership, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

#### *V.C.5—Appeal of Regional Director Decision*

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

#### **V.D—MERGERS, PURCHASE AND ASSUMPTIONS, AND SPIN-OFFS**

There are three additional ways a community federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

#### *V.D.1—Standard Mergers*

Generally, the requirements applicable to field of membership expansions apply to mergers where the continuing credit union is a community federal charter.

Where both credit unions are community charters, the continuing credit union must meet the criteria for expanding the community boundaries. A community credit union cannot merge into a single occupational/associational, or multiple common bond credit union, except in an emergency merger. However, a single occupational or associational, or multiple common bond credit union can merge into a community charter as long as the merging credit union has a service facility within the community boundaries or a majority of the merging credit union's field of membership would qualify for membership in the community charter. While a community charter may take in an occupational, associational, or multiple common bond credit union in a merger, it will remain a community charter.

Groups within the merging credit union's field of membership located outside of the community boundaries may not continue to be served. The merging credit union must notify groups that will be removed from the field of membership as a result of the merger. However, the credit union may continue to serve members of record.

Where a state-chartered credit union is merging into a community federal credit union, the continuing federal credit union's field of membership will be worded in accordance with NCUA policy. Any subsequent field of membership expansions must comply with applicable amendment procedures.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

#### *V.D.2—Emergency Mergers*

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping; or

• Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take 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 federal credit union without regard to any field of membership restrictions, including the service facility requirement. Under this authority, a federal credit union may take in any dissimilar field of membership.

Even though the merging credit union is a single common bond credit union or multiple common bond credit union or community credit union, the continuing credit union will remain a community charter. Future community expansions will be based on the continuing credit union's original community area.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

#### *V.D.3—Purchase and Assumption (P&A)*

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to community expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most instances, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities may also be acquired without regard to field of membership restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the P&A does not meet the emergency criteria, then only members of record can be obtained unless they otherwise qualify for membership in the community charter.

P&As involving federally insured credit unions in different NCUA regions must be

approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

#### *V.D.4—Spin-Offs*

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All field of membership requirements apply regardless of whether the spun-off group goes to a new or existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the field of membership requirements are met;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a portion of the community, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

#### *V.E—OVERLAPS*

##### *V.E.1—General*

Generally, an overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit community credit unions to overlap any other charters without performing an overlap analysis.

*V.E.2—Exclusionary Clauses*

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group or community otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

**V.F—CHARTER CONVERSIONS**

A community federal credit union may convert to a single occupational or associational, or multiple common bond credit union. The converting credit union must meet all occupational, associational, and multiple common bond requirements, as applicable. The converting credit union may continue to serve members of record of the prior field of membership as of the date of the conversion, and any groups or communities obtained in an emergency merger or P&A. A change to the credit union's field of membership and designated common bond will be necessary.

A community credit union may convert to serve a new geographical area provided the field of membership requirements of V.A.3 of this chapter are met. Members of record of the original community can continue to be served.

**V.G—OTHER PERSONS WITH A RELATIONSHIP TO THE COMMUNITY**

A number of persons who have a close relationship to the community may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers in the community;
- Members of the immediate family or household; and
- Organizations of such persons

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family

member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

**CHAPTER 3****LOW-INCOME CREDIT UNIONS AND CREDIT UNIONS SERVING UNDERSERVED AREAS****I—INTRODUCTION**

One of the primary reasons for the creation of federal credit unions is to make credit available to people of modest means for provident and productive purposes. To help NCUA fulfill this mission, the agency has established special operational policies for federal credit unions that serve low-income groups and underserved areas. The policies provide a greater degree of flexibility that will enhance and invigorate capital infusion into low-income groups, low-income communities, and underserved areas. These unique policies are necessary to provide credit unions serving low-income groups with financial stability and potential for controlled growth and to encourage the formation of new charters as well as the delivery of credit union services in low-income communities.

**II—LOW-INCOME CREDIT UNION***II.A—Defined*

A credit union serving predominantly low-income members may be designated as a low-income credit union. Section 701.34 of NCUA's Rules and Regulations defines the term "low-income members" as those members:

- Who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics; or
- Whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau.

The term "low-income members" also includes members who are full-time or part-time students in a college, university, high school, or vocational school.

To obtain a low-income designation from NCUA, an existing credit union must establish that a majority of its members meet the

low-income definition. An existing community credit union that serves a geographic area where a majority of residents meet the annual income standard is presumed to be serving predominantly low-income members. A low-income designation for a new credit union charter may be based on a majority of the potential membership.

#### II.B—SPECIAL PROGRAMS

A credit union with a low-income designation has greater flexibility in accepting non-member deposits insured by the NCUSIF, are exempt from the aggregate loan limit on business loans, and may offer secondary capital accounts to strengthen its capital base. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions (CDRLP) if it is involved in the stimulation of economic development and community revitalization efforts.

The CDRLP provides both loans and grants for technical assistance to low-income credit unions. The requirements for participation in the revolving loan program are in Part 705 of the NCUA Rules and Regulations. Only operating credit unions are eligible for participation in this program.

#### II.C—LOW-INCOME DOCUMENTATION

A federal credit union charter applicant or existing credit union wishing to receive a low-income designation should forward a separate request for the designation to the regional director, along with appropriate documentation supporting the request.

For community charter applicants, the supporting material should include the median household income or annual wage figures for the community to be served. If this information is unavailable, the applicant should identify the individual zip codes or census tracts that comprise the community and NCUA will assist in obtaining the necessary demographic data.

Similarly, if single occupational or associational or multiple common bond charter applicants cannot supply income data on its potential members, they should provide the regional director with a list which includes the number of potential members, sorted by their residential zip codes, and NCUA will assist in obtaining the necessary demographic data.

An existing credit union can perform a loan or membership survey to determine if the credit union is primarily serving low-income members.

#### II.D—THIRD PARTY ASSISTANCE

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering and low-income designation process. If the charter is granted, a low-income credit union may contract with a

third party to provide necessary management services. Such contracts should not exceed the duration of one year subject to renewal.

#### II.E—SPECIAL RULES FOR LOW-INCOME FEDERAL CREDIT UNIONS

In recognition of the unique efforts needed to help make credit union service available to low-income groups, NCUA has adopted special rules that pertain to low-income credit union charters, as well as field of membership additions for low-income credit unions. These special rules provide additional latitude to enable underserved, low-income individuals to gain access to credit union service.

NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all of its members will meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations. Any multiple common bond credit union can add low-income associations to their fields of membership.

A low-income designated community federal credit union has additional latitude in serving persons who are affiliated with the community. In addition to serving members who live, work, worship, or attend school in the community, a low-income community federal credit union may also serve persons who participate in programs to alleviate poverty or distress, or who participate in associations headquartered in the community.

Examples of a low-income designated community and an associational-based low-income federal credit union are as follows:

- Persons who live in [the target area]; persons who work, worship, attend school, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons.
- Members of the Canarsie Economic Assistance League, in Brooklyn, NY, an association whose members all meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations.

#### III—SERVICE TO UNDERSERVED COMMUNITIES

##### III.A—General

A multiple common bond federal credit union may include in its field of membership, without regard to location, an “underserved area” as defined by the Federal Credit Union Act, 12 U.S.C. 1759(c)(2). The addition of an “underserved area” will not change the charter type of the multiple common bond

federal credit union. More than one multiple common-bond federal credit union can serve the same “underserved area,” provided each credit union is approved as provided below.

By adding an “underserved area,” a multiple common bond federal credit union does not become eligible to receive the benefits afforded to low-income designated credit unions, such as expanded use of nonmember deposits and access to the Community Development Revolving Loan Program for Credit Unions.

### III.B—“Underserved Area” Defined

The Federal Credit Union Act defines an “underserved area” as (1) a “local community, neighborhood, or rural district” that (2) meets the definition of an “investment area” under section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (“CDFI”), 12 U.S.C. 4702(16), and (3) is “underserved by other depository institutions” based on data of the NCUA Board and the federal banking agencies.

#### III.B.1—Local Community

To be eligible for approval as “underserved,” a proposed area must be a well-defined local community, neighborhood, or rural district as defined in Chapter 2, sections V.A.1. and V.A.2. of this Manual.

#### III.B.2—Investment Area

To be approved as an “underserved area,” the proposed area must meet the CDFI definition of an “investment area.” *Id.* §4702(16). A proposed area that, at the time the credit union applies, is designated in its entirety as an Empowerment Zone or Enterprise Community (*id.* §1391) automatically qualifies as an “investment area”; no further criteria of an “investment area” must be met. *Id.* §4702(16)(B). A proposed area that is not designated as such must qualify as an “investment area” under “the objective criteria of economic distress” developed by the CDFI Fund (“distress criteria”) based on current decennial U.S. Census data, and also must have “significant unmet needs” for loans and financial services that credit unions are authorized to offer to their members. *Id.* §4702(16)(A).

#### III.B.2.a—Economic Distress Criteria

*Geographic Unit(s) By Proposed Area’s Location.* The location of a proposed “underserved area” either within or outside of an MSA corresponding to the most recent completed decennial census published by the U.S. Bureau of the Census (“decennial Census”) determines the geographic unit(s) that apply to determine whether the area meets the distress criteria.

*Within MSA.* For a proposed area located, in whole or in part, within an MSA, the per-

missible geographic units (“Metro units”) for implementing the economic distress criteria are: (i) a census tract; (ii) a block group; and (iii) an American Indian or Alaskan Native area. 12 CFR 1805.201(b)(3)(ii)(B) (2008). For ease of implementation, it is advisable to use a census tract as the proposed area’s Metro unit.

*Outside MSA.* For a proposed area that is located entirely outside an MSA, the permissible units (“Non-Metro units”) for implementing the economic distress criteria are: (i) a county or equivalent area; (ii) a minor civil division that is a unit of local government; (iii) an incorporated place; (iv) a census tract; (v) a block numbering area; (vi) a block group; and (vii) an American Indian or Alaskan Native area. *Id.* For ease of implementation, it is advisable to use either a census tract or county, as the case may be, as the proposed area’s Non-Metro unit.

*Proposed Area Consisting of a Single Metro Unit.* A proposed area consisting of a single whole Metro unit (*e.g.*, a single census tract located within an MSA) must meet one of the following distress criteria, as reported by the most recent decennial Census:

- *Unemployment.* The proposed area’s unemployment rate is at least 1.5 times the national average; or
- *Poverty.* At least 20 percent (20%) of the proposed area’s population lives in poverty; or
- *Median Family Income.* The proposed area’s Median Family Income (“MFI”) is at or below 80 percent (80%) of either the MFI of the corresponding MSA, or of the national MFI for Metro Areas, whichever is greater; or
- *Other Criterion.* Any other economic distress criterion the CDFI Fund may adopt in the future.

*Id.* §1805.201(b)(3)(ii)(D)(1), (2)(i) and (3) (2008).

*Proposed Area Consisting of a Single Non-Metro Unit.* A proposed area consisting of a single whole Non-Metro unit (*e.g.*, a single county located outside an MSA) must meet one of the following distress criteria, as reported by the most recent decennial Census:

- *Unemployment.* The proposed area’s unemployment rate is at least 1.5 times the national average; or
- *Poverty.* At least 20 percent (20%) of the proposed area’s population lives in poverty; or
- *Median Family Income.* The proposed area’s MFI is at or below 80 percent (80%) of either the corresponding state’s Non-Metro MFI or the national MFI for Non-Metro Areas, whichever is greater; or
- *Other Criterion.* Any other economic distress criterion the CDFI Fund may adopt in the future.

*Id.* §1805.201(b)(3)(ii)(D)(1), (2)(ii) and (3) (2008). Alternatively, a proposed area consisting of a single Non-Metro county (located

outside an MSA) may instead meet either of the following two criteria, as reported by the decennial Census:

- *County Population Loss.* County's population loss of at least 10 percent (10%) between the most recent and the preceding decennial Census; or
- *County Migration Loss.* County's net migration loss of at least 5 percent (5%) in the 5-year period preceding the most recent decennial Census.

*Id.* §1805.201(b)(3)(ii)(D)(4)–(5) (2008).

*Proposed Area Consisting of Multiple Contiguous Units.* When a proposed area consists of either multiple contiguous Metro units (*e.g.*, a group of adjoining census tracts) or multiple contiguous Non-Metro units (*e.g.*, a group of adjoining counties), a population threshold applies when implementing the economic distress criteria. At least 85 percent (85%) of the area's total population must reside within the units that are "distressed," *i.e.*, that meet one of the applicable economic distress criteria above, as reported by the decennial Census (Unemployment, Poverty and MFI for census tracts plus, for counties only, Population Loss and Migration Loss); the balance of the area's population may reside in the non-"distressed" tract(s). The population threshold is met, and the whole proposed area qualifies as "distressed," when the "distressed" units represent at least 85 percent of the area's total population.

#### *III.B.2.b—Proposed Area's "Significant Unmet Needs"*

A proposed area that is "distressed" also must display "significant unmet needs" for loans or for one or more of the financial services credit unions are authorized to offer. To meet this criterion, the credit union must include within its Business Plan a section, one page in length, entitled "Significant Unmet Needs for Credit Union Services" ("SUN section") that establishes the existence of such unmet needs by identifying the credit and depository needs of the community and detailing how the credit union plans to serve those needs. The credit union may choose which among the following "credit and depository needs" to address in the SUN section: loans, share draft accounts, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and similar services. The existence of each "credit and depository need" the credit union identifies and plans to serve must be supported by objective reasons and/or accompanying documentation derived from an identified, authoritative source of the credit union's choice. Third party documentation generally is the most compelling.

#### *III.B.3—Underserved by Other Depository Institutions*

A proposed area that meets the CDFI definition of an "investment area" (*i.e.*, is "distressed" and has "significant unmet needs") must also be underserved by other insured depository institutions, including credit unions. 12 U.S.C. 1759(c)(2)(A)(ii). This statutory criterion is met when the concentration of depository institution facilities among the population of the proposed area's non-"distressed" tracts—which sets a benchmark level of adequate service—is greater than the concentration of facilities among the population of all of the proposed area's census tracts combined. If there are no non-"distressed" tracts within a proposed area, a non-"distressed" census tract or larger geographic unit (*e.g.*, city or county) of the credit union's choice that adjoins the proposed area may be used to set the benchmark concentration ratio.

Without regard to a proposed area's location within or outside an MSA, this criterion compares two ratios: the ratio of facilities to the population of the non-"distressed" tracts (the benchmark) versus the same facilities-to-population ratio among all the tracts of the proposed area as a whole. If the benchmark ratio is greater than the ratio for the whole area, then the area is "underserved by other depository institutions," and vice versa.

#### *III.C—NCUA Approval*

If NCUA approves the request to add an "underserved area," the credit union will be issued an amendment to Section 5 of its charter.

#### *III.D—Approval to Serve an Already Approved "Underserved Area"*

Once a credit union is initially approved to serve an "underserved area," other credit unions that subsequently apply may be approved to serve the same area. To be approved, the area must qualify as "underserved" at the time the new applicant applies. An applicant must demonstrate the area continues to be "distressed", as provided above, only if a new decennial Census has been published since the date the area was last approved. In any case, the applicant must demonstrate that the area still has "significant unmet needs" for loans or credit union services (to qualify as an "investment area"), and remains "underserved by other depository institutions" (to qualify as "underserved").

#### *III.E—Business Plan*

A federal credit union that desires to include an underserved community in its field of membership must first develop, and submit for approval, a business plan specifying

how it will serve the community. In addition, the business plan must include a SUN section as provided in section III.B.2.b. above. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the “underserved area” to ensure that the needs of the community are being met, and must require such reports before NCUA allows a multiple common bond federal credit union to add an additional “underserved area.”

#### III.F—Service Facility

Once an “underserved area” has been added to a federal credit union’s field of membership, the credit union must establish within two years, and maintain, an office or service facility in the community. A service facility is defined as a place where shares are accepted for members’ accounts, loan applications are accepted and loans are disbursed. By definition, a service facility includes a credit union-owned branch, a shared branch, a mobile branch, or an office operated on a regularly scheduled weekly basis or a credit union owned electronic facility that meets, at a minimum, the above requirements. This definition does not include an ATM or the credit union’s Internet Web site.

### IV—APPEAL PROCEDURES FOR DENIAL OF UNDERSERVED AREA

#### IV.A—NCUA Disapproval

When NCUA disapproves any application to add an “underserved area” in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

#### IV.B—Appeal of Regional Director Decision

If the regional director denies an “underserved area” request, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the

date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

## CHAPTER 4

### CHARTER CONVERSIONS

#### I—INTRODUCTION

A charter conversion is a change in the jurisdictional authority under which a credit union operates.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation.

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 regulator. If the state-chartered credit union’s deposits are federally insured, it will also fall under NCUA’s jurisdiction.

A federal credit union’s power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation. Certain federal laws and regulations also apply to federally insured state chartered credit unions.

There are two types of charter conversions: federal charter to state charter and state charter to federal charter. Common bond and community requirements are not an issue from NCUA’s standpoint in the case of a federal to state charter conversion. The procedures and forms relevant to both types of charter conversion are included in appendix 4.

### II—CONVERSION OF A STATE CREDIT UNION TO A FEDERAL CREDIT UNION

#### II.A—General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion and file proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, e.g., chartering and reserve requirements; and
- Be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including an on-site examination by NCUA where appropriate. NCUA will also consult

with the appropriate state authority regarding the credit union's current financial 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 applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. However, if the converting credit union is a multiple group charter and the new federal charter is a multiple group, then the new federal charter may retain in its field of membership any group that the state credit union was serving at the time of conversion. Subsequent changes must conform to NCUA chartering policy in effect at that time.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V of this manual. If the state-chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

The converting credit union, regardless of charter type, may continue to serve members of record. The converting credit union may retain in its field of membership any group or community added pursuant to state emergency provisions.

#### II.B—SUBMISSION OF CONVERSION PROPOSAL TO NCUA

The following documents must be submitted with the conversion proposal:

- Conversion of State Charter to Federal Charter (NCUA 4000);
- Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section should be completed and, where applicable, signed by the credit union officials.
- Report of Officials and Agreement to Serve (NCUA 4012);
- The Application to Convert From State Credit Union to Federal Credit Union (NCUA 4401);
- The Application and Agreements for Insurance of Accounts (NCUA 9500);
- Certification of Resolution (NCUA 9501);
- Written evidence regarding whether the state regulator is in agreement with the conversion proposal; and
- Business plan, as appropriate, including the most current financial report and delinquent loan schedule.

If the state charter is applying to become a federal community charter, it must also comply with the documentation requirements included in Chapter 2, Section V.A.2 of this manual.

#### II.C—NCUA CONSIDERATION OF APPLICATION TO CONVERT

##### *II.C.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.

##### *II.C.2—On-Site Review*

NCUA may conduct an on-site examination of the books and records of the credit union. Non-federally insured credit unions will be assessed an insurance application fee.

##### *II.C.3—Approval by the Regional Director and Conditions to the Approval*

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. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert to a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement (LUA), which requires the signature of the officials and the regional director.

##### *II.C.4—Notification*

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

##### *II.C.5—NCUA Disapproval*

When NCUA disapproves any application to convert to a federal charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

##### *II.C.6—Appeal of Regional Director Decision*

If a conversion to a federal charter is denied by the regional director, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and

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present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

### II.D—ACTION BY BOARD OF DIRECTORS

#### II.D.1—General

Upon being informed of the regional director's preliminary approval, the board must:

- Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;
- Obtain a letter or official statement from the state regulator 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;
- Obtain a letter from the private share insurer (includes excess share insurers), if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director; and
- Submit a statement of the action taken to comply with any conditions imposed by the regional director in the preliminary approval of the conversion proposal and, if applicable, submit the signed LUA.

#### II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board of directors has satisfactorily completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. A denial of a conversion application can be appealed. Refer to Section II.C.6 of this chapter.

### II.E—COMPLETION OF THE CONVERSION

#### II.E.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 notify the credit union

and the state regulator of the date of the conversion.

#### II.E.2—Assumption of Assets and Liabilities

As of the effective date of the conversion, 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.

#### II.E.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.

As of the commencement of operations, the accounting system, records, and forms must conform to the standards established by NCUA.

#### II.E.4—Credit Union's Name

Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. The credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of "state credit union" stationery immediately, and discontinue using credit cards, ATM cards, etc., within 180 days after the effective date of the conversion, or the reissue date, whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the state-chartered name can be used by the members until depleted.

#### II.E.5—Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

- Report of Officials (NCUA 4501); and
- Financial and Statistical Reports, as of the commencement of business of the federal credit union.

### III—CONVERSION OF A FEDERAL CREDIT UNION TO A STATE CREDIT UNION

#### III.A—GENERAL REQUIREMENTS

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

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;

- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities. The federal credit union converting to a state charter remains responsible for the entire operating fee for the year in which it converts.

#### III.B—SPECIAL PROVISIONS REGARDING FEDERAL SHARE INSURANCE

If the federal credit union intends to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (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 intend 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 its federal share insurance or converting from federal to non-federal 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, and address the criteria set forth in Section 205(c) of the Federal Credit Union Act.

Where the state credit union will be non-federally insured, federal insurance ceases on the effective date of the charter 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 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.

#### III.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 conver-

sion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;
- A proposed Notice of Special Meeting of the Members (NCUA 4221);
- A copy of the ballot to be sent to all members (NCUA 4506);
- If the credit union intends to continue with federal share insurance, an application for insurance of accounts (NCUA 9600);
- Evidence that the state regulator is in agreement with the conversion proposal; and
- A statement of reasons supporting the request to convert.

#### III.D—APPROVAL OF PROPOSAL TO CONVERT

##### *III.D.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.

##### *III.D.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.

##### *III.D.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.

##### *III.D.4—Notification*

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

##### *III.D.5—NCUA Disapproval*

When NCUA disapproves any application to convert to a state charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

##### *III.D.6—Appeal of Regional Director Decision*

If the regional director denies a conversion to a state charter, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of

denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

#### III.E—APPROVAL OF PROPOSAL BY MEMBERS

The members may not vote on the proposal until it is approved by the regional director. Once approval of the proposal is received, the following actions will be taken by the board of directors:

- The proposal must be submitted to the members for approval and a date set for a meeting to vote on the proposal. The proposal may be acted on at the annual meeting or at a special meeting for that purpose. The members must also be given the opportunity to vote by written ballot to be filed by the date set for the meeting.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted. The notice must:
  - Specify the purpose, time and place of the meeting;
  - Include a brief, complete, 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;
  - Specify the costs of the conversion, i.e., changing the credit union's name, examination and operating fees, attorney and consulting fees, tax liability, etc.;
  - 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;
  - Be accompanied by a Federal to State Conversion—Ballot for Conversion Proposal (NCUA 4506); and
  - State in **bold** face type that the issue will be decided by a majority of members who vote.
- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to pro-

ceed further with the proposition, provided federal insurance is maintained. If the proposed state-chartered credit union will not be federally insured, 20 percent of the total membership must participate in the voting, and of those, a majority must vote in favor of the proposal. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions 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.

- 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 NCUA 4505.

#### III.F—COMPLIANCE WITH STATE LAWS

If the proposal for conversion is approved by a majority of all members who voted, the board of directors will:

- Ensure that all requirements of state law and the state regulator have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert; and
- 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. The regional director may set a new date for the conversion to be completed.

#### III.G—COMPLETION OF CONVERSION

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

- 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 as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state regulator in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- 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 regulator 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

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director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effective and completed until the improper actions and steps have been corrected.

- 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 regulator.

- If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.

- There is no federal 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. The converting credit union is advised to contact the state regulator for applicable state requirements.

- The credit union shall neither use the words “Federal Credit Union” in its name

nor represent itself in any manner as being a federal credit union.

- Changing of the credit union’s name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. Unless it violates state law, the credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of “federal credit union” stationery immediately, and discontinue using credit cards, ATM cards, etc., within 180 days after the effective date of the conversion, or the reissue date, whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the federal chartered name can be used by the members until depleted. If the state credit union is not federally insured, it must change its name and must immediately cease using any credit union documents referencing federal insurance.

- If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

(Approved by the Office of Management and Budget under control numbers 3133–0015 and 3133–0116)

**APPENDIX 1****GLOSSARY**

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA Rules and Regulations, as well as state laws, may be used for further reference.

**Adequately capitalized** - A credit union is considered adequately capitalized when it has a net worth ratio of at least 6 percent. A multiple common bond credit union must be adequately capitalized in order to add new groups to its charter. The regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.

**Affinity** - A relationship upon which a community charter is based. Acceptable affinities include living, working, worshipping, or attending school in a community.

**Appeal** - The right of a credit union or charter applicant to request a formal review of a regional director's adverse decision by the National Credit Union Administration Board.

**Associational common bond** - A common bond comprised of members and employees of a recognized association. It includes individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

**Business plan** - Plan submitted by a charter applicant or existing federal credit union addressing the economic advisability of a proposed charter or field of membership addition.

**Charter** - The document which authorizes a group to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

**Common bond** - The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are two common bonds which can serve as a basis for a group forming a federal credit union or being included in an existing federal credit union's field of membership: occupational - employment by the same company, related companies or in a trade, industry, or profession (TIP); and associational - membership in the same association.

**Community credit union** - A credit union whose field of membership consists of persons who live, work, worship, or attend school in the same well-defined local community, neighborhood, or rural district.

**Credit union** - A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services.

**Economic advisability** - An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

**Emergency merger** - Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to common bond policy.

**Exclusionary clause** - A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group which otherwise could be included in its field of membership.

**Federal share insurance** - Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

**Field of membership** - The persons (including organizations and other legal entities) a credit union is permitted to accept for membership.

**Household** - Persons living in the same residence maintaining a single economic unit.

**Housekeeping Amendment** - A field of membership amendment to delete groups, change group names, change group locations, remove exclusionary clauses, and to add other persons eligible for credit union membership by virtue of their close relationship to a common bond group or the community for community charters.

**Immediate family member** - A spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

**In danger of insolvency** - In making the determination that a particular credit union is in danger of insolvency, NCUA will establish that the credit union falls into one or more of the following categories:

1. The credit union's net worth is declining at a rate that will render it insolvent within 24 months. In projecting future net worth, NCUA may rely on data in addition to Call Report data. The trend must be supported by at least 12 months of historic data.

2. The credit union's net worth is declining at a rate that will take it under two percent (2%) net worth within 12 months. In projecting future net worth, NCUA may rely on data in addition to Call Report data. The trend must be supported by at least 12 months of historic data.
3. The credit union's net worth, as self-reported on its Call Report, is significantly undercapitalized, and NCUA determines that there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months. In making its determination on the prospect of achieving adequate capitalization, NCUA will assume that, if adverse economic conditions are affecting the value of the credit union's assets and liabilities, including property values and loan delinquencies related to unemployment, these adverse conditions will not further deteriorate.

**Letter of Understanding and Agreement** - Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants for a limited time.

**Mentor** - An individual who provides guidance and assistance to newly chartered, small, or low-income credit unions. All new federal credit unions are encouraged to establish a mentor relationship with a trained, experienced credit union individual or an existing credit union.

**Metropolitan Statistical Area (MSA)** - The Office of Management and Budget defines a metropolitan statistical area as an urbanized area that has at least one urbanized area in excess of 50,000 and "comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting."

**Merger** - Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state regulator whenever a state credit union is involved.

**Multiple common bond credit union** - A credit union whose field of membership consists of more than one group, each of which has a common bond of occupation or association.

**Occupational common bond** - Employment by the same entity or related entities or a Trade, Industry, or Profession.

**Once a member, always a member** - A provision of the Federal Credit Union Act which permits an individual to remain a member of the credit union until he or she chooses to withdraw or is expelled from the membership of the credit union. Under this

provision, leaving a group that is named in the credit union's charter does not terminate an individual's membership in the credit union.

**Organizations of such persons** - An organization or organizations composed exclusively of persons who are within the field of membership of the credit union.

**Overlap** - The situation which results when a group is eligible for membership in more than one credit union.

**Primary potential members** - Members or employees who belong to an associational or occupational group.

**Purchase and assumption** - Purchase of all or part of the assets of and assumption of all or part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

**Service area** - The area that can reasonably be served by the service facilities accessible to the groups within the field of membership.

**Service facility** - A place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network if either: (1) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include the credit union's Internet website. A service facility does not include an ATM or interest in a shared branch network for purposes of serving an underserved area.

**Single associational common bond credit union** - A credit union whose field of membership includes members and employees of a recognized association.

**Single common bond credit union** - A credit union whose field of membership consists of one group which has a common bond of occupation or association.

**Single occupational common bond credit union** - A credit union whose field of membership consists of employees of the same entity or related entities or part of a Trade, Industry, or Profession (TIP).

**Spin-off** - The transfer of a portion of the field of membership, assets, liabilities, shares, and capital of one credit union to a new or existing credit union.

**Subscribers** - For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

**Trade, Industry, or Profession (TIP)** - A single occupational common bond credit union based on employment in a trade, industry, or profession including employment at any number of corporations or other legal entities that while not under common ownership – have a common bond by virtue of producing similar products, providing similar services, or participating in the same type of business.

**Underserved community** - A local community, neighborhood, or rural district that is an “investment area” as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The area must also be underserved based on other NCUA and federal banking agency data.

**Unsafe or unsound practice** - Any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund.

**APPENDIX 2**

**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.

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 \_\_\_\_\_.

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

**National Credit Union Administration**

**Pt. 701, App. B**

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.

Dated this \_\_\_\_\_ of \_\_\_\_\_  
(day) (month) (year)

NATIONAL CREDIT UNION ADMINISTRATION BOARD  
ON BEHALF OF THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

\_\_\_\_\_  
Regional Director

\_\_\_\_\_ Federal Credit Union

By:

\_\_\_\_\_  
Chief Executive Officer Date

\_\_\_\_\_  
Chief Financial Officer Date

\_\_\_\_\_  
Secretary Date

**APPENDIX 3- NCUA OFFICES**

**CENTRAL OFFICE,**

1775 Duke Street, Alexandria, VA 22314-3428, Phone: 703-518-6300.

**REGION I – Albany,**

9 Washington Square, Washington Avenue Extension, Albany, NY 12205-5512, Phone: 518-862-7400, FAX: 518-862-7420.

Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York, Rhode Island, Vermont.

**REGION II - Capital**

1775 Duke Street, Suite 4206, Alexandria, VA 22314-3437, Phone: 703-519-4600, FAX: 703-519-4620.

Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia.

**REGION III - Atlanta**

7000 Central Parkway, Suite 1600 Atlanta, GA 30328-4598, Phone: 678-443-3000, FAX: 678-443-3020.

Alabama, Florida, Georgia, Indiana, Kentucky, Mississippi, North Carolina, Ohio, Puerto Rico, South Carolina, Tennessee, Virgin Islands.

**REGION IV - Austin**

4807 Spicewood Springs Road, Suite 5200, Austin, TX 78759-8490, Phone: 512-342-5600, FAX: 512-342-5620.

Arkansas, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin.

**REGION V - Tempe**

1230 W. Washington Street, Suite 301, Tempe, AZ 85281, Phone: 602-302-6000, FAX: 602-302-6024.

Alaska, Arizona, American Samoa, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.

**APPENDIX 2**  
**NCUA FORMS**

<u>Form Number</u>	<u>Form Title</u>
NCUA 4000	Conversion of State Charter to a Federal Charter – Federal Credit Union Investigation Report
NCUA 4001	Federal Credit Union Investigation Report
NCUA 4008	Organization Certificate
NCUA 4009	Approval of Organization Certificate and Certification of Insurance
NCUA 4012	Report of Official and Agreement to Serve
NCUA 4015	Application for Field of Membership Amendment
NCUA 4015-EZ	Application for Field of Membership Amendment (use for all single common bond expansions and multiple common bond expansions of less than 3,000)
NCUA 4221	Notice of Meeting of Members to Convert from a Federal to State Chartered Credit Union
NCUA 4401	Application to Convert from a State to a Federal Credit Union
NCUA 4505	Affidavit - Proof of Results of Membership Vote - Proposed Conversion From Federal Credit Union to State Credit Union
NCUA 4506	Federal to State Conversion - Ballot for Conversion Proposal
NCUA 9500	Application and Agreements for Insurance of Accounts
NCUA 9501	Certification of Resolutions
NCUA 9600	Information to be Provided in Support of the Application of a State Chartered Credit Union for Insurance of Accounts

**CONVERSION OF STATE CHARTER TO FEDERAL CHARTER  
FEDERAL CREDIT UNION INVESTIGATION REPORT**

This report must be filled in completely and submitted with the other completed forms listed in Chapter 4 and in the instructions for this form.

**A. INFORMATION FOR CHARTER AND BYLAWS**

1. Proposed Name: \_\_\_\_\_ Federal Credit Union  
Second Choice of Name: \_\_\_\_\_ Federal Credit Union

2. Contact Person \_\_\_\_\_  
Bus. Tel. No./Area Code: \_\_\_\_\_ Res. Tel. No./Area Code \_\_\_\_\_

3. The credit union will maintain its office at:  
\_\_\_\_\_  
(City) (County) (State) (Zip)

4. Permanent mailing address of credit union:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Define proposed field of membership (Attach a copy of current state charter field of membership):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. The board will have (an odd number 5 to 15) \_\_\_\_\_ members; the credit committee (an odd number, 3 to 7) \_\_\_\_\_ members; the supervisory committee (3 to 5) \_\_\_\_\_ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

**B. CHARACTER AND FITNESS OF SUBSCRIBERS**

7. Type or print the list of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name:	Address:
Occupation:	Years of Membership:
Name:	Address:
Occupation:	Years of Membership:
Name:	Address:
Occupation:	Years of Membership:
Name:	Address:
Occupation:	Years of Membership:
Name:	Address:
Occupation:	Years of Membership:
Name:	Address:
Occupation:	Years of Membership:
Name:	Address:
Occupation:	Years of Membership:
Name:	Address:
Occupation:	Years of Membership:
Name:	Address:
Occupation:	Years of Membership:

**ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED  
PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION  
SHOULD BE INCLUDED AS AN ATTACHMENT.**

**The undersigned certifies that to the best of his/her knowledge and belief the above  
information is true and correct.**

**I do (do not) recommend that a charter be granted to this group.**

Signature \_\_\_\_\_, Organizer

*Organizer's Address:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FORM 4000 INSTRUCTIONS

**A. INFORMATION FOR CHARTERS AND BYLAWS**

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 5. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual*."

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

**B. CHARACTER AND FITNESS OF SUBSCRIBERS**

The names and address of the subscribers should be recorded legibly and completely in item 7 of this report. It is from this information that the National Credit Union Administration prepares Section 3 of the charter. The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

**C. SUBMITTAL OF CHARTER APPLICATION**

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Application to Convert, NCUA 4401 – one original;
2. Written evidence regarding whether the state regulator is in agreement with the conversion proposal;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Certificate of Resolution, NCUA 9501 - one original;
5. Organization Certificate, NCUA 4008 - one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
6. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;
7. Most current financial report and delinquent loan schedule; and
8. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

FEDERAL CREDIT UNION INVESTIGATION REPORT

This form must be filled in completely and submitted with the other completed forms listed in the instructions to this form.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name: \_\_\_\_\_ Federal Credit Union

Second choice: \_\_\_\_\_ Federal Credit Union

2. Contact Person: \_\_\_\_\_

Business Tel.: \_\_\_\_\_

Residence Tel.: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

3. The credit union will maintain its offices at:

\_\_\_\_\_  
(City, State, County, Zip Code)

3a. Proposed permanent mailing address of credit union:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Define proposed field of membership: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. The board will have (an odd number, 5 to 15) \_\_\_\_\_ members; the credit committee will have (an odd number, 3 to 7) \_\_\_\_\_ members; the supervisory committee will have (3 to 5) \_\_\_\_\_ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

**B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION**

(Attach a separate sheet if space available is not adequate.)

**GENERAL INFORMATION**

**1. Potential membership: \_\_\_\_\_**

NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

**2. Potential interest (survey results).**

NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.

Number of people surveyed: \_\_\_\_\_  
Number of people responding to survey: \_\_\_\_\_  
Number of people pledging an initial deposit: \_\_\_\_\_  
Total dollars pledged: \$ \_\_\_\_\_  
Number pledging systematic savings: \_\_\_\_\_  
Total dollars pledged (per month): \$ \_\_\_\_\_

**3. Number of persons attending the charter-organization meeting: \_\_\_\_\_**

**4. Attach a business plan containing, at a minimum, the following elements:**

- mission statement;
- analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and other economic data;
- evidence of member support;
- goals for shares, loans, and for number of members;
- financial services needed/desired;
- financial services to be provided to members of all segments within the field of membership;
- how/when services are to be implemented;
- organizational/management plan addressing qualification and planned training of officials/employees;

- continuity plan for directors, committee members, and management staff;
- operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;
- type of record keeping and data processing system;
- detailed semiannual pro forma financial statements (balance sheet, income and expense projections) for 1st and 2nd year, including assumptions - e.g., loan and dividend rates;
- plans for operating independently;
- written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);
- source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and
- evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.

5. What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives?

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6. What provisions have been made to overcome potential difficulties?

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Dates of planned contacts by organizer to determine progress and to assist the group:

First Contact Date: \_\_\_\_\_  
Second Contact Date: \_\_\_\_\_  
Third Contact Date: \_\_\_\_\_

**SPECIFIC INFORMATION - OCCUPATIONAL (same company) CHARTER APPLICANTS**

1. How long has the sponsor company been in existence? \_\_\_\_\_
  
2. What was the highest number of employees during the past three years? \_\_\_\_\_  
Lowest number during the past three years? \_\_\_\_\_ If a large variance, please explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
3. Are there any contemplated changes in the corporate structure of the company? \_\_\_\_\_  
If yes, explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. Have there been any significant changes in the corporate structure in the past three years? \_\_\_\_\_ If yes, please explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
5. Are there any negotiations now in progress between management and labor that could lead to work stoppages? \_\_\_\_\_ If yes, please explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
6. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each.**

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**8. Are there other employees of the company who are not being included in the proposed field of membership? \_\_\_\_\_ If so, give the number and location of the other employees and explain why they are not included in the proposed credit union's field of membership.**

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**SPECIFIC INFORMATION - OCCUPATIONAL (trade, industry or profession)  
CHARTER APPLICANTS**

**1. Explain how the credit union will be able to transact business effectively with the members.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS**

**1. State the purpose and goals of the organization sponsoring this charter.**

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**2. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed.** \_\_\_\_\_

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**3. In what year was the organization established? \_\_\_\_\_ Is it incorporated? \_\_\_\_\_ Where is the headquarters located? \_\_\_\_\_**

**4. Give statistics as to trends in membership during the last five years.** \_\_\_\_\_

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**5. What is the frequency of membership meetings? \_\_\_\_\_  
Average attendance: \_\_\_\_\_ Dues required: \$ \_\_\_\_\_**

**6. State the geographic territory where members reside.** \_\_\_\_\_

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**7. Submit a copy of the current bylaws of the association, the constitution, articles of incorporation, or equivalent documentation and recent financial statements, i.e. balance sheet, and income and expense statement, with this application.**

**8. If the bylaws, constitution, articles of incorporation, or equivalent documentation provide for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members.**

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SPECIFIC INFORMATION – MULTIPLE COMMON BOND CHARTER APPLICANTS

1. Explain how the credit union will be able to transact business effectively with the members. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**C. CHARACTER AND FITNESS OF SUBSCRIBERS**

1. List of subscribers who have signed the Organization Certificate (7 not more than 10 persons). Names should be IDENTICAL to signature on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Occupation: \_\_\_\_\_  
Years of Residence: \_\_\_\_\_

2. Are all of the subscribers within the field of membership? \_\_\_\_\_ Do they appear to be representative of the group described in the definition of the field of membership? \_\_\_\_\_ If not, explain. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Does your investigation indicate that the subscribers are persons of good character? \_\_\_\_\_ If not, explain. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? \_\_\_\_\_ If not, explain. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? \_\_\_\_\_ If so, explain. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Is an application for a State Charter now pending? \_\_\_\_\_

8. Has the group ever had a credit union? \_\_\_\_\_ If so, when did it liquidate or merge?

\_\_\_\_\_

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature: \_\_\_\_\_, Organizer

Organizer's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_ Date: \_\_\_\_\_

FORM 4001 INSTRUCTIONS

**A. INFORMATION FOR CHARTER AND BYLAWS**

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, Item 1 provides space for a second choice.

The territory of operations of a Federal Credit Union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

**B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION**

This section of the report contains information on the required business plan elements and other information needed to make a decision on the economic advisability of chartering the proposed credit union.

**C. CHARACTER AND FITNESS OF SUBSCRIBERS**

The names and addresses of the subscribers should be recorded legibly and completely in item C. 1. of this report. It is from this information that the National Credit Union Administration prepares Section 3 of the charter. The names of the subscribers must be IDENTICAL to their signatures on the Organization Certificate.

**D. SUBMITTAL OF CHARTER APPLICATION**

**In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:**

- 1. Organization Certificate, NCUA 4008 - one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;**
- 2. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;**
3. Business Plan - refer to Part B, question 4 of this form and Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan;
- 4. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original; and**
5. Certification of Resolutions, NCUA 9501 - one original.

**NATIONAL CREDIT UNION ADMINISTRATION**

---

**FEDERAL CREDIT UNION**

**(A corporation chartered under  
the laws of the United States)**

**CHARTER NO. \_\_\_\_\_**

**NCUA 4008  
PAGE 1**

**ORGANIZATION CERTIFICATE**

\_\_\_\_\_ **FEDERAL CREDIT UNION**

**Charter No.** \_\_\_\_\_

**TO NATIONAL CREDIT UNION ADMINISTRATION:**

We, the undersigned, do hereby associate ourselves as a Federal Credit Union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal Credit Unions.

- (1) **The name of this credit union shall be \_\_\_\_\_ Federal Credit Union.**
- (2) This credit union will maintain its office and will operate in the territory de-scribed in the field of membership.

- (3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

<i>NAME</i>	<i>ADDRESS</i>	<i>SHARES</i>

- (4) The par value of the shares of this credit union will be stated in the bylaws.
- (5) The field of membership shall be limited to those having the following common bond: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120(b) of the Federal Credit Union Act.
- (7) **This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.**
- (8) **The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.**

IN WITNESS THEREOF we<sup>1</sup> have here unto subscribed our names this

_____	_____	_____
(day)	(month)	(year)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

*Subscribed before me, an officer competent to administer oaths, at \_\_\_\_\_*  
CITY/STATE

this \_\_\_\_\_  
(day) (month) (year)

Signed \_\_\_\_\_

Title \_\_\_\_\_  
*(Notary public or other competent officer)*

<sup>1</sup> At least seven signers none of whom should administer the oath.

**APPROVAL OF ORGANIZATION CERTIFICATE  
AND  
CERTIFICATION OF INSURANCE**

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. Seq.), the  
foregoing organization certificate and insurance of member accounts of  
\_\_\_\_\_ Federal Credit Union are approved this \_\_\_\_\_  
\_\_\_\_\_  
(day) (month) (year)

\_\_\_\_\_  
CHAIRPERSON  
NATIONAL CREDIT UNION ADMINISTRATION

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: NATIONAL CREDIT UNION ADMINISTRATION

Proposed \_\_\_\_\_ Federal Credit Union

Title of Prospective Position: \_\_\_\_\_

Name: \_\_\_\_\_  
Mr./Ms./Mrs. Last, First, Middle

Maiden Name (If Different From Above): \_\_\_\_\_

Address (Res.): \_\_\_\_\_  
Street, City, State, Zip Code

Telephone Number: ( ) \_\_\_\_\_

Place of Birth: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
City/State/Country

Employer: \_\_\_\_\_

Social Security Number (Optional): \_\_\_\_\_

Type of Business: \_\_\_\_\_

Number of years with present employer: \_\_\_\_\_ Your position title: \_\_\_\_\_

Education background (enter highest grade completed)  
High School: \_\_\_\_\_ College: \_\_\_\_\_ Major Field of Study: \_\_\_\_\_

Other training or experience:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you willing to accept the position of trust for which you have been selected and to remain in office until a qualified successor is found? \_\_\_ YES \_\_\_ NO

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal Credit Union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties?  
\_\_\_ YES \_\_\_ NO

Estimated number of hours per month you will be able to volunteer: \_\_\_\_\_

**IF THE ANSWER IS YES TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON THE FOLLOWING PAGE:**

Have you ever been convicted of any **CRIMINAL OFFENSE** involving dishonesty or a breach of trust?    YES    NO

To facilitate the process of obtaining a credit and background check, please provide the following:

- 1. Any other names which you have used: \_\_\_\_\_ and,
- 2. Previous address, (if your address changed over the past 2 years):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 3. Name of Spouse: \_\_\_\_\_

**READ THE FOLLOWING CAREFULLY BEFORE SIGNING**

**CERTIFICATION AND AGREEMENT TO SERVE**

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice that follows.

---

DateSignatureWitness

**PRIVACY ACT NOTICE**

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.68 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on the previous page was YES:

**CRIMINAL OFFENSE:**

Nature of offense: \_\_\_\_\_  
Date of occurrence: \_\_\_\_\_ Date of conviction: \_\_\_\_\_  
Sentence conferred: \_\_\_\_\_  
(Attach a separate sheet if space provided is not adequate)

**CRIMINAL OFFENSE GUIDELINES**

**The Federal Credit Union Act, Subchapter II, Section 205(d), requires that, except with the written consent of the NCUA Board, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust. To assist the NCUA Board in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.**

**If the NCUA Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the NCUA Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.**

**An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage: \_\_\_ YES \_\_\_ NO**

AUTHORIZATION TO OBTAIN A CREDIT REPORT

The National Credit Union Administration (NCUA) may evaluate the competence, experience, character, and integrity of any individual who is to serve as an official, employee, or committee member of a federally insured credit union, in accordance with §1790a of the Federal Credit Union Act and Chapter 1, §V.B.4 of the NCUA Chartering and Field of Membership Manual.

NCUA may disapprove any individual whose employment it believes will not be in the best interest of the credit union or of the public. To assist in the evaluation process, NCUA may obtain and review an individual's credit report.

Your signature on this document authorizes NCUA to obtain a copy of your credit report.

\_\_\_\_\_v  
Last First Middle

Social Security Number: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

\_\_\_\_\_  
Signature Date

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT  
NCUA FORM 4015

**USE FOR MULTIPLE COMMON BOND EXPANSION FOR GROUPS OF  
3,000 OR MORE PERSONS**

*Attach a separate application for each group included in your request for expansion.  
The application must be complete or it will be returned unprocessed.*

1. Name and address of credit union: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\_\_\_\_\_ Charter Number: \_\_\_\_\_  
\_\_\_\_\_

2. Name and address of group: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

***If the group is an association, include a copy of the association's  
Charter/Bylaws or other equivalent organizational documentation.***

3. Provide the proposed field of membership wording. Use the example wording found  
in NCUA's *Chartering and Field of Membership Manual*, Chapter 2, Section IV.A.2.  
\_\_\_\_\_  
\_\_\_\_\_

4. How many primary potential members (excluding immediate family and household  
members) are in the group:  
\_\_\_\_\_

5. (a) What is the distance between the group's location and your credit union's nearest  
service facility<sup>1</sup> to which the group has access (Reference Chapter 2, Section  
IV.A.1):  
\_\_\_\_\_  
\_\_\_\_\_

(b) What is the address of this service facility:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> A service facility is defined as a place where shares are accepted for members' accounts, loan applications  
are accepted or loans are disbursed.

(c) Describe the service area<sup>2</sup> primarily served by the above service facility:

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6. Is the group in the field of membership of any other credit union? Yes\_\_\_ No\_\_\_

If yes, and the overlapped credit union is not a community credit union or a non-federally insured credit union, please address the following:

Provide the name and location of the other servicing credit union:

---

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Include a letter from the overlapped credit union indicating whether it concurs or objects to the overlap. If the overlapped credit union objects or fails to respond, document attempts to resolve the issue:

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---

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Explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

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<sup>2</sup> A federal credit union's service area is the area that can reasonably be served by the service facility accessible to the groups within the field of membership. It will most often coincide with that geographic area primarily served by the service facility.

7. Attach a letter, or equivalent documentation, from the group requesting credit union service indicating:

- that the group wants to be added to the federal credit union's field of membership;
- whether the group presently has other credit union service available;
- the number of persons currently included within the group to be added and the group's location(s);
- the group's proximity to the credit union's nearest service facility; and
- why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. *The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of NCUA's Chartering and Field of Membership Manual.*

8. Other comments:

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Name and title of credit union board-authorized representative (e.g., President/CEO):

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(Typed/Printed Name) (Signature) (Date)

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT  
NCUA FORM 4015-EZ

**USE FOR MULTIPLE COMMON BOND EXPANSIONS OF LESS THAN 3,000  
PERSONS AND ALL SINGLE COMMON BOND EXPANSIONS**

*Attach a separate application for each group included in your request for expansion.  
The application must be complete or it will be returned unprocessed.*

1. Name and address of credit union: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
Charter Number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Name and address of group: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

***If the group is an association, include a copy of the association's  
Charter/Bylaws or other equivalent organizational documentation.***

3. Provide the proposed field of membership wording: \_\_\_\_\_  
\_\_\_\_\_

4. **Multiple Common Bond Expansions Only:** Attach a letter, or equivalent  
documentation, from the group requesting credit union service indicating:

- that the group wants to be added to the federal credit union's field of membership;
- the number of persons to be added and the group's location(s); and
- the group's distance to the credit union's nearest service facility.

5. **Single Common Bond Expansions Only:** How the group shares the occupational  
or associational common bond \_\_\_\_\_  
How many primary potential members (excluding immediate family and household  
members) are in the group: \_\_\_\_\_

Name and title of credit union board-authorized representative (e.g., President/CEO):

\_\_\_\_\_  
(Typed/Printed Name and Title) (Signature) (Date)

**NOTICE OF MEETING OF MEMBERS TO CONVERT  
FROM A FEDERAL TO A STATE CHARTERED CREDIT UNION**

\_\_\_\_\_ FEDERAL CREDIT UNION  
\_\_\_\_\_  
(City) (State)

**THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.**

Notice is hereby given that a meeting of the members of \_\_\_\_\_ Federal Credit Union has been called and will be held at \_\_\_\_\_ on \_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_M. for the purpose of considering and voting upon the following resolution:

**"RESOLVED, That the \_\_\_\_\_ Federal Credit Union be converted to a credit union chartered under the laws of the State of \_\_\_\_\_ and that its operation under Federal charter be discontinued.**

**RESOLVED FURTHER, That the board of directors and the officers of this credit union and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."**

**The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons:**

**The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union:**

**The proposed conversion would result in the following costs of conversion (i.e. changing the credit unions name, examination and operating fees, attorney and consulting fees, tax liability, etc):**

**The board of directors recommends that the members approve the proposal to convert to a State charter.**

**The members' accounts will  will not  continue to be insured by the National Credit Union Share Insurance Fund.**

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, and return it to the following address by no later than the date and the time announced for the meeting of the members:

***BY ORDER OF THE BOARD OF DIRECTORS***

\_\_\_\_\_  
**TITLE: \_\_\_\_\_**  
**(CHAIRPERSON)**

\_\_\_\_\_  
**TITLE: \_\_\_\_\_**  
**(BOARD SECRETARY)**

**APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION**

The \_\_\_\_\_ Credit Union of \_\_\_\_\_ (city), \_\_\_\_\_ (State), incorporated under the laws of the State of \_\_\_\_\_ on \_\_\_\_\_ by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership. Provide a copy of the credit union's charter, articles of incorporation or bylaws, as amended to date.  
\_\_\_\_\_  
\_\_\_\_\_
2. Is proposed Federal charter to cover same field of membership? Yes  No  If answer is "No," explain fully: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Standard financial and statistical reports as of \_\_\_\_\_ or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.
4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached.
5. The following policies on loans to members are currently in effect in this credit union:
  - a. Interest rates on loans: \_\_\_\_\_
  - b. Charges incident to making loans which are passed on to borrowers: \_\_\_\_\_
  - c. Maturity limits: \_\_\_\_\_
  - d. Unsecured loan limit: \_\_\_\_\_
  - e. Secured loan limit: \_\_\_\_\_
  - f. Types of security accepted: \_\_\_\_\_
  - g. Requirements of amortization (Repayment requirements): \_\_\_\_\_
6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

- 7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)
- 8. Types of accounts which members are required or are permitted to maintain: Share  Deposit  Other  (describe): \_\_\_\_\_  
\_\_\_\_\_
- 9. Describe any real estate owned by credit union, including a list of its current market value: \_\_\_\_\_  
\_\_\_\_\_
- 10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act): \_\_\_\_\_  
\_\_\_\_\_
- 11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act: \_\_\_\_\_  
\_\_\_\_\_
- 12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members:  
\_\_\_\_\_  
\_\_\_\_\_
- 13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: \_\_\_\_\_  
\_\_\_\_\_
- 14. Give specific reasons as to why you desire to convert to a Federal credit union:  
\_\_\_\_\_  
\_\_\_\_\_

We hereby authorize the National Credit Union Administration to examine our books and our records.

We, the undersigned \_\_\_\_\_ Chief Executive Officer and  
\_\_\_\_\_ Chief Financial Officer of the  
\_\_\_\_\_ Credit Union of  
\_\_\_\_\_ State of

\_\_\_\_\_ certify: That we are the duly elected Chairperson  
and the Chief Financial Officer, respectfully, of said credit union; that the statements made  
in this Application to Convert from a State to a Federal Credit Union and the schedules  
attached hereto are true, complete, and correct to the best of our knowledge and belief and  
are made in good faith.

\_\_\_\_\_  
TITLE: \_\_\_\_\_  
(CHAIRPERSON)

\_\_\_\_\_  
TITLE: \_\_\_\_\_  
(CHIEF FINANCIAL OFFICER)

**AFFIDAVIT  
PROOF OF RESULTS OF MEMBERSHIP VOTE - PROPOSED CONVERSION FROM  
FEDERAL CREDIT UNION TO STATE CREDIT UNION**

**We, the undersigned \_\_\_\_\_ chairperson and  
\_\_\_\_\_ secretary of the \_\_\_\_\_ Federal  
Credit Union, hereby swear or affirm as follows:**

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.
  
2. That on the date of the said meeting of members there were \_\_\_\_\_ members of this credit union qualified to vote; \_\_\_\_\_ members were present at said meeting; of those members present, \_\_\_\_\_ members voted in favor of the conversion and \_\_\_\_\_ members voted against the conversion; of those members not present at the meeting but who filed ballots, \_\_\_\_\_ members voted in favor of the conversion and \_\_\_\_\_ members voted against the conversion; and that, without duplication of the votes of any member, a total of \_\_\_\_\_ members voted in favor of the conversion and \_\_\_\_\_ members voted against the conversion.

**National Credit Union Administration**

**Pt. 701, App. B**

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

\_\_\_\_\_  
**TITLE: \_\_\_\_\_**  
**(CHAIRPERSON)**

\_\_\_\_\_  
**TITLE: \_\_\_\_\_**  
**(BOARD SECRETARY)**

\_\_\_\_\_

**FEDERAL CREDIT UNION**

Subscribed before me, an officer competent to administer oaths, at \_\_\_\_\_  
\_\_\_\_\_, this \_\_\_\_\_  
(day) (month) (year)

Signed \_\_\_\_\_

(SEAL)

Title \_\_\_\_\_  
(Notary Public or other competent officer)

My Commission Expires \_\_\_\_\_,  
(year)

**FEDERAL TO STATE CONVERSION  
BALLOT FOR CONVERSION PROPOSAL**

I have read the notice concerning the meeting of the members of the \_\_\_\_\_ Federal Credit Union called for \_\_\_\_\_ to consider and to vote upon the following proposition:

"RESOLVED, That the \_\_\_\_\_ Federal Credit Union be converted to a credit union chartered under the laws of the State of \_\_\_\_\_ and operation under Federal Charter Number \_\_\_\_\_ be discontinued.

**RESOLVED FURTHER, That the board of directors and the officers of this credit union are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."**

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

*I vote for the conversion*

*I vote against the conversion*

\_\_\_\_\_  
(Account Number)

\_\_\_\_\_  
(Signature of Member)

Date: \_\_\_\_\_

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

*Date:* \_\_\_\_\_

TO: The National Credit Union Administration Board (Board)

The proposed \_\_\_\_\_ Federal Credit Union

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.
2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and other insured credit unions.
3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.
4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.
5. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.
6. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.
7. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.
8. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

9. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.
10. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.
11. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18, Sec. 1001.

**CERTIFICATION OF RESOLUTIONS**

\_\_\_\_\_ **FEDERAL CREDIT UNION (PROPOSED)**

**We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting, the board of directors passed the following resolution and recorded it in its minutes:**

**"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.**

**Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."**

\_\_\_\_\_  
**Chief Executive Officer**

\_\_\_\_\_  
**Recording Officer, Board of Directors**

NCUA 9501

**INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS**

*Existing credit unions must complete the entire application. All other applicants do not have to complete questions 8, 11, 12, 13, 15, and 16.*

\_\_\_\_\_ Credit Union

- 1. Show below the location of the credit union's books and records.

\_\_\_\_\_ (Street Address)

(City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_ (Telephone)

- 2. Show the date (month, day, year) in which the credit union was chartered. \_\_\_\_\_
- 3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence as discussed in the instructions. Schedule No. \_\_\_\_\_
- 4. Potential membership (total number of persons who could be served including present members). \_\_\_\_\_
- 5. Identify charter type (e.g., single common bond, multiple common bond, community). \_\_\_\_\_
- 6. Does the credit union operate under standard bylaws provided by the state supervisory authority? Yes  No  (Complete a.)
  - a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. \_\_\_\_\_
- 7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes  No  (Complete a.)
  - a. Explain fully on an attached schedule. Schedule No. \_\_\_\_\_

- 8. Attach a copy of the latest State supervisory authority examination. Copies of any correspondence from the accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.
- 9. Attach copies of the Balance Sheet and Statement of Income and Expense (or Financial and Statistical Report) for the month preceding the date of this application and for the same month of the preceding year.  
Schedule Nos. \_\_\_\_\_

10. Reserves

Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

\_\_\_\_\_

11. Delinquent Loans and Charged-off Loans

a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11a. Schedule No. \_\_\_\_\_

b. List below the requested information on delinquent loans for the latest four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for the same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date	Date	Date	Date
	2 to less than 6 mos.	\$	\$	\$	\$
	6 to less than 12 mos.	\$	\$	\$	\$
	12 mos. and over	\$	\$	\$	\$
	Totals	\$	\$	\$	\$
	Share Balances	\$	\$	\$	\$
	Loan Balances	\$	\$	\$	\$

\*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end and or current period).

	Year	Year	Year	Current Yr. To Date	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					

\*If this information is available.

12. Does the credit union have any unrecorded or contingent liabilities, (including pending law suits or civil actions)? Yes  No  Complete a.

a. List on an attached schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. \_\_\_\_\_

13. Do any asset accounts other than loans to members, investments, and real estate have actual values less than the book values shown on the Balance Sheet?

List on a separate schedule a description of such assets, showing at least the following information; account number, description of item, book value and actual value. Schedule No. \_\_\_\_\_

14. List below or on an attached schedule, any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No. \_\_\_\_\_. Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately.

<u>Description of Item</u>	<u>Current Market Value</u>	<u>Current Book Value</u>
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____

15. Individual Share and Loan Ledgers:

a. Were the totals of the trial balance of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? \_\_\_\_\_

b. What are the differences as of the month and preceding the date of this application?

	<u>Shares</u>	<u>Loans</u>
Balances in General Ledger	\$ [ ]	\$ [ ]
Totals of the trial balance of the individual ledgers	\$ [ ]	\$ [ ]
Differences	\$ [ ]	\$ [ ]

16. Supervisory Committee:

a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee?

Effective Date \_\_\_\_\_

(1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit?  
Date \_\_\_\_\_

b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts:  
Effective Date \_\_\_\_\_

(1) If all members' accounts have not been verified under controlled conditions during the last two years, what is the supervisory committee's target date for completion of the verification program?  
Date \_\_\_\_\_

c. If it is necessary to complete either 16a(1) or 16 b(1); please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. \_\_\_\_\_

17. List below the credit union's surety bond coverage.
- a. Name of carrier \_\_\_\_\_
  - b. Standard form number of the bond (i.e., 23, 576, 577, 578, 581, 562 CU-1, other) \_\_\_\_\_
  - c. Basic amount of coverage \$ \_\_\_\_\_
  - d. Bond premium paid to (date) \_\_\_\_\_
  - e. What is the amount of coverage required by State law or your bylaws? \_\_\_\_\_
  - f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.) \_\_\_\_\_  
\_\_\_\_\_
18. Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? \_\_\_\_\_
- Attach a schedule describing each activity in full. Schedule No. \_\_\_\_\_
19. Does the board of directors or management know of any adverse economic condition that is affecting or will affect the credit union's present or future operation or that of the sponsor organization? \_\_\_\_\_
- Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. \_\_\_\_\_
20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? \_\_\_\_\_
- a. Attach a statement describing the circumstances. Schedule No. \_\_\_\_\_
21. Lending policies and practices:
- a. Complete the following schedule showing the present policies and practices on loans to members.
  - b. Complete the following schedule of largest loans with the attached instructions pertaining to Item No. 21.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Down Payment (Equity)
<b>1. Credit Union Policies and Practices</b>			
<b>a. Unsecured Loan Limits</b>			
<b>b. Secured Loan Limits</b>			
<b>(1) New Auto Collateral</b>			
<b>(2) Used Auto Collateral</b>			
<b>(3) Real Estate</b>			
<b>(a) First Mortgage</b>			
<b>(b) Second Mortgage</b>			
<b>(4) Comakers</b>			
<b>(5) Others (describe)</b>			
<b>c. Loans to Organizations</b>			
<b>d. Loans to Directors, Officers, or Committee Members</b>			
<b>2. State Credit Union Law; Bylaws</b>			
<b>a. Unsecured Loan Limits</b>			
<b>b. Secured Loan Limits</b>			
<b>c. Loans to Directors, Officers, or Committee Members</b>			




\*If there is more than one type of collateral assign value to each type.

CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO \_\_\_\_\_

2. Date of CUSO'S Organization \_\_\_\_\_  
(Date of obtaining charter from State)

3. Type of organization (check one):

- a. General Partnership     c. Joint Ownership
- b. Limited Partnership     d. Corporation

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

a. \_\_\_\_\_

<i>Name</i>	<i>Charter Number (If FCU)</i>	<i>%</i>
-------------	--------------------------------	----------

b. \_\_\_\_\_

<i>Name</i>	<i>Charter Number (If FCU)</i>	<i>%</i>
-------------	--------------------------------	----------

(Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

a. \_\_\_\_\_

<i>Name</i>	<i>Charter Number (If FCU)</i>	<i>Amount</i>
-------------	--------------------------------	---------------

b. \_\_\_\_\_

<i>Name</i>	<i>Charter Number (If FCU)</i>	<i>Amount</i>
-------------	--------------------------------	---------------

(Continue on reverse side if additional space is required)

6. List all known services which are being offered by CUSO (be as specific as possible). \_\_\_\_\_

\_\_\_\_\_

7. Comments (include all other pertinent information, if applicable, not previously discussed). \_\_\_\_\_

\_\_\_\_\_

8. Attach the latest Financial and Statistical Report of CUSO, if available.

FORM 9600 INSTRUCTION

APPLICATION OF A STATE CHARTERED CREDIT UNION  
FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with these instructions. Additional schedules may be included if deemed appropriate.

Existing credit unions must complete the entire application. All other applicants do not have to complete questions 8, 11, 12, 13, 15, and 16.

Existing credit unions must submit current policies and financial statements as noted in the application. All other applicants must submit proposed policies and pro forma financial statements for the first and second year of operation.

When an item specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

**Item No. 10: Reserves:** The term "reserves" means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members.

**Item No. 11a:** The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principle, excluding transfers from pledged shares, collateral, and comments regarding the collectability of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

**Item No. 11b:** The schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

**Adverse Trends:** If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved

serious exceptions shown in the State examination report, the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or

Unresolved Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

- A. Investments in U.S. Government securities guaranteed as to principle and interest or Federal Agency securities, the market value of which is now less than the book value.
- B. Real estate other than that used entirely for the credit union's own office(s).
- C. Other investments of any type except:
  - 1. Loans to other credit unions.
  - 2. Certificates of, or accounts in, federally insured financial institutions.
  - 3. Deposits or accounts in corporate credit unions.

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21b: In selecting the largest loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified below has been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans

You should list the following no. of the largest unpaid balances

Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Re-payment" column.

Complete the Credit Union Service Organization (CUSO) schedule for each investment/loan to a CUSO.

#### **TERMINATION OF INSURANCE**

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.



7. To comply with the requirement of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto.
8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.
9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance Fund. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.
10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741.208 of NCUA's regulations.
11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act and any other applicable federal law.

**In support of this application we submit the following schedules:**

<b>Schedule No.</b>	<b>Title</b>
---------------------	--------------

**CERTIFICATIONS AND RESOLUTIONS**

**We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called and regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:**

**We, the undersigned, certify to the correctness of the information submitted.**

**Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.**

**Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.**

**We further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed or future officer, committee member or employee is indicted for such an offense.**

\_\_\_\_\_  
(Signature) Chairperson, Board of Directors

\_\_\_\_\_  
(Print or type Chairperson's Name)

\_\_\_\_\_  
(Signature) Secretary, Board of Directors

\_\_\_\_\_  
(Print or type Secretary's Name)

APPENDIX 5

TRADE ASSOCIATIONS

Credit Union National Association (CUNA)  
P.O. Box 431  
Madison, WI 53701  
608-231-4000

National Association of Federal Credit Unions (NAFCU)  
3138 N. 10th Street, Suite 300  
Arlington, VA 22201  
703-522-4770

National Association of State Credit Union Supervisors (NASCUS)  
1655 North Fort Myer Drive, Suite 300  
Arlington, VA 22209  
703-528-8351

National Federation of Community Development Credit Unions (NFCDCU)  
120 Wall Street, 10th Floor  
New York, NY 10005-3902  
212-809-1850

[73 FR 73398, Dec. 2, 2008, as amended at 75 FR 36263, 36263, June 25, 2010; 78 FR 13463, Feb. 28, 2013; 78 FR 32544, May 31, 2013]

**PART 702—PROMPT CORRECTIVE  
ACTION**

Sec.

702.1 Authority, purpose, scope and other supervisory authority.

702.2 Definitions.