

NCUA LETTER TO FEDERAL CREDIT UNIONS

**NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314**

DATE: June 1999 **LETTER NO.:** 99-FCU-2

TO: Federal Credit Unions

SUBJ: Further clarification on the information set forth in the
preamble IRPS 99-1

On December 17, 1998, the National Credit Union Administration (NCUA) Board issued Interpretive Ruling and Policy Statement ("IRPS") 99-1, which implemented the Credit Union Membership Access Act of 1998. IRPS 99-1 was effective January 1, 1999, except for the provisions relating to the definition of "local community, neighborhood, or rural district," and "immediate family member or household" which became effective March 5, 1999. IRPS 99-1 authorizes multiple common bond chartering for federal credit unions and makes other important changes to NCUA's chartering and field of membership policies.

The purpose of this letter is to supplement and further clarify the information set forth in the preamble to IRPS 99-1. The information, which is in a question and answer format, provides additional guidance and will assist in understanding the new chartering and field of membership manual. You are encouraged to contact your regional office if further information or clarification is needed.

NCUA is currently involved in litigation filed by the American Bankers Association and others challenging the validity of IRPS 99-1. On March 10, 1999, in a preliminary opinion in that case, the Court has indicated that NCUA is likely to succeed on all issues except for NCUA's rule on voluntary mergers. If the plaintiffs prevail on any issues in the litigation, some of the

answers in this document may be inoperative. If this occurs, NCUA will expeditiously issue a new letter to credit unions that identifies necessary changes mandated by the outcome of the litigation.

Sincerely,

/S/

Norman E. D'Amours
Chairman, NCUA Board

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QUESTIONS AND ANSWERS

IRPS 99-1

GENERAL

1. Why did the NCUA Board issue a new field of membership policy?

The Board issued a new field of membership policy to comply with the Credit Union Membership Access Act (CUMAA). It also updates the policies to reflect advances and changes in chartering requirements since the promulgation of IRPS 94-1. The new policies are incorporated into the revised Chartering and Field of Membership Manual ("IRPS 99-1").

2. What do the new field of membership policies include?

The new field of membership policies include the procedures for chartering and amending the fields of membership of federal credit unions. To improve readability, the format of the new Chartering and Field of Membership Manual has been updated from the prior version. The manual is formatted as follows:

- Chapter 1 addresses credit union chartering.
- Chapter 2 contains separate sections on single occupational charters, single associational charters, multiple common bond charters, and community charters.
- Chapter 3 addresses low-income credit unions and underserved communities.
- Chapter 4 addresses conversions from federal to state charter and from state to federal charter.

3. Can members added under the prior multiple common bond policy retain their membership in the credit union?

Yes. Any person or organizational member that belonged to a credit union as of the date of enactment of CUMAA (August 7, 1998) can remain a member.

4. Can credit unions continue to serve groups added under the prior multiple common bond policy?

Yes. Credit unions can continue to serve groups added pursuant to prior multiple common bond policies. This means that credit unions can continue to serve existing members from those groups and also add new members from those groups.

5. Is it necessary to designate a core common bond?

No. The concept of a core common bond to permit field of membership expansions for multiple common bond credit unions no longer applies. A multiple common bond credit union may only expand pursuant to the multiple common bond policies. That is, each expansion (addition of a new group) must meet the multiple common bond policies.

6. Can credit unions still use the Streamlined Expansion Procedure (“SEP”) to add groups to their charters.

No. CUMAA requires NCUA to make a written determination of the appropriateness of adding new groups, regardless of size, to a multiple common bond credit union. However, the credit union can continue to serve all groups and members that were added pursuant to the SEP guidelines.

CREDIT UNION CHARTERING

7. Does CUMAA require NCUA to encourage the formation of new credit unions?

Yes, where practicable and consistent with safety and soundness concerns, the NCUA should encourage the chartering of a separate credit union instead of adding a group to a multiple common bond credit union. If NCUA can not determine whether the group has the ability to form its own credit union, NCUA staff may contact the group directly to determine the answers to the following questions:

- Has the group explored the possibility of chartering a credit union?
- Is the group interested in chartering a credit union?
- Does the group want any literature on chartering a credit union?
- Does the group’s representative want to speak with someone, such as an Economic Development Specialist or the Director of Insurance, who specializes in assisting groups interested in chartering a credit union?

8. Can a group form a new credit union if it has less than 3,000 primary potential members?

Yes. 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., employee of corporation or members of an association) may not be economically advisable.

CHARTER TYPES

9. What type of charters does the new field of membership policy permit?

The new policy permits three types of federal credit union charters – single common bond, multiple common bond, and community.

10. What is a single common bond credit union?

A single common bond credit union is one serving one or more groups having a single, shared common bond. Single common bond credit unions can be either occupational based or associational based.

11. What is a multiple common bond credit union?

A multiple common bond credit union is one that serves a combination of occupational and/or associational groups, each group having its own common bond. Therefore, any credit union that added at least one group with a dissimilar common bond, including any group added under the Streamlined Expansion Procedures, is considered to be a multiple common bond credit union. Any expansion by a multiple common bond credit union must comply with the multiple common bond policies.

12. How does the new policy define a community charter?

Community charters must be based on a single well-defined **local** community, neighborhood, or rural district where individuals have common interests or interact. The word “local” was added by Congress and was intended to be more limiting than previous policies.

13. Can credit unions expand under a single common bond of trade, industry, or profession?

No. While not prohibited by CUMAA, NCUA has not reinstated this policy at this time.

14. Can a credit union seek to remove an existing exclusionary clause which provides overlap protection?

Yes. A credit union can petition the regional director to remove an exclusionary clause. For overlaps by a single common bond or multiple common bond credit union, the clause will be removed if the two credit unions agree to the removal or

if the regional director determines the benefits to the members outweigh any adverse effect on the overlapped credit union. For an overlap by a community charter, the exclusionary clause will be removed on request by the credit union, unless the overlapped credit union is a newly chartered (chartered within 2 years) single or multiple common bond credit union. If the credit union is a newly chartered single or multiple common bond credit union, and safety and soundness concerns exist, the regional director can permit an exclusionary clause to remain in effect for a period not to exceed 60 months from the date of the overlapped credit union's charter. In some cases, the removal of an exclusionary clause may result in an expansion. If the removal of an exclusionary clause results in an expansion, the policies applicable to the credit union's charter type must be met.

15. Can a credit union convert to another type of charter?

Yes. Any type of credit union (single common bond, multiple common bond, or community) may, with NCUA approval, convert to another type of charter – if the applicable common bond or community field of membership requirements are met. After a credit union converts to a single or multiple common bond credit union, it may not convert its charter back to a single or multiple common bond charter for a period of three years, unless the NCUA determines there is a need to convert to resolve safety and soundness concerns. Credit unions may convert to a community charter without regard to the time limitation.

16. After converting its charter, can a credit union continue to serve groups that do not qualify under the new field of membership?

No, although groups within the community boundaries can still be served by the community charter. Those groups that do not qualify under the new charter type cannot be included in the credit union's field of membership. **However, the credit union may continue to serve members of record.** The converting credit union must notify the sponsors of the groups that are outside the new community boundaries that the credit union cannot enroll new members from their groups.

17. How does a single common bond credit union convert to a multiple common bond credit union?

A single common bond credit union can request in writing to the regional office to convert to a multiple common bond credit union. The conversion to a multiple common bond credit union is effective with the addition of any unrelated group to the credit union's field of membership through an amendment or a merger. A business plan is not required.

18. How does a multiple common bond credit union convert to a single common bond credit union?

Prior to submitting a request to remove the unrelated groups and convert the charter, the credit union must notify each group that will no longer be served that the credit union can no longer enroll new members from those groups (although members of record can continue receiving service). The credit union must then submit a letter to NCUA requesting the conversion, establishing its new single common bond, and detailing which groups to remove, along with evidence that the groups no longer being served were notified. A business plan is not required.

SINGLE COMMON BOND

19. How does a single common bond credit union expand its field of membership and remain a single common bond credit union?

Generally, a single common bond credit union can expand its charter only by adding a group that shares the credit union's common bond or by acquiring through merger a credit union that has the same common bond. Single common bond expansions may include parent and subsidiary companies. Two healthy single common bond credit unions may merge if they share the same common bond. If the credit union desires to add an unrelated group to its field of membership through an amendment or a merger, it must address the multiple common bond credit union expansion criteria in its field of membership or merger application and request to convert to a multiple common bond credit union. If approved, NCUA will designate the credit union as a multiple common bond credit union.

20. Does it matter if a single common bond credit union becomes a multiple common bond credit union?

Yes. The way in which a credit union can expand its charter is governed by its common bond type. Therefore, it can affect future expansions. For example, single common bond credit unions (both occupational and associational) can only add groups that share the same common bond. These groups can be added without regard to location and without any limitations on the size of the group. On the other hand, multiple common bond credit unions cannot expand their charters on the basis of a single common bond. They can add various occupational and associational groups, if certain criteria are met, but the groups must be within the credit union's service area (reasonable proximity to an existing service facility), and the statutory criteria must be satisfied. The common bond type also governs mergers where the continuing credit union is a federal credit union.

21. Can two single common bond credit unions with dissimilar common bonds merge?

Generally, no. However, such a merger is permissible if (1) the statutory requirements for an emergency merger exist, or (2) the continuing credit union first converts to a multiple common bond charter and the merger is being pursued due to safety and soundness concerns surrounding the merging single common bond credit union.

22. What is NCUA’s policy regarding a single common bond credit union overlapping a single common bond or multiple common bond credit union?

Generally, NCUA **will not** initially charter two credit unions to serve the same group. However, on issues related to overlap, NCUA’s policy is to permit a single common bond credit union to overlap another credit union when 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.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the credit unions agree to the overlap, NCUA will permit the overlap. If the credit unions cannot resolve the overlap, NCUA will make a determination after performing an overlap analysis.

Among the factors NCUA will consider are the nature of the issue, the desire of the group, and the financial effect on the overlapped credit union. If the group to be added has 200 primary potential members or less, NCUA will presume the overlap is incidental and will approve the overlap.

23. What is NCUA’s policy regarding a single common bond credit union overlapping a community charter?

NCUA will permit single common bond federal credit unions to overlap community charters without performing an overlap analysis.

OCCUPATIONAL COMMON BOND

24. How does the new field of membership policy define a single occupational common bond?

A single occupational common bond can be established in several ways. It can be based on employment in a single company, employment in a company with a controlling ownership interest of not less than 10 percent in or by another company, employment in a company under contract and possessing a strong dependency relationship with another company, and by attendance at a school

(assuming the credit union serves the employees of the school). Under the prior policy, students attending school were considered an associational group. They are now considered to be an occupational group.

25. Since students are now considered an occupational common bond, can a single common bond credit union serving employees of a school serve the students of the school?

Yes, but the credit union must submit an application for a field of membership amendment and obtain the regional director's approval. It is important to remember that, although students share a common bond with the employees of the school, the statutory numerical limitations would apply if a multiple common bond credit union wishes to add such a group.

ASSOCIATIONAL COMMON BOND

26. How does the new field of membership policy define an associational common bond?

A single associational common bond consists of individuals and/or groups whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Qualifying associational groups must hold meetings open to all members, must sponsor other activities demonstrating that the members of the group meet to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership.

27. Can an association based on a customer-client relationship meet NCUA's common bond requirements?

Associations based primarily on a customer-client relationship do not meet the agency's associational common bond requirements. However, having an incidental customer-client relationship is permissible as long as the associational common bond requirements are met. An example of an incidental customer-client relationship is a fraternal association that offers insurance which is not a condition of membership.

28. Assume a single associational common bond credit union requests to add the chamber of commerce to its field of membership. Can the credit union serve the employees of businesses belonging to the chamber of commerce?

No, a single associational common bond credit union cannot serve the employees of members because the common bond does not extend beyond the association's members (i.e., the businesses). However, a multiple common

bond credit union could serve the employees by adding each of the businesses independently.

MULTIPLE COMMON BOND

29. What new statutory rules apply to multiple common bond credit union expansions?

A multiple common bond credit union can add groups to its charter when NCUA determines in writing that:

- The credit union has not engaged in any unsafe or unsound practice which is material during the one year period preceding the filing to add the group;
- The credit union is adequately capitalized;
- 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; and
- The formation of a separate credit union by the group is not practicable or consistent with reasonable standards for safe and sound operations.

In addition, the group must be within reasonable proximity to an existing service facility of the credit union (i.e., within the credit union's service area).

30. What is an unsafe or unsound practice?

In connection with multiple common bond expansions, NCUA defines an unsafe or unsound practice as 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. If a credit union is experiencing adverse trends in areas such as capital adequacy, profitability or loan delinquency, it does not necessarily mean that it is operating in an unsafe and unsound manner. If adverse trends persist, the credit union's financial condition could deteriorate to the point where an unsafe or unsound condition exists.

31. What is adequate capitalization?

Adequate capitalization in the context of field of membership means the credit union has a net worth ratio of not less than 6 percent. The net worth ratio is

computed as all of the credit union's retained earnings including undivided earnings, regular reserves, uninsured secondary capital (for low income designated credit unions), net income, and other reserves (excluding the allowance for loan losses and accumulated gains/losses on available for sale securities) divided by total assets.

32. What will NCUA do to determine if the credit union has the administrative capability and financial resources to serve the proposed group?

To determine whether the credit union has met this requirement, NCUA will review the credit union's most recent examination report, 5300 Call Report, Financial Performance Report or, if necessary, contact the credit union for additional information.

33. What guidelines will be used to determine whether any potential harm the expansion may have on any other credit union is clearly outweighed by the beneficial effect of the expansion?

NCUA will perform an overlap analysis, as described in Chapter 2 of the manual, if the group to be added is greater than 200 primary potential members. NCUA's presumes that any overlap of 200 or less primary potential members is incidental; therefore, such overlaps will be permitted without any individual overlap analysis.

34. Are there special requirements for processing expansion requests involving groups of 200 or more members?

NCUA presumes that groups with 200 or less primary potential members cannot form an economically viable credit union. A group over 200 persons (not including immediate family or household members) can only be added to a multiple common bond credit union's charter if NCUA determines that the formation of a separate credit union by the group is not practicable. NCUA will look at the totality of circumstances when making this determination. In assessing whether a group should be independently chartered or added to a multiple common bond credit union, NCUA will consider, among other things:

- 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.
- 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.

The depth of analysis and number of factors considered will depend on the type and size of the group. If it appears the group may be able to form its own credit union, NCUA will contact the group for additional information.

35. Are there special requirements for processing expansion requests involving groups of 3000 or more members?

A group with 3000 or more persons (not including immediate family or household members) can only be added to a multiple common bond credit union’s charter if NCUA determines that the formation of a separate credit union by the group is not practicable because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or it is determined that the group is not economically advisable. NCUA will look at the totality of circumstances (as discussed above) when making this determination. While NCUA will consider the desires of the group, a letter asserting a group cannot or does not want to form its own credit union is not sufficient to determine economic advisability. Accordingly, NCUA will contact the group and request additional information.

36. Are there any other requirements a multiple common bond credit union must meet before adding a group?

Yes, the group to be added, regardless of size, must be within the credit union’s service area (reasonable proximity to an existing service facility).

37. What is a credit union’s service area?

Service area is applicable only for multiple common bond credit unions. This is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. That is, the group to be added must be within reasonable proximity geographically to a service facility of the credit union.

38. What is a service facility?

A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This can include a credit union-owned branch, a shared branch, or a credit union owned electronic facility that meets, at a minimum, these requirements. Also, an office location open on a regularly scheduled weekly basis, and a mobile branch that goes to the same location on a weekly basis will qualify. An ATM does not qualify as a service facility.

39. What are the common bond rules for mergers involving multiple common bond credit unions?

NOTE: NCUA is currently involved in litigation filed by the American Bankers Association and others that challenges the validity of NCUA's rule authorizing the voluntary merger of multiple common bond credit unions. In a preliminary opinion in that case, the Court indicated that the ABA is likely to succeed in its argument that NCUA's rule on voluntary mergers does not meet requirements of the law. Therefore, the following answer may become inoperative if the Court does not rule in NCUA's favor.

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. The merger requirements outlined in Section 205 of the Federal Credit Union Act and Part 708b of NCUA's Regulations must be met. The requirements of Chapter 2, Section IV.B.2 of the chartering manual are not applicable. If a merging credit union has one or more groups with 3,000 or more primary potential members, it must establish that such groups cannot form separate credit unions.

If a merger has been recommended by NCUA or the state credit union supervisor (if applicable) for safety and soundness reasons, the merger may take place without regard to the size of any group in the merging (discontinuing) credit union's field of membership.

Regarding the service area requirement, this criteria would be met if all of the merging credit union's groups are within the service area of the continuing credit union. It could also be met if the continuing credit union maintains the merging credit union's service facilities.

Mergers between any types of credit unions may be approved by NCUA, without regard to field of membership rules or other legal constraints, if the emergency merger provisions of the statute are met.

40. For mergers, does the 3,000 person numerical limitation refer to actual or potential members?

NOTE: NCUA is currently involved in litigation filed by the American Bankers Association and others that challenges the validity of NCUA's rule authorizing the voluntary merger of multiple common bond credit unions. In a preliminary opinion in that case, the Court indicated that the ABA is likely to succeed in its argument that NCUA's rule on voluntary mergers does not meet requirements of the law. Therefore, the following answer may become inoperative if the Court does not rule in NCUA's favor.

The limitation refers to **primary potential members**, not actual members. For example, if a merging multiple common bond credit union has a group with 2,000 members out of 6,000 primary potential members (i.e., employees), the 6,000 figure would be applied. Immediate family and household members are not included in determining the number of primary potential members. Similarly, if a sponsor has downsized its employees to a point where actual credit union members from the group outnumber the current number of employees, the current number of employees (i.e., primary potential members) would be the controlling figure.

41. Can a multiple common bond credit union that has at least one group with 3,000 or more potential members merge into another multiple common bond federal credit union?

NOTE: NCUA is currently involved in litigation filed by the American Bankers Association and others that challenges the validity of NCUA's rule authorizing the voluntary merger of multiple common bond credit unions. In a preliminary opinion in that case, the Court indicated that the ABA is likely to succeed in its argument that NCUA's rule on voluntary mergers does not meet requirements of the law. Therefore, the following answer may become inoperative if the Court does not rule in NCUA's favor.

Yes. If the credit union is pursuing a merger because NCUA or the state supervisory authority (if appropriate) has determined there are safety and soundness concerns, it can merge irrespective of the numerical limitation. Additionally, even if there are no safety or soundness concerns, the credit union can merge into a federal credit union as long as NCUA's merger requirements are satisfied (i.e., the group cannot form its own credit union). If the merger requirements are not met, this may require a merging credit union to spin-off select groups with 3,000 or more primary potential members before NCUA can approve the merger.

42. What is NCUA's overlap policy regarding a multiple common bond credit union overlapping a single common bond or multiple common bond credit union?

An overlap will not be permitted unless 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.

As before, when an overlap situation arises, officials of the expanding credit union must ascertain the views of the overlapped credit union only if the group to be added has more than 200 primary potential members. 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. An overlap analysis will be performed regardless of any agreements between the credit unions.

In reviewing the overlap, the regional director will consider a number of factors, such as:

- 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.

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.

43. What is NCUA's policy in regards to a multiple common bond credit union overlapping a community charter?

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

SOLD AND SPUN-OFF GROUPS

44. Can a multiple common bond credit union continue to serve a group that is sold or spun off by one of its sponsors?

Yes. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold or spun-off select group, without regard to location, if it is readily identifiable (e.g., the employees continue to work at the same facility or plant), and the credit union requests a field of membership amendment. Since this is a housekeeping amendment rather than a charter expansion, the 3,000 person numerical limitation, overlap analysis requirements, and other multiple common bond expansion criteria do not apply. **The credit union must submit a letter to NCUA outlining the change to the wording of its field of membership and discussing the corporate restructuring in detail.**

45. Can a single common bond credit union continue to serve a group that is sold or spun off by the sponsor?

No, unless the group otherwise qualifies for membership in the credit union (such as a strong dependency relationship) or if the credit union converts to a multiple common bond charter. If the single common bond credit union chooses to convert to a multiple common bond charter and the group is readily identifiable (e.g., the employees continue to work at the same facility or plant), the field of membership amendment will be processed as a housekeeping amendment. The credit union need only submit a letter outlining the sponsor reorganization in as much detail as possible. If the group is not readily identifiable, the multiple common bond expansion criteria apply (e.g., the 3,000 person numerical limitation and service area requirements) and the credit union must submit a 4015 or 4015 EZ (Application for a Field of Membership Amendment).

CORPORATE RESTRUCTURING

46. Widgets FCU is a single common bond credit union serving “employees of Widgets, Inc., located in Grafton, Wisconsin”. If Widgets, Inc. purchases a division from another company that is located in Grafton, Wisconsin, and these new employees are now considered employees of Widgets, Inc., can Widgets FCU serve the new employees?

Yes. Because the new employees are considered employees of Widgets, Inc., the current field of membership clause permits Widgets FCU to serve the new employees immediately. A field of membership amendment is not necessary, and the credit union need not notify NCUA. However, if the geographic location of the new division is different from what is already listed in the charter (in this case Grafton, Wisconsin), an Application for Field of Membership Amendment

(NCUA Form 4015 or 4015-EZ) must be submitted to NCUA for approval. This is a common bond addition; therefore, the size and location of the group is irrelevant.

47. Widgets FCU is a single common bond credit union serving “employees of Widgets, Inc.”. If Widgets, Inc. purchases a division from another company and these new employees are now considered employees of the XYZ subsidiary of Widgets, Inc., can Widgets FCU serve the new employees?

Yes, but Widgets FCU must request a field of membership amendment (i.e., submit form 4015 or 4015 EZ) before serving these new employees because the current field of membership does not permit the credit union to serve employees of subsidiaries.

48. Widgets FCU is a multiple common bond credit union serving, among others, “employees of Widgets, Inc.”. If Widgets, Inc. purchases a division from another company and these new employees are now considered employees of the XYZ subsidiary of Widgets, Inc., can Widgets FCU serve the new employees?

Yes, but Widgets FCU must request a field of membership amendment (i.e., submit form 4015 or 4015 EZ) before serving these new employees because the field of membership clause does not refer to employees of subsidiaries of Widgets, Inc. Also, since Widgets FCU is a multiple common bond credit union, it must address the multiple common bond expansion criteria (i.e., service area, formation of a separate credit union, etc.) before adding any subsidiary group.

49. Widgets FCU serves employees of Widgets, Inc., and Gadgets FCU serves employees of Gadgets, Inc. Both credit unions are single sponsor. If Widgets, Inc., and Gadgets, Inc. merge to form a new entity, W&G, Inc., can either or both credit unions serve the W&G, Inc.’s employees?

Yes. Both credit unions must request an amendment to expand their field of membership by submitting an Application for Field of Membership Amendment (NCUA 4015 or 4015-EZ) to serve employees of the new entity, W&G, Inc. The credit unions must submit a letter to NCUA detailing the changes to the fields of membership and the sponsor restructure. This will be processed as a common bond expansion.

50. Widgets FCU serves employees of Widgets, Inc. and Gadgets FCU serves employees of Gadgets, Inc. Widgets, Inc., and Gadgets, Inc. merge to form one new entity, W&G, Inc. Each credit union is now serving W&G, Inc. Can the two credit unions now merge?

Yes, after each credit union has received an approval for an expansion amendment, they can merge because they now share the same common bond.

COMMUNITY CHARTERS

51. How does the current community charter policy differ from the policy set forth in IRPS 94-1?

The new policy differs in several ways. First, under prior policy, the credit union applicant had to demonstrate sufficient interaction among persons in the community to qualify. The new policy includes an alternate standard – having “common interests.” It will be up to the charter applicant to provide evidence on whether the individuals in the geographic area interact or have common interests. Either or both will be sufficient. Second, the community must meet the criteria of a “local” community, neighborhood, or rural district.

52. What is a “local” community, neighborhood, or rural district?

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and common interests, a number of issues must be considered. For example, the existence of a single major trade area, shared municipal or recreational facilities, or an area newspaper may be sufficient evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are significant in determining whether the area is local in nature. A large population in a small geographic area or a small population in a large geographic area may meet NCUA community chartering requirements. On the other hand, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with a large population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being “local.” In such cases, documentation demonstrating interaction and/or common interests will be greater than necessary for a smaller area.

53. How have the documentation requirements for community charters been streamlined?

NCUA will usually consider the community requirements to be met in situations where the area to be served comprises: (1) a recognized single political jurisdiction not greater than a county or its equivalent, or two or more contiguous

political jurisdictions wholly contained within a single county or its equivalent, and the population does not exceed 300,000, or (2) multiple contiguous political jurisdictions exceeding the boundaries of a single county or its equivalent, and the population does not exceed 200,000. In these cases, the credit union must only submit a narrative describing how the area meets the standards for community interaction or common interests. That is, the narrative should describe, in detail, the community's trade areas, shared facilities, organizations, media, etc., as described under Chapter 2, Section V.A.2. The credit union must also provide maps depicting the boundaries and surrounding areas, business and marketing plans demonstrating it can adequately serve the community, and evidence of the population.

However, if NCUA does not find sufficient evidence of community interaction or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. Regardless of the streamlined procedures, the regions may request additional information in support of a community application.

54. What documentation is required if the area to be served does not qualify for the streamlined provisions?

In this case, the credit union needs to fully document that the proposed service area meets NCUA's definition of a community. A full discussion of the documentation requirements is included in Chapter 2, Section V of the manual.

55. Can more than one credit union serve the same community area?

Yes.

56. If a single common bond or multiple common bond credit union converts to a community charter, can it continue to serve existing select groups located outside of the community service area?

No, but members of record can continue to be served. Only individuals who live, work, worship, or attend school in the community service area can be served by the community charter. Groups that will no longer be served must be notified by the credit union.

57. If a credit union submitted its original application to convert to a community charter before August 7, 1998, under what field of membership policies will its application be evaluated?

All applications originally submitted before August 7, 1998, will be evaluated under the policies established in IRPS 94-1, unless the credit union specifically requests the application be evaluated under IRPS 99-1.

58. If the credit union submitted an application to convert to a community charter that will be evaluated under IRPS 94-1, has NCUA established a deadline to submit a response to resolve any outstanding concerns?

Yes, complete responses and supporting documentation must be submitted to the regional office by June 30, 1999, to resolve all outstanding issues or questions regarding the application. If NCUA does not receive a complete response by this date, it will evaluate the application under IRPS 99-1.

59. Can a single occupational or associational common bond credit union, or multiple common bond credit union merge into a federal community charter?

Yes, if a service facility of the merging credit union is located within the boundaries of the community charter's geographic service area or a majority of the discontinuing credit union's field of membership would qualify for membership in the new community charter. However, groups, or segments of groups, within the merging credit union's field of membership but which are located outside of the community area may not continue to receive service. The credit union may continue to serve members of record and will remain a community charter.

60. Can two community charters merge?

Yes. Where both credit unions are community charters, the continuing credit union must meet the criteria for expanding its community boundaries. In other words, the combined area must qualify as a single, well-defined local community, neighborhood or rural district where individuals have common interests or interact.

61. Can a community credit union merge into a single common bond or multiple common bond credit union?

No. A community credit union cannot merge into a single or multiple common bond credit union, unless the merger is consummated pursuant to the emergency merger provisions. An emergency merger does not change the original common bond and cannot be used as a basis for future expansions.

62. If an occupational or associational credit union merges into a community charter under the emergency merger provisions, does the continuing credit union remain a community charter?

Yes. Emergency mergers do not change the continuing credit union's charter type.

63. How does NCUA's new policy treat overlaps by community charters?

Only a newly chartered single or multiple common bond credit union (i.e., a credit union chartered for less than two years) will be protected from overlap by a community charter. The overlap protection will extend from 12 to 24 months from the overlapped credit union's effective date of charter, and, at the regional director's discretion, may be extended for safety and soundness reasons for an additional period not to exceed 60 months from the date of the overlapped credit union's charter. An exclusionary clause is not required if the overlapped credit union agrees to the overlap.

64. Is there any overlap protection for newly chartered community credit unions?

No.

65. What will happen to any exclusionary clauses that are currently in a community charter's field of membership?

Exclusionary clauses granted prior to the effective date of IRPS 99-1 will remain in effect until one of the affected credit union petitions NCUA to remove the exclusionary clause. NCUA will then remove the exclusionary clause unless the overlap affects a newly chartered single or multiple common bond credit union (i.e., a credit union chartered less than two years).

EMERGENCY MERGERS

66. What changes were made concerning the emergency merger provisions?

Previously, among the conditions that had to be met to comply with the emergency merger provisions were that the merging credit union had to be either insolvent or likely to become insolvent within 12 months. Now, there is no specific time limit during which the credit union is expected to become insolvent. A credit union will not be permitted to expand through any group(s) or communities acquired from such a merger.

Unchanged are the additional requirements that there must be an emergency requiring expeditious action, other alternatives are not reasonably available, and the public interest would best be served by approving the merger.

67. Will a credit union's failure to resolve Y2K concerns serve as a reason to approve an emergency merger?

Any credit union that is not making acceptable progress in becoming Y2K compliant **may** be determined to have serious and persistent operational problems requiring expeditious action that meets the emergency merger criteria.

LOW INCOME & UNDERSERVED AREAS

68. What is NCUA’s policy on chartering credit unions or expanding credit union charters for special low-income associations?

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 its field of membership.

69. Can a credit union add an underserved community to its field of membership?

Any federal credit union may include in its field of membership, without regard to location, communities that meet the definition of an underserved area. However, the credit union must develop a business plan and must operate a service facility in the underserved community.

70. What is an underserved area?

An “underserved area” is a well-defined 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.

71. Are the terms “low-income” and “underserved area” synonymous?

No. An underserved area includes any of the following:

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent and the area has significant unmet needs for loans or equity investments;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national

Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments.;

- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments;
- An area where the unemployment rate is at least 1.5 times the national average and the area has significant unmet needs for loans or equity investments;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent and the area has significant unmet needs for loans or equity investments; or
- An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent and the area has significant unmet needs for loans or equity investments.

72. What is an example of “significant unmet needs for loans or equity investments?”

Studies or analyses to determine whether an area has significant unmet needs for loans or equity investments may include HMDA data about availability of mortgage financing, demographics of financial institutions in the area, CRA rating of those institutions located in the targeted area, or statistics from the local Chamber of Commerce documenting a lack of business development.

73. What are the other requirements for gaining approval to serve an underserved area?

The credit union must first establish that the area is a community and develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs.

In addition, the credit union must establish and maintain an office or facility in the community. For underserved areas, a service facility is defined as a place where shares are accepted for members’ accounts, loan applications are accepted and loans are disbursed. This includes a credit union owned branch, a shared branch, a mobile branch, or a credit union owned electronic facility that meets, at a minimum, these requirements. Also, an office location open on a regularly

scheduled weekly basis and a mobile branch that goes to the same location on a weekly basis will qualify. This definition does not include an ATM.

CHARTER CONVERSIONS

74. When a credit union converts to either state or federal charter, what name change procedures must be followed?

The credit union must change its name on all signage, records, accounts, investments, promotional material and other documents as soon as possible, but no later than 180 days from the effective date of the conversion. The credit union must change its name on stationery immediately.

All converting credit unions (unless contrary to state law in the case of a federal to state conversion) must also discontinue using credit cards and ATM cards 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 time frame for an additional 180 days. Member share drafts with the old credit union name can be used by the member until depleted.

For conversions to state charter, where the converting credit union will no longer be federally insured, the credit union must discontinue use of all documents stating that the credit union is federally insured, including credit cards and share drafts, immediately after conversion.

75. Are there any changes in the disclosure which must be made to members of a federal credit union which is converting to a state charter?

The new policy clarifies that the specific costs of the conversion must be disclosed to the members, including the costs of changing the credit union's name, examination and operating fees, attorney and consulting fees, tax liability, etc.

MEMBERS OF THE IMMEDIATE FAMILY OR HOUSEHOLD

76. How does the new manual define members of the immediate family or household?

Previously, NCUA allowed credit union boards wide latitude in defining who is eligible as an immediate family member. Now, NCUA has provided a definition that applies to all federal credit unions. No approval is necessary from NCUA to implement the immediate family member definition. Under the new policy, NCUA separately defines members of the immediate family and members of the household.

“Immediate family” is defined as a grandparent, parent, spouse, sibling, child, or grandchild. For the purposes of this definition, immediate family member includes adopted children, stepparents, stepchildren, and stepsiblings.

“Household” is defined as persons living in the same residence and who maintain a single economic unit. This includes any person who is a permanent member of and participates in the maintenance of the household, including family members, domestic partners, foster children, and legal guardian relationships. While roommates in a single residence would meet this definition, a fraternity, sorority, or nursing home is excluded from this definition.

77. Can a credit union adopt a more restrictive definition?

Yes, by board resolution, a credit union may adopt a more restrictive definition. NCUA need not review or formally approve the change.

APPLICATION FOR A FIELD OF MEMBERSHIP AMENDMENT

78. How does a credit union apply for a field of membership amendment?

Credit unions must follow the procedures outlined in Chapter 2 of the manual.

79. Must a single common bond or multiple common bond credit union submit an Application for a Field of Membership Amendment (NCUA 4015) or can it simply provide the information in narrative form?

A single common bond or multiple common bond credit union **must** submit the NCUA Form 4015. Applications submitted without this form completed in its entirety may be returned. If the group to be added consists of 200 or fewer primary potential members, the credit union can submit the streamlined application form, NCUA 4015-EZ. This short form should expedite the amendment process for both the credit union and NCUA. Therefore, credit unions are encouraged to use it where applicable.

SERVING FOREIGN NATIONALS

80. Can a credit union serve foreign nationals within its field of membership?

Yes, if the credit union has the ability, resources, and management expertise to serve such persons wherever they reside. However, before providing such service, the credit union must develop a business plan and obtain approval from the NCUA regional director. The business plan should explain in detail the loan

products to be offered and incorporate loan and collection policies governing the administration of the loan program.

81. Can a credit union establish an office outside the United States?

A credit union may only establish a service facility outside the United States and its territories if the service facility is located on a United States military base or U.S. embassy property.

ONCE A MEMBER, ALWAYS A MEMBER

82. How does the new policy address the “once a member, always a member” provision?

Previously, to utilize the “once a member, always a member” provision, a credit union had to adopt a board resolution which permitted individuals to retain their membership in the credit union after the individual left the field of membership. Now, a resolution is not needed; the “once a member, always a member” provision is statutorily authorized. Except for expulsion (as provided in Section 118 of the FCU Act), once a person becomes a member of a credit union, he or she may remain a member until the person chooses to withdraw from the membership of the credit union. While the credit union can restrict services to those members who leave the field of membership, it cannot terminate a member’s regular share account or restrict the member’s voting rights.