Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing amendments to its chartering and field of membership manual to update chartering policies and further streamline the select group application process. These proposed amendments result from NCUA's experience addressing field of membership issues and concerns that surfaced after the adoption of the current chartering and field of membership policies.

DATES: Comments must be postmarked or received by August 14, 2000.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-Mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, 4807 Spicewood Springs Road, Suite 5200, Austin, Texas 78759 or telephone (512) 231–7900; Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Lynn K. McLaughlin, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: In 1998, Congress updated the laws on field of membership with the passage of the Credit Union Membership Access Act (''CUMAA''). On August 31, 1998, the NCUA Board issued a proposed rule that revised and updated NCUA's chartering and field of membership policies. 62 FR 49164 (September 14, 1998). On December 17, 1998, the NCUA Board issued a final rule with an effective date of January 1, 1999. When the NCUA Board issued its final rule it instructed the Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99–1.

Shortly after the effective date of the rule, the American Bankers Association (American Bankers) sought a preliminary injunction from the United States District Court for the District of Columbia (the Court) against NCUA to enjoin the final rule. On March 10, 2000, the Court denied the American Bankers' motion. After the Court denied the American Bankers' motion for a preliminary injunction, the American Bankers along with the Independent Community Bankers of America (Community Bankers), filed an amended complaint consisting of seventeen counts. On March 30, 2000, the Court dismissed all of the challenges by the American Bankers and Community Bankers to IRPS 99–1.

Over the past eighteen months, NCUA's Field of Membership Taskforce has monitored and reviewed the implementation of IRPS 99–1 in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. In response to this continued oversight, the Field of Membership Taskforce provided a report to the Board this year. The findings and recommendations are in response to issues that either arose during the past eighteen months or were identified by the NCUA Board as issues that needed clarification.

A. Proposed Amendments

1. Occupational Common Bond

Independent Contractors. Chapter 2, Section II.A of the Chartering Manual states:

> So that NCUA may monitor any potential field of membership overlaps, each group to be served (*e.g.*, employees of subsidiaries, franchisees, and contractors) must be separately listed in Section 5 of the charter.

63 FR 73022 (December 30, 1998). It was the NCUA Board's intent that companies with a strong dependency relationship should be specifically named in the credit union's charter in order to monitor overlaps. However, in some cases, such as when the group possessing the dependency relationship is comprised of numerous sole proprietors or independent contractors, it would be burdensome to list each contractor, and any overlap would be immaterial. For example, there may be hundreds of independent drivers for any particular cab company. Therefore, the NCUA Board is proposing to amend the language in the section on occupational common bonds so that in situations where multiple contractors, who qualify based on a strong dependency relationship, are sole proprietors, the regional director may determine that more generalized wording is acceptable.

2. Associational Common Bond

Students Groups. Under IRPS 99–1, students are considered occupational groups. This permits single occupational common bond credit unions to serve persons employed or attending the same school. However, it does not allow single associational charters, such as faith-based groups that operate schools, to include students in their charters. While a single common bond church credit union can serve the church's employees, including faculty and staff, it cannot serve the students unless the credit union changes its charter type to multiple common bond. This policy restriction is confusing and causes undue problems for some credit unions. To remedy this situation, the NCUA Board believes that student groups should be considered as either associational or occupational, depending on the circumstances.

Given the history of student groups, there is a basis and precedent for re-defining this common bond to allow greater flexibility. For example, over the years, student groups have been treated differently.

As early as 1967, students could be included in the field of membership of a federal credit union chartered primarily to serve faculty and other employees of a college or university. That policy re-stated the earlier position that it did not appear economically advisable to charter a credit union with

a field of membership limited to students.

In IRPS 89–1 as well as IRPS 94–1, it was determined that student groups could constitute a valid associational common bond and could qualify for a charter. In IRPS 99–1, however, students again became part of an occupational common bond. This change addressed the problem of adding students to occupational school based credit unions, but it created an unanticipated problem with associational based faith credit unions. For example, many churches sponsor and operate schools. The resulting issue with this change was whether students at church schools could be added without changing the common bond type of the credit union (faith based credit unions have an associational common bond).

There is no question that the students of church schools share a common bond with the church, but by policy, the students could not be added without going through the expansion procedures and changing the nature of the credit union. The NCUA Board does not believe this is desired or equitable. The NCUA Board believes that students are a unique group that can be considered either occupational or associational depending on the circumstances. That is, a student group, by itself or when combined with school employees, can be or constitute part of an occupational common bond. When part of a church group, the student group can be treated as part of an associational common bond. Therefore the NCUA Board is proposing to amend Chapter 2, Section III A.1. of IRPS 99–1 to reflect this view.

While not requiring a policy change, several other issues involving students have arisen in the last eighteen months that require clarification. NCUA, by policy, will not consider a student group below the elementary level, in and of itself, as constituting a valid group (employees and students of an elementary school would still be a valid group). Additionally, students of martial arts, sports camps, and other similar social/recreational training programs do not constitute a valid associational group simply because they are enrolled in the program. It is the intent of IRPS 99–1 and these amendments that students must be tied to some academic endeavor or occupational based training program (*i.e.*, college, trade school). Finally, student associational groups must also provide evidence of a valid organization. This can be in the form of bylaws, charter or other equivalent documentation. It is important that the existence of a valid association be determined.

Tiered Voting. In determining whether a group qualifies as an associational group, one of the criteria NCUA considers is whether the members of the group have voting rights. While NCUA will evaluate the totality of circumstances in reaching its decision, a member's ability to vote is a significant factor, especially when differentiating between bona fide associations and client-customer relationships.

Questions have arisen whether this criterion requires each member of the group to vote directly for an official of the association. NCUA has found that some large associations have adopted voting procedures where members vote for delegates who, in turn, cast their votes for officials. This voting structure constructively meets the intent of the field of membership policy. Examples of this may include churches where the lay persons elect delegates who attend the regional or national meetings to elect the national officers and labor unions that may be similarly structured. Therefore, where such voting structures exist, the association will be considered to have met the voting requirement criterion.

Documentation Requirements

Generally, IRPS 99–1 requires that an association provide documentation that it is a valid association. In addressing this issue in IRPS 99–1, language was included that indicated that the best method to demonstrate an organization was a valid association was through a charter or bylaws, or other equivalent documentation. The NCUA Board has found that in some cases, particularly at the local level, some faith based associations may not possess bylaws or a charter. In those cases, it is not necessary to have a copy of a charter or bylaws, but it is necessary to be able to document in some way, *i.e.*, other equivalent documentation, that it is a valid association. For example, a church may not have bylaws or a charter, but it should be able to obtain some other documentation demonstrating it is a legally constituted church. Often, this can come from the presiding official of the church.

3. Multiple Common Bond Credit Unions

Expedited Process for Groups of 500 or Less

In the chartering process, as well as the addition of select groups to a multiple common bond credit union, economic advisability is critically important. NCUA has long taken the position that no charter should be granted unless a determination is made that the credit union ''will be viable and that it will provide needed services to its members,'' and will have a ''reasonable opportunity to succeed.'' To ignore these basic, yet very important, chartering requirements would create unnecessary and undue risks to the National Credit Union Share Insurance Fund (NCUSIF). Equally important is the fact that members of a credit union that has no reasonable chance of success are needlessly harmed. Therefore, it is the responsibility of NCUA to assure that if a credit union is chartered, it has, at a minimum, a reasonable opportunity to succeed in today's financial marketplace. This issue was thoroughly discussed in the preamble to IRPS 99–1.

The addition of groups to a multiple common bond credit union also takes into consideration economic advisability, as well as other criteria. CUMAA requires that before the addition of any group is approved, the NCUA Board must determine, in writing, that:

(1) The applicant credit union has not engaged in any material unsafe or unsound practices within the preceding 1-year period;

(2) The applicant credit union is adequately capitalized (this definition is legally different from the definition in Prompt Corrective Action);

(3) The applicant credit union has the administrative capability to serve the proposed membership;

(4) The benefit to the members outweighs any potential harm the expansion may have on another credit union; and

(5) The applicant credit union has met such additional requirements as the Board may prescribe.

An administrative process must be established to address these issues, particularly since the statute requires that the determination must be in writing.

The economic advisability of a group forming a separate credit union is also an essential element of consideration before a group can be added to a multiple common bond credit union. The statute clearly sets forth this standard. It states:

> [T]he Board shall—(A) encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union. * * *

12 U.S.C.1759 (f)(1)(A). Consequently, NCUA must determine in writing not only that the five statutory criteria are

met, but it must also make the determination that the group is not economically advisable for the group to form a separate credit union. The burden, as it should be, is on NCUA to make this determination. This assessment is essentially the same assessment that NCUA would make if the group requested a separate charter, *i.e.,* does it have a reasonable chance of survival? That is, regardless of the size of the group, NCUA must determine if the group could stand on its own as a separate credit union. If the group could safely form its own credit union, then the statute requires that the group be encouraged to form its own credit union.

As set forth in the preamble to IRPS 99–1, it remains the intent of the Board that every group being added to a multiple common bond credit union should be analyzed to determine whether it has the capability and desire to support an independent operation. This requirement, however, must be balanced with operational feasibility. To overlook the complexities of providing financial services will only lead to future supervisory problems. The regulatory approach, therefore, should consider known economic factors and the likelihood of success in establishing and managing a new credit union in today's marketplace. To restate what was discussed in IRPS 99–1, it is the intent that a group desiring a separate charter should have every reasonable opportunity to form a new credit union, but this desire must be balanced against known economic hurdles and start-up operational requirements. Similarly, a larger group lacking the interest to charter and operate a separate credit union should be closely analyzed since desire and initiative are critical to its overall success.

In addressing these requirements in relation to the historical data related to chartering new credit unions, the NCUA Board established an expedited process in IRPS 99–1 for groups of 200 or less primary potential members. Although a written determination regarding the various statutory criteria is still required, the expedited process allowed for the streamlined processing of groups of 200 or less since the Board found that a group of 200 or less, in almost all cases, would not be economically advisable. Thus, this past year, applicant credit unions applying to add a group of 200 or less simply had to complete the Form 4015–EZ. Additionally, no overlap analysis was required for these small groups.

A review of the empirical data of the last eighteen months has convinced the NCUA Board that the expedited processing number should be raised. The data indicates that a substantial majority of the multiple group expansions approved, 91.3 percent, were groups of 200 or less. Further, 96.7 percent of the approved expansions constituted groups of 500 or less. Overall, only 2 percent of all applications for multiple group expansions were denied. In every case involving a group of 500 or less, NCUA found that the group could not reasonably establish an economically viable stand-alone credit union. In fact, the smallest federal credit union chartered in 1999 had a primary potential membership of 2,000. The smallest state credit union chartered in 1999 had a primary potential membership of 1,651.

The NCUA Board believes that based on the historical experience of 1999 and early 2000, plus other chartering data since 1990, that the expedited processing number for adding groups should be raised to 500.[1] In conjunction with this proposal, the NCUA Board is also proposing that the overlap analysis required of groups of 200 or more should be raised to 500.

Adequate Capitalization for Multiple Common Bond Credit Union Expansions

In the preamble to the proposed rule and the preamble to IRPS 99–1 the NCUA Board addressed the issue of defining the statutory term ''adequate capitalization'' for the addition of select groups to multiple common bond credit unions. It was noted in the more extended discussion in the preamble to the final rule that a reason for the policy change in 1982 allowing select group expansions was to assist credit unions in diversifying their fields of membership for safety and soundness reasons. Since that rationale is also applicable today, the NCUA Board specifically included in the final rule for single common bond and community credit unions the possibility that an expansion could be approved notwithstanding the credit union's financial or operational problems. One of the statutory requirements for the addition of select groups for a multiple common bond credit union, however, is that the credit union be adequately capitalized. However, adequate capitalization was not defined by the statute. Consequently, the Board provided its rationale in the preamble to IRPS 99–1 why 6 percent capitalization for a credit union in existence more than 10 years should be considered adequate for field of membership purposes. In particular, the Board stated:

> [A] 6 percent capitalization for field of membership expansions for multiple common bond credit unions chartered more than 10 years is reasonable and establishes a standard that, while not meeting the average capitalization level of federal credit unions, is indicative of a credit union that generally is managed in a safe and sound manner.

63 FR 72009 (December 30, 1998). In addition to the exception for credit unions chartered less than 10 years, low-income credit unions were also provided flexibility in meeting the capitalization requirement. Low-income credit unions or credit unions chartered less than ten years will be considered adequately capitalized for field of membership purposes provided they are making reasonable progress toward meeting the 6 percent net worth requirement.

In further addressing this issue, the Board stated that:

> [A] restoration capitalization plan, which was a basis for the 1982 policy and which remains operationally desirable, is not consistent with the statutory requirement in CUMAA that, before an expansion can be granted, the credit union must be adequately capitalized. A capitalization restoration plan, while operationally desirable, could essentially render the statutory requirement that the credit union be adequately capitalized meaningless. A ten-year window to obtain a capitalization level of 6 percent is reasonable, obtainable and consistent with prudent safety and soundness goals.

63 FR 72009 (December 30, 1998). The NCUA Board continues to support this view. That is, under normal circumstances, credit unions should be able to achieve a 6 percent capitalization level within 10 years. However, the NCUA Board also believes that for reasons totally outside the control of the credit union, such as sponsor problems, temporary asset fluctuations or economic downturns, a credit union may temporarily drop below or not be able to achieve or sustain a 6 percent capitalization level. These situations need to be addressed in view of the statutory adequate capitalization requirement. Since the addition of select groups is one way to reverse adverse economic trends, the NCUA Board believes that the exception provided newly chartered or low-income designated credit unions should also apply if the credit union is otherwise operationally sound and has the administrative capability to add and

[1] Since 1990, 5 credit unions with 500 or less primary potential members were chartered. Of those 5, 3 remain active. Since 1990, 11 credit unions with primary potential members of 501–1000 were chartered. Of those 11, 8 remain active. Of the 119 federal and state credit unions chartered since 1990, 16 had primary potential members of 1000 or less.

serve new groups effectively. Accordingly, the regional director should be given the latitude to make a determination that any credit union with less than 6 percent net worth is adequately capitalized for field of membership purposes if the credit union is making reasonable progress toward meeting the requirement. An element of consideration is whether the addition of a select group would facilitate improvement in the capitalization level. For example, if a reasonable plan is in place, and the addition of a select group would not adversely affect the credit union's capitalization goal, then the lower than 6 percent capital level should not be a reason for denying the addition of the group. Therefore, the NCUA Board is proposing to amend Chapter 2, Section IV.B.2 of the Chartering Manual to provide the regional director with this discretionary authority.

Reasonable Proximity for Select Group Expansions

In addressing the issue of reasonable proximity and the addition of a select group, the question was raised how NCUA would respond if a select group was located a considerable distance from the credit union, but no other credit unions are within closer proximity that could or are willing to serve the group. In this situation, the nonavailability of other credit unions is a factor that should be considered in determining whether the group is within reasonable proximity. This interpretation does not require a change in the chartering manual.

A second issue was also raised regarding the policies affecting the addition of groups that are within reasonable proximity of a service facility (this term includes a service center, branch or shared branch or any offsite credit union location that meets the definition of a service facility). This issue is particularly important in view of the networking system of state and national shared service centers, most of which technically meet NCUA's service facility definition. These shared service centers permit participation by credit unions without requiring, in many cases, an ownership interest. The identical or near identical nature of the shared service centers in the state and national networking system with the definition of a service facility in IRPS 99–1 has created confusion and, therefore, must be clarified.

Although IRPS 99–1 states that a credit union can expand around a shared service facility, it was never the intent that a credit union that was simply part of a service center networking system should be permitted to add groups around any of the numerous shared service center locations without an ownership interest. Consequently, the current policy guidance has been that expansions around shared service facilities would not be permitted unless the shared service facility was locally owned by a credit union. The rationale for this position is statutory.

CUMAA requires that NCUA shall first encourage the formation of separately chartered credit unions. If the formation of a separate credit union is not practicable or consistent with the standards set forth in the statute, then a select group can be included in the ''field of membership of a credit union that is within reasonable proximity to the location of the group.'' 12 USC 1759 (f)(1)(B). The statute then delineates a number of approval criteria that must be satisfied before a select group can be added.

In defining reasonable proximity, the Board stated that the group to be added must be within the ''service area'' of a ''service facility'' of the credit union. Service facility was defined to mean a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

While not entirely clear in the preamble to IRPS 99–1 or in the policy itself, it was the Board's intent that expansions would be limited to select groups that were within reasonable proximity to a credit union, as it was ultimately defined.

The state and national networking service center system, if used to allow the addition of groups, generally would not conform to the statutory requirements. For example, a credit union in Texas could add groups within reasonable proximity to a service center in Georgia or the hundreds of other service centers located in the United States, even though there was no ownership interest in the service centers, by virtue of its membership or participation in the service center network.

The issue is, can credit unions that are linked to service centers through a state or national network use that linkage, without ownership, to expand their fields of membership by adding select groups located within the service area of those service centers? It is the Board's belief that to allow a credit union to expand around any service center not local to or not having an ownership interest by that credit union would be inconsistent with the statute. However, it is the Board's view that the current policy is overly restrictive and that the threshold for allowing the addition of groups around a shared service facility should be modified.

The Board is amending Chapter 2, Section 4.A.1 of the Chartering Manual to permit the addition of groups around shared service facilities if the credit union either (1) owns directly or through a CUSO or similar organization, at least a 5 percent interest in the service facility or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

Multiple Common Bond Documentation Requirements

During 1999, there were a number of questions and issues related to the documentation requirements that must be satisfied to add select groups. The most questioned requirement related to what information the groups needed to provide relative to why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. While this information is found on Form 4015, IRPS 99–1 did not specifically delineate that the letter from the group must include information on its ability to form a separate credit union. To clarify this issue, the NCUA Board is proposing additional clarifying language be added to Chapter II, IV.B.3 as follows:

Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. Some of the areas the credit union may consider include:

- 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.

A credit union need not address every item on this list, simply those issues that are relevant to its particular request. As stated in the proposed language, a credit union is responsible for obtaining from groups over 500 primary potential members information regarding the factors NCUA will evaluate to determine whether a group can form its own credit union. NCUA reserves the right to contact the groups directly to discuss economic advisability criteria. Direct contact often expedites the process.

Voluntary Mergers

Consistent with current policy, two single common bond credit unions that share the same common bond (same field of membership) can voluntarily merge. For example, corporation A is nationally based. As a result of being nationally based, it has several credit unions that are not geographically restricted serving its employees. These single common bond credit unions share the same common bond and field of membership. Accordingly, by policy, no analysis of the groups are required to determine if they can stand on their own and the credit unions can voluntarily merge.

Similarly, if corporation A is served by a single common bond credit union and corporation B is served by a single common bond credit union, the two single common bond credit unions can merge if one corporation is acquired by the other. In other words, if corporation A purchases corporation B, then the two single common bond credit unions share the same common bond and there is no restriction on the two credit unions voluntarily merging. Again, no analysis is required, other than to determine they share the same common bond.

The two situations described above have not presented a problem this past year. However, if in the examples provided above, one of the credit unions is a healthy multiple common bond credit union, the result can be entirely different. In some cases this places an undue burden on the credit unions and often presents potential long term supervisory concerns. For example, if in the second example the credit union serving corporation B is a multiple common bond credit union, and corporation A purchases corporation B, under current policy, if the primary field of membership in corporation B's credit union has more than 3,000 primary potential members and every other group is less than 3,000 primary potential members, then NCUA still must analyze each group of 3,000 or more potential members to determine whether the formation of a separate credit union is practical. This is a harsh result when both credit unions essentially share the same common bond.

The NCUA Board believes that if there is an intervening event, such as a corporate acquisition or restructuring, and the two credit unions have a substantial overlap of their fields of membership (in other words, the field of membership of both credit unions that results from the restructuring corporations), then the two credit unions should be allowed to voluntarily merge without analyzing that group's ability to form its own credit union.

Using the examples above, if corporation A, served by a single common bond credit union, purchases corporation B, served by a multiple common bond credit union, then employees of B can join credit union A if credit union A's field of membership already includes all employees of A. That is, corporation B employees are now corporation A employees and therefore are a part of credit union A's common bond. Further, even if credit union A were a multiple common bond credit union, policy would permit the addition of the employees of corporation B. It would be treated as an expansion, but processed as a housekeeping amendment. The only restriction is that credit union A cannot serve the other groups in credit union B without satisfying the select group expansion requirements. In many cases, the end result is almost a total overlap of the field of membership of both credit unions.

The almost total overlap is critical to this issue since, in reality, no new select groups that do not already have credit union service are being added. The criteria for multiple common bond expansions includes the statutory guidance that the NCUA Board must encourage the formation of separately chartered credit unions. This language assumes that the group does not already have credit union service available to it, and before adding the select group to another credit union, the agency must first encourage, if reasonable, a separate charter, and then make the determination whether the group can stand on its own as a separate entity. This analysis is relevant to new unaffiliated groups, not groups already included in the field of membership.

In addressing this issue, some credit unions decide to voluntarily merge since they essentially share the same field of membership. In other words, what was once two separate groups being served by two separate credit unions is now one group being served by two separate credit unions. In this situation, particularly if they apply to voluntarily merge, there is no interest in sustaining two credit unions. Consequently, merger is often the best alternative.

If the remaining groups are less than 3,000 primary potential members, they are incidental to the field of membership and should not be the basis for jeopardizing what otherwise is a sound business decision in the interests of the members and the NCUSIF.

Finally, in some instances, the acquiring corporation wants only one credit union serving its employees—not two. How does a healthy credit union dissolve? Obviously, it can voluntarily liquidate, but that is hardly the logical alternative. Allowing a merger in this situation is appropriate and supportable.

Therefore, in light of the reasons stated above, the NCUA Board is proposing a modification to its merger policy to permit the voluntary merger of credit unions with fields of membership that substantially overlap. That is, if the two credit unions share the same primary field of membership, and each of the remaining select groups have primary potential members less than 3,000, then the remaining groups will be considered incidental and the credit unions should be allowed to merge. However, non-primary groups greater than 3,000 would not be considered incidental.

Supervisory Mergers

When safety and soundness concerns are present, NCUA may approve the merger of any federally insured credit union. The NCUA Board is proposing to amend Chapter II, Section IV.D.2 of the Chartering Manual to clarify that abandonment by 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 are examples that may constitute grounds for merging a credit union due to supervisory concerns. This amendment is consistent with the guidance provided this past year in evaluating whether a merger was voluntary or supervisory.

Common Bond Charter Conversions

Chapter 2 Section IV.F of the Chartering Manual states that:

> Once a multiple common bond credit union converts to a single occupational or assocational credit union, it cannot convert back to a multiple common bond credit union for a period of three years, unless there are safety and soundness concerns.

Although this section is rather straightforward it can have unintended consequences. This past year a multiple common bond credit union divested itself of its select groups so that it could expand its primary potential membership strictly in conformance with single common bond policies. Shortly after converting to a single common bond, the sponsor restructured and sold what had been a major part of the potential single common bond. While the credit union can continue to serve the members of record from this group, it cannot take in new members from the group without converting back to a multiple common bond. Present field of membership policy does not allow for this unless there are safety and soundness concerns.

As has been previously noted, corporate reorganizations and restructuring have increased dramatically this past year, and it is expected that the pace of last year will continue. This type of problem was not anticipated. The intent of the restrictive language in current policy is to prevent credit unions from circumventing the statute by dropping its select groups, becoming a single common bond credit union and adding other single common bond groups (a single common bond credit union can add groups within its common bond without regard to location or size), and then converting back by adding new groups or the groups it dropped when it became a single common bond credit union.

In the situation described above, circumstances beyond the credit union's control entirely altered the primary reason the credit union converted to a single common bond credit union. To eliminate this deleterious result from unexpected corporate reorganizations/restructuring, the NCUA Board is proposing to permit a credit union to continue to serve any group included in or added to its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion, even if the group is later sold, spun-off or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group, then it must convert back to a multiple common bond credit union on the third anniversary of the date of conversion. During this three-year period, it will continue to be treated as a single common bond credit union.

Conversions of Multiple Common Bond Credit Unions

The NCUA Board is proposing that Chapter IV, Section II. be amended to clarify that a state chartered multiple common bond credit union that converts to a federal charter may retain in its field of membership any group that it was serving at the time of conversion. Any subsequent additions or amendments to the field of membership must comply with federal field of membership policies. Additionally, the NCUA Board is clarifying that if any state chartered credit union that was considered under state law to be a single common bond credit union, but under federal rules would be classified a multiple common bond credit union, converts to a federal charter, the charter type must be changed to reflect federal policy.

The NCUA Board is also proposing an amendment to Chapter IV, Section III.A of the Chartering Manual to clarify that a federal credit union converting to state charter remains responsible for the operating fee for the year in which it converts. Currently, this fee is not pro rated.

4. Corporate Restructuring for Occupational Common Bond Credit Unions and Multiple Common Bond Credit Unions

This past year, the most challenging and complex field of membership issues involved the loss or dilution of a field of membership as a result of corporate reorganization or restructuring. This issue was addressed in IRPS 99–1, however, the current policy does not completely set forth the resolution of various, and sometime numerous, consequences of a corporate restructuring/reorganization, particularly when the credit unions involved are reluctant, and in some cases refuse, to mutually address the problem.

Corporate restructuring, under previous field of membership policies, could be more easily resolved since those policies allowed greater flexibility when a credit union added a new group, or continued service to a group that no longer was in its field of membership.

CUMAA, however, placed new restrictions on the addition of new groups relative to size and reasonable proximity. What was previously a relatively simple process became more problematic because of the requirement to determine if the change could be handled as a housekeeping amendment, or whether it required the credit union to apply for an expansion. If it was considered an expansion, then all the requirements relative to adding a new group applied. To illustrate this problem, consider the following example:

> Credit union A serves occupational group A and credit union B serves occupational group B. Occupational group A buys occupational group B. Can credit union A now serve occupational group B? What happens to credit union B? Can it continue to serve its old field of membership, or has it lost its field of membership and now must convert to another type of credit union or voluntarily liquidate or merge? If credit union B continues to operate, can it also serve occupational group A? What happens if in the acquisition both groups are totally integrated and they are no longer separately identifiable? What happens if it is a merger and the credit unions cannot reasonably determine if the new field of membership can easily be divided?

Often, one of the credit unions is significantly smaller than the other. In this instance, should credit union A, if it is the smaller of the two, receive a field of membership windfall and credit union B be left without a viable field of membership. In other words, should either credit union A or B be advantaged or adversely impacted by a corporate restructuring/reorganization over which they have no control. Lastly, what happens if the new corporation chooses to only allow one credit union to serve its employees? What is NCUA's responsibility in trying to determine who should serve whom?

This example, while relatively simple factually, is occurring with greater frequency, and there are no simple answers. It is further complicated if one of the credit unions is a multiple common bond charter. In fact, experience has demonstrated that the variations on this example are endless. Most often, the corporate change results in a significant hardship for one of the credit unions. It is anticipated that the number of corporate reorganizations and acquisitions will continue to climb thus impacting a larger number of credit unions.

Current written policy is not clear on how to resolve these type of issues. Further, in the development of current policy, all the ramifications of the problems resulting from corporate restructuring and acquisitions were not fully considered. Consequently, after considerable review of this issue, the NCUA Board believes that the current policy must be clarified in order to provide credit unions affected by this

common occurrence, and over which they have no control, more equitable treatment. The NCUA Board does not believe that Congress intended that credit unions should be forced to liquidate because of a corporate reorganization/restructuring. Consequently, the NCUA Board is of the view that in a corporate restructuring situation, greater flexibility must be allowed so that both credit unions can serve the same field of membership.

For single common bond credit unions, the NCUA Board is proposing an amendment to clarify actual practice that if the group comprising the single common bond of a credit union merges with, or is acquired by, another group, the credit unions originally serving both groups can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment. In other words, it will be permissible for both credit unions to serve the same single common bond group. However, the credit unions may agree to divide the field of membership in some way. To clarify this practice, additional language is proposed to state that 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.

For multiple common bond credit unions, the NCUA Board is proposing a clarifying amendment to reflect that when two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, then 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 by a housekeeping amendment to its charter. As with single common bond credit unions, both credit unions will be allowed to serve the new group resulting from the merger, buyout or acquisition, and the credit unions can mutually divide the new field of membership. If they do not agree to a division of the field of membership, then a total overlap will be permitted. The NCUA Board believes this to be in the best interests of the credit unions and the members and the safety and soundness concerns that evolve when a credit union loses its field of membership.

Finally, it is important to note that the NCUA Board does not believe this policy clarification is in violation of CUMAA or its intent since new unaffiliated groups are not being added. Rather, the same potential membership, in terms of numbers, have the ability to choose to join one or both credit unions.

These changes do no alter the current policy that a multiple common bond credit union can, by a housekeeping amendment, continue to maintain in its field of membership groups that have been sold, spun-off, or merged.

5. Commmunity Charters

Chapter 2, Section V.A.2 of the Chartering Manual states that an ''ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements.'' Chapter 2, Section V.A.2 of the Chartering Manual further states that:

> In most cases, the ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.,* a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.,* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these this criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

The NCUA Board included this statement in the final rule to define those situations based on historical data that generally meet the community requirements. As a consequence of the historical data, which is further supported by NCUA's experience in 1999 for presumptive community charters, NCUA only requires a letter describing how the particular area meets the standards for community interaction or common interests. This was not intended to suggest that geographical areas with populations larger than 300,000, for example, would not qualify for a community charter. There is no negative presumption for larger geographical areas. Simply, more detailed documentation will be necessary to support that the proposed area is a well-defined community. In fact, the NCUA Board has approved six community charters with a population in excess of 300,000 under IRPS 99–1.

Community Action Plan (CAP)

Currently, credit unions are required to submit both a business and marketing plan with any proposed, converting or expanding community charter application. A business and marketing plan is also critical in evaluating the application for a newly chartered community credit union. It is anticipated that the marketing plan for either an expansion, conversion or chartering of a community charter will address how the credit union intends to serve the entire community.

However, very often, this aspect of the marketing plan may be very general and not specific to low-income or underserved areas.

The development of the marketing plan is solely within the purview of the credit union and is important in that it provides the strategy to achieve the objectives set forth in the business plan. NCUA has not previously required that the marketing plan be specific as to any one issue, but IRPS 99–1 does require that it address how the entire community will be served.

One of the goals of the Federal Credit Union Act is to make credit available to people of small means. Therefore, the NCUA Board is proposing that the chartering manual be revised to require that any type of application related to expanding, converting or chartering a community credit union include not only the required business and marketing plan, but also a community action plan (CAP) that will be periodically updated by the board of directors of the credit union and reviewed periodically by NCUA. There is no evidence to support that community credit unions have failed to fulfill their responsibility to serve the entire community. However, since service to the entire community is an essential consideration for community charters, it is appropriate that NCUA set forth its regulatory expectations in this regard. Existing community credit unions will also be expected to review their business and marketing plans and develop a CAP, which if approved in a final rule, should be in place no later than December 31, 2001.

The business plan would continue to address the documentation requirements set forth in Chapter 1 of the Chartering and Field of Membership Manual; however, the CAP would supplement the marketing plan by specifically addressing the credit union's plan to market its services to the entire community, including underserved or low-income areas (if applicable). This may include current or future delivery systems, such as ATMs, 24 hour voice response system, internet web sites, current or future customized programs to assist community residents such as credit counseling and budgeting, and current or future service facility locations. An important component of CAP is that it will specifically focus on providing services to the entire community consistent with sound business principles, and in

particular less advantaged economic groups or groups with historically less access to financial services within its community field of membership.

Internal guidelines to examiners would require them to periodically review a community credit union's CAP and its overall effectiveness in meeting the goals outlined in the plan. In the event a community credit union failed to reasonably follow its CAP, the regional director would have discretion to pursue appropriate supervisory actions.

6. Underserved Areas

The addition of underserved areas, as defined in Chapter 3 of IRPS 99–1, to the field of memberships of operating credit unions has been identified as a priority by the Board. Additionally, some credit unions have pointed out that the requirements for adding an underserved area are difficult to document. Consequently, the Board believes that the current policies on adding underserved areas should be modified in order to more easily achieve the statutory intent of providing service to the greatest number of people of small means.

Three criteria must be met before an underserved area can be added to any federal credit union's field of membership. First, the area must be a local community. Second, the area must also be classified as an investment area as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703 (16)) and meet any additional requirements the Board may impose (the Board has not imposed any additional requirements). Third, the credit union adding the underserved area must establish and maintain an office or facility in the local community, neighborhood, or rural district.

After reviewing the statutory intent of service to underserved areas and the overall goal of improving credit union service to these areas, the NCUA Board proposes to modify the current polices relating to each of the three criteria in order to encourage further development of credit union activities in underserved areas and thereby improve financial services to those most in need.

IRPS 99–1 articulates a presumption policy for communities within a single political jurisdiction if the population does not exceed 300,000, or, if within multiple contiguous political jurisdictions, the population does not exceed 200,000. Under IRPS 99–1, however, interaction or common interests still must be demonstrated. The NCUA Board believes an impediment to facilitating service to underserved areas is the current policy requiring the applicant credit union to establish that there is interaction or common interests in the underserved area.

In previous policies, the NCUA Board has determined that an area where a majority of residents meeting NCUA's definition of low-income could in and of itself be the basis for a common bond. Similarly, the NCUA Board believes that in certain cases, if an area otherwise meets the requirements of an underserved area, then additional documentation will not be necessary to establish that it is a local community where the residents have common interests or interact.

Accordingly, if the area meets the requirements for an investment area, and the size of the investment area, whether contained wholly or in part of a single political jurisdiction or multiple political jurisdictions, meets the presumptive criteria established in IRPS 99–1, then the credit union will not have to demonstrate common interests or interaction among the residents. Accordingly, Chapter III, Section III, should be amended to state that the ''well-defined local community, neighborhood, or rural district'' requirement will be met if:

(1) The underserved area to be served is in a recognized single political jurisdiction, *i.e.*, a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or

(2) The underserved area to be served is in multiple contiguous political jurisdictions, *i.e.,* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000.

However, should the underserved area exceed these limits, the credit union must document the area meets the local community criteria outlined in Chapter 2, Section V.A.2, Documentation Requirements of IRPS 99–1.

The statute further requires that the local community, neighborhood, or rural district must be an investment area that is underserved. The Community Development Banking and Financial Institutions Act of 1994 delineates seven criteria, any one of which is sufficient to establish an area as an investment area. In six of those criteria, there is the requirement that there must be ''significant unmet needs for loans or equity investments.'' The Board has the authority to determine what constitutes significant unmet needs for loans or equity investments. In this instance, if the proposed area meets the poverty, median family income, unemployment, distressed housing, or population loss criteria as set forth in the Community Development Banking and Financial Institutions Act of 1994, then the Board will presume that there are significant unmet needs for loans or equity investments.

Finally, the third potential problem area in providing service to an underserved area is the statutory requirement that the ''credit union establishes and maintains an office or facility in the local community, neighborhood, or rural district at which credit union services are available.'' NCUA has determined that this statutory test will be met if one of two requirements is met.

First, at the time the underserved area is added to the credit union's field of membership, a plan must be in place to establish and maintain an office or facility within two years. In addition to a permanent office or facility, this requirement may also be satisfied through periodic service to the underserved area through the use of a mobile office, an office open at select times each week, a service facility or shared branches or shared service facilities. A credit union that has multiple underserved areas in its field of membership must meet the statutory requirement for each underserved area unless the underserved areas are contiguous.

Second, if a credit union has a preexisting office within close proximity to the underserved area(s), then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

In addition to the amendments discussed above, the Board desires to provide incentives to further encourage the addition of underserved areas. In this regard, the NCUA Board is considering one or more incentives for credit unions adding underserved communities if the underserved community is a minimum population size. Comments are specifically requested on what the population size of the underserved area should be in order for the credit union to qualify for one or more of the following incentives:

- The asset base used to compute the credit union's operating fee will be frozen for a two-year period.

• The operating fee will be reduced by ten percent or more per year until the total reduction equals $20,000 over a maximum five-year period.

• The assets of the underserved area will not be included in the calculation of the credit union's operating fee for 5 years.

• Fixed assets in the underserved area will not be counted toward the fixed asset limitation of § 701.35 of NCUA's Rules and Regulations. In addition, the credit union would be exempt from the charitable donation regulation, § 701.25 and would be allowed to increase the dollar threshold from $100,000 to $250,000 when an appraisal is required, § 722.3(a)(1).

It is the Board's intent that the final amendments include some form of incentives. The NCUA Board is requesting comments on these proposed incentives and any others that would increase service to underserved areas.

7. Miscellaneous Issues

Single Common Bond Status

There has been a lingering question relative to the status of single common bond credit unions as of the date of enactment of CUMAA if the corporate sponsor subsequently reorganizes/restructures. For example, if corporation A is served by a single common bond credit union as of the date of enactment of CUMAA, but subsequent to the date of enactment corporation A restructures and spins off a division, can the single common bond credit union continue to serve the spun off division (no longer a part of corporation A) without converting to a multiple common bond credit union?

The position consistently followed by NCUA was that the credit union would have to convert to a multiple common bond credit union in order to continue to serve the spun off group. This was consistent with the statute because members of the group could still be served, even though they may not have been members of the credit union at the time of CUMAA's enactment.

This position has created unnecessary hardships for several credit unions. As a result, the NCUA Board has revisited this issue and believes that the previous position should be modified. The rationale for this modification is two-fold. First, the statute states:

> (ii) a member of any group whose members constituted a portion of the membership of any Federal credit union as of that date of enactment shall continue to be eligible to become a member of that credit union, by virtue of membership in that group, after that date of enactment.

12 U.S.C 1759(c)(1)(A)(ii). Clearly, the credit union can continue to serve any member of the group that was part of the field of membership as of the date of enactment. Second, the successor language in CUMAA states:

> If the common bond of any group referred to in subparagraph (A) is defined by any particular organization or business entity, subparagraph (A) shall continue to apply with respect to any successor to the organization or entity.

12 U.S.C. 1759(c)(1)(B). In other words, if the group was included in the field of membership of a credit union, that group can remain in the field of membership regardless of a change in that group's corporate status. For example, name change, move to a different location, acquisition of new subsidiaries, *etc.*

The above statutory provisions make it clear that groups within a credit union's field of membership as of the date of enactment can continue to be served. The only question is, must the status of the credit union change in light of the statutory definition of the types of credit unions? Upon further review, the NCUA Board is modifying its position on this issue since no new non single common bond groups are being added. Therefore, the NCUA Board is classifying any credit union that was a single common bond credit union as of the date of enactment of the statute as a single common bond credit union provided it does not add any new groups to its field of membership after the date of enactment. That is, to remain a single common bond credit union, it can only serve those groups that constituted part of the single common bond at the time CUMAA was enacted.

Low-Income Communities Added Under IRPS 94–1

IRPS 94–1 permitted any credit union to include in its field of membership, without regard to location, communities and associational groups satisfying the low-income definition.[2] The purpose of this policy was to facilitate the making of credit union service available to persons in low-income communities. The only other requirement for the addition of a low-income community was that the area so designated in fact met community standards. Although the courts did not address this particular issue or overturn any polices related to service to low-income communities, CUMAA affirmatively provided authority for federal credit unions to add any person within a local community, neighborhood, or rural district if the local community, neighborhood or rural district is (1) an investment area that is underserved and (2) the credit union establishes and maintains an office or facility in the designated investment or underserved area. 12 U.S.C. 1759(c)(2).

There are seven tests for an underserved investment area, any one of which will satisfy the requirement. The authority granted in CUMAA for federal credit unions is a broader standard than the low-income requirement definition in IRPS 94–1 in that it encompasses a significantly larger low-income base. One of the tests for an underserved investment area is that 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; and the area has significant unmet needs for loans or equity investments.'' [3] In many instances, this one test can be less stringent than the previous requirement under IRPS 94–1.

As has been repeatedly noted and even referenced in CUMAA, credit unions have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means. This is reflected in the statutory authority to serve underserved investment areas. Throughout IRPS 99–1, the Board took note of this statutory mandate and adopted policies that encourage and promote credit union services to low-income groups and communities. This continues to be the NCUA Board's approach.

This discussion is necessary in light of the fact IRPS 99–1 does not directly address the status of low-income communities added under IRPS 94–1 since that term was essentially subsumed in the definition of an underserved area in IRPS 99–1. In other words, if the low-income community added under IRPS 94–1 meets the definition of an underserved investment area, and the credit union maintains an office in the low-income community, then it meets the requirements of IRPS 99–1.

The problem that has arisen relates to the continued service to the low-income community added under IRPS 94–1, which is no longer recognized under IRPS 99–1, if the credit union converts to a different charter type. [4] Current policy is that the grandfather provision no longer applies once the charter type

[2] Majority of the residents fall at or below 80 percent of the median household income of the nation or who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics.

[3] Chartering and Field of Membership Manual, Chapter III, Section III.

[4] If the credit union does not convert its charter type, it can continue to serve the low-income community added under IRPS 94–1 pursuant to the grandfather provision in CUMAA.

is converted. However, this policy, as it relates to low-income communities and underserved investment areas, is overly restrictive in view of the broad mandate of the statute to provide credit union services to people of modest means.

Based on the authority provided by CUMAA, the ability to serve people of modest means was expanded, not restricted. As previously mentioned, any number of other criteria were provided to broaden the ''modest means'' base. The primary limiting factor was the establishment and maintenance of an office in the area to be served. The NCUA Board has determined that any low-income community added under IRPS 94–1 will qualify as an underserved investment area. If, however, the credit union does not maintain an office in the low-income community, before it can expand that portion of its field of membership, it must come into compliance with IRPS 99–1.

Express Chartering

For many groups, obtaining NCUA's approval for a federal credit union charter is a time-consuming process that generally takes many months, sometimes as long as two years. It has been NCUA's experience that organizers have encountered difficulties in developing comprehensive business plans, operating policies and reasonable financial projections. To help achieve the agency's goals of encouraging the formation of credit unions and to make quality credit union service available to all eligible persons, the chartering procedures were reviewed by staff to determine if the application process could be modified to:

(1) Expedite the chartering process, and

(2) Achieve the agency's goal, as set forth in the Strategic Plan, of facilitating the formation of new credit unions.

After review of the current policy and procedures (IRPS 99–1), and considering the overall fail/success ratio of new charters, [5] the NCUA Board has determined that the chartering process can be streamlined without creating any undue risks to the National Credit Union Share Insurance Fund provided reasonable safeguards are implemented. To accomplish this goal, Express Chartering Procedures (ECP) are being implemented. To implement ECP, it is not necessary to amend IRPS 99–1. As faster approval of charter applications will result from standardized policies and business plans, and documentation of member and sponsor support. While the level of service of a new charter will initially be limited under ECP, credit union officials can enhance business plans and policies to increase services as they gain experience operating the credit union. Furthermore, with the addition of Economic Development Specialists in each region, more direct assistance, in conjunction with other organizations, can be provided to newly chartered credit unions. This assistance should provide increased opportunities to expand credit unions services in newly chartered credit unions.

In order to charter a federal credit union, a group must possess:

(1) An appropriate common bond or be a well-defined local community, neighborhood, or rural district;

(2) The subscribers must be of good character and fit to represent the credit union; and

(3) The establishment of the credit union must be economically advisable.

Each of these legal requirements were examined by NCUA to determine where changes could be made to expedite the chartering process. The NCUA Board's analysis of each requirement is addressed below:

Common Bond/Community

The inability of the charter applicant to establish the existence of an acceptable common bond type or community often contributes to the length of time it takes to process a new charter application. This basic requirement in the chartering process is statutory and must be satisfied. For single and multiple common bond credit unions, the existence of an association or employer generally satisfies the field of membership requirement, and, therefore, is not problematic. Conversely, a community charter applicant is more likely to encounter delay in its effort to establish that the proposed geographic boundaries constitute a ''local community.'' With the implementation of IRPS 99–1, and its streamlined procedures for certain communities, it is believed that this particular problem has been adequately addressed; therefore, the NCUA Board is not making any changes to this requirement.

Fitness of Management and Officials

In order to determine management's fitness to serve, NCUA performs both background criminal and credit checks on the proposed credit union's prospective officials and subscribers. (12 U.S.C. 1790a and 12 CFR 701.14) It often takes up to two months before receiving the results of background criminal investigations. However, rarely is adverse information uncovered during this process. Furthermore, the regions can and will approve a charter subject to receipt of the background review information. If adverse information is uncovered, the officials are charged with finding a suitable replacement. If the charter has already been granted, it is not suspended or canceled.

In some cases, the applicant group will be required to replace one or more of the proposed officials because of adverse credit checks. This also can result in a processing delay, but, generally, the delay is not extended. Additionally, and most importantly, due to safety and soundness concerns, it is important that credit checks be performed.

Because of the importance of background checks and NCUA's overall statutory responsibility to ensure the fitness of officials, the NCUA Board is not making any changes to this requirement.

Economic Advisability

To determine whether a proposed credit union would be economically viable, the group must submit a detailed business plan, as outlined in IRPS 99–1. The plan must contain a number of elements, including evidence of member support, proposed policies, evidence of subsidies, and pro forma financial projections.

Most often, delays in chartering a new credit union result from deficiencies in the group's business plan. For example, projections may not be reasonable, or policies may be incomplete or unacceptable. For new subscribers this is a particularly burdensome process and often requires the assistance of consultants and/or NCUA staff. It is also the one area that procedural modifications can be made without undermining the overall goal of obtaining an acceptable business plan.

It is during the development of the business plan that many groups decide that they do not have the expertise to run a credit union. In other words, the development of a business plan acts as a check and balance for those who mistakenly believe that chartering and running a credit union is an easy task. This accounts for the low percentage of groups that actually complete the chartering process. Although this has some safety and soundness benefits, the NCUA Board believes that if procedures can be put in place that allow applicant groups to maintain their initial momentum, more credit unions will be chartered and the entire process of developing a meaningful business plan will be better understood and

[5] Between 1990–1999, 119 credit unions were chartered. Of those chartered, 95 remain active for an overall 80% active status.

appreciated. Accordingly, the NCUA Board believes that those requirements relating to the development of a business plan can be modified to allow for expeditious charter approval, but restrict services offered until the credit union completes a more thorough business plan. The more thorough business plan is now required before the charter can be approved.

Express Chartering Program

The NCUA Board has given the Office of Examination and Insurance the responsibility to implement ECP. The ECP procedures will utilize standardized forms, NCUA on-site assistance, and certain restrictions on the initial services that may be offered. The ECP will be reviewed on an annual basis, by the Office of Examination and Insurance, to determine whether it is achieving its intended purpose without creating additional risks to the National Credit Unions Share Insurance Fund.

The ECP will use, to the greatest extent possible, standardized forms to facilitate the issuance of a charter early during the chartering process. They include:

- Standard business plan for limited services;
- Standard member survey format—this will include all applicable data needed to analyze the group's initial financial projections (initial pledge, systematic savings, *etc.*);
- Standard policies (shares, lending, investments, *etc.*); and
- Standard forms for sponsor support, grants, and nonmember deposits (where applicable). Often, letters of support are inconclusive or the terms are unclear. Standard forms should help to eliminate this problem.

Initially, credit unions using ECP will only be able to offer regular shares and signature loans not exceeding predetermined amounts. This will enable the officials to familiarize themselves with basic credit union operations and cash management skills. The Letter of Understanding and Agreement (LUA) that always accompanies a new charter will include this restriction. An applicant credit union can elect not to use ECP.

Once a credit union demonstrates it can manage these limited responsibilities, the officials can submit a new credit union prepared business plan to expand services (*e.g.*, share drafts, credit cards, *etc.*). This further refinement of the business plan can be accomplished in stages with increased responsibilities and services offered commensurate with the approved business plan.

The advantage of the early ECP is that once the credit union is chartered, some services can be offered, and the officials will gain experience and knowledge in the operation of a credit union as they prepare a more detailed business plan. It is also believed that the importance of a business plan will be better appreciated if the officials are actually engaged in operating the credit union.

While NCUA's resources are limited, judicious use of NCUA staff to work with qualifying groups would be beneficial. The ECP will make use of the regional EDSs to guide the group through the application process. Once the group is chartered, the EDS and examiner will work with the credit union, as they do now.

Internet Expansion Requests

The NCUA Board has given the Field of Membership Taskforce the oversight responsibility for the development of an Internet select group expansion process. This process would allow credit unions to submit requests for occupational groups of 500 or less online with an expedited approval by NCUA. When these proposed amendments are finalized the Board will provide more details.

8. Technical Amendment on the Title of the Section Regarding Immediate Family Members

The Board is proposing to change the titles of Chapter 2, Section II.H, Chapter II, Section III.H. and Chapter II, Section IV. H. to ''Other Person's Eligible for Credit Union Membership.'' This proposed technical amendment is appropriate to accurately conform the title to the policy contained in that section.

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the proposed community action plan requirements in IRPS 00–1 are covered under the Paperwork Reduction Act. NCUA is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review.

The proposed amendment would require community federal credit unions to develop a community action plan to serve their members, including low-income members and low-income areas. The NCUA Board estimates that it will take an average of two hours for a federal credit union to comply with this community action plan requirement. The NCUA Board also estimates that 625 credit unions will have to develop this plan so the cumulative total annual paperwork burden is estimated to be approximately 1250 hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements is necessary; (2) the accuracy of NCUA's estimate of the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements. Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, D.C. 20503; Attention: Alex T. Hunt, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. These proposed amendments make no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

C. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and record keeping requirements.

By the National Credit Union Administration Board on June 6, 2000.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 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 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 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 are set forth in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–1. Copies may be obtained by contacting NCUA at the address found in 792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 99–1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

3. In IRPS 99–1, Chapter 2, Section II.A is revised to read as follows:

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 four ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an 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; or
- Employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, III.A.1).

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 will be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or the subsidiaries listed below;
- 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.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (*e.g.*, employees of subsidiaries, franchisees, and contractors) must be separately listed in Section 5 of the charter. However, in situations where multiple contractors, who qualify based on a strong dependency relationship, are sole proprietors, the regional director may determine that more generalized wording is acceptable (*e.g.*, ''non-incorporated owner-operators who work regularly under contract to AJM Industries, Inc. in Glenville, New York'').

The corporate 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 a single occupational common bond 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); or
- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor);
- Persons employed or working in Chicago, Illinois. (no occupational common bond);
- Employees of all colleges and universities in the State of Texas. (not a single occupational common bond); or
- Employees of Timbrook School District and Swanbrook School District, in Burns, Georgia. (not a single occupational common bond).

4. In IRPS 99–1, Chapter 2, Section III.A.1 is revised to read as follows:

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. 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 will include a definition of the group that may be served based on the effective date of the association's charter, bylaws, and any other equivalent documentation. If the associational charter crosses NCUA regional boundaries, each of the affected regional directors must be consulted prior to NCUA action on the charter.

Qualifying associational groups must hold meetings open to all members, must sponsor other activities which demonstrate 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. Usually, this will be found in the association's charter and bylaws.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, such as:

• 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;
• 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. Individuals or honorary members who only make donations to the association are not eligible to join the credit union. Other classes of membership that do not meet to accomplish the goals of the association would not qualify.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups constitute associational common bonds and may qualify for a federal credit union charter.

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 (see Charter 2, II.A).

Homeowner associations, tenant groups, co-ops, consumer groups, and other groups of persons having an ''interest in'' a particular cause and certain consumer cooperatives may also qualify as an association.

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.

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.

5. In IRPS 99–1, Chapter 2, Section II.B.4 is revised to read as follows:

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015) to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership;
—Whether the group presently has other credit union service available; and
—The number of persons currently included within the group to be added and their locations.

• 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 II.E of this Chapter.

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership; and
—The number of persons currently included within the group to be added and their locations.

6. In IRPS 99–1, Chapter 2, Section III.B.4 is revised to read as follows:

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015), to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's associational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership;
—Whether the group presently has other credit union service available; and
—The number of persons currently included within the group to be added and their locations.

• The most recent copy of the group's charter and bylaws or equivalent documentation.

• 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 III.E of this Chapter.

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added.

Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's associational common bond;
—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 most recent copy of the group's charter and bylaws or equivalent documentation.

7. In IRPS 99–1, Chapter 2, Section IV.B.3 is revised to read as follows:

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) to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—The group's occupational or associational common bond;
—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, and provide comments on as many of the following factors that are applicable:

• 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.

• 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).

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational or associational common bond;
—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).

8. In IRPS 99–1, Chapter 2, Section II.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single occupational group. 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. However, when two or more credit unions are attempting to serve the same occupational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the affected credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

• The group has 500 or less primary potential members or the overlap is otherwise incidental in nature—*i.e.*, the group of persons in question is so small as to have no material effect on the original credit union;

• The overlapped credit union does not object to the overlap; or

• 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.

In reviewing the overlap, the regional director will consider:

• The nature of the issue;

• Efforts made to resolve the matter;

• Financial effect on the overlapped credit union;

• The desires of the group(s);

• Whether the original credit union fails to provide requested service;

• The desire of the sponsor organization; and

• The best interests of the affected group and the credit union members involved.

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.

New charter applicants and every single occupational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

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

9. In IRPS 99–1, Chapter 2, Section II.E.1 is revised to read as follows:

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. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. 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.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

• Employees of Lucky Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

10. In IRPS 99–1, Chapter 2, Section III.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single associational group. 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. However, when two or more credit unions are attempting to serve the same associational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

• The group has 500 or less primary potential members or the overlap is otherwise incidental in nature—*i.e.,* the group of persons in question is so small as to have no material effect on the original credit union;

• The overlapped credit union does not object to the overlap;

• There is limited participation by members of the group in the original credit union after the expiration of a reasonable period of time; or

• The field of membership is broadly stated, such as a national association.

In reviewing the overlap, the regional director will consider:

• The nature of the issue;

• Efforts made to resolve the matter;

• Financial effect on the overlapped credit union;

• The desires of the group(s);

• Whether the original credit union fails to provide requested service;

• The desire of the sponsor organization; and

• The best interests of the affected group and the credit union members involved.

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.

New charter applicants and every single associational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

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

11. In IRPS 99–1, Chapter 2, Section III.E.2 is revised to read as follows:

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.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. 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.

12. In IRPS 99–1, Chapter 2, Section IV.E.2 is revised to read as follows:

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.

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 can be accomplished through a housekeeping amendment.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

• Employees of MHS Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

13. In IRPS 99–1, Chapter 2, Section IV.A.1 is revised to read as follows:

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 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. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch if the credit union either (1) owns directly or through a CUSO or similar organization at least a 5 percent interest in the service facility, 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 an ATM.

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.

14. In IRPS 99–1, Chapter 2, Section IV.B.2 is revised to read as follows:

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. All amendments to a multiple common bond credit union's field of membership must be approved by the regional director.

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 more 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; however, only groups over 500 must address why they cannot form their own 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.

15. In IRPS 99–1, Chapter 2, Section IV.E.1 is revised to read as follows:

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.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members. An overlap analysis is not required for groups with 500 or less primary potential members.

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 generally not approve an overlap unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in field of membership 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.

New charter applicants and every select group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union. This requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

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

16. In IRPS 99–1, Chapter 2, Section IV.D.1 is revised to read as follows:

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 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 in excess of 3,000 primary potential members cannot merge into a multiple common bond credit union, absent supervisory reasons.

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.

17. In IRPS 99–1, Chapter 2, Section IV.D.2 is revised to read as follows:

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.

18. In IRPS 99–1, Chapter 2, Section IV.F is revised to read as follows:

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 1, Section IV.D.

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 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. However, a credit union can continue to serve any group included in, or added to, its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion if the group is later sold, spun-off or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group after three years from the date of conversion, then it must convert back to a multiple common bond credit union. During this three-year period, it will continue to be treated as a single common bond credit union.

Once a multiple common bond credit union converts to a single occupational or assocational credit union, it cannot convert back to a multiple common bond credit union for a period of three years, unless there are safety and soundness concerns.

19. In IRPS 99–1, Chapter 2, Section II.B.2 is revised to read as follows:

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 which 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 if 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.

20. In IRPS 99–1, Chapter 2, Section III.B.2 is revised to read as follows:

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 which requires 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.

21. In IRPS 99–1, Chapter 2, Section IV.F is revised to read as follows:

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.

22. In IRPS 99–1, Chapter 2, Section V.A.2 is revised to read as follows:

In addition to the documentation requirements set forth 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.

A community credit union is unique in that it must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

''Well-defined'' means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be 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/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant 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 also significant factors 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. For example, an ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements. While this may most often be true, it does not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements.

Conversely, 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 significant 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 supporting the interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, the ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.,* a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

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. The credit union must also provide evidence of the political jurisdiction(s) and population. Evidence of the political jurisdiction(s) should include maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas.

If the area to be served does not meet the political jurisdiction(s) and population requirements of the preceding paragraph, or if required by NCUA, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district. It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, *etc.*);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- Maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas;
- Common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, *etc.*); or
- Other documentation that demonstrates that the area is a community where individuals have common interests or interact.

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 of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

In addition, proposed and existing community credit unions must develop a community action plan (CAP). The CAP supplements the credit union's marketing plan by specifically addressing how the credit union plans to market its services to the entire community, including any underserved or low-income areas, if applicable. This may include current or future delivery systems, such as ATMs, 24 hour voice response system, internet web sites, current or future customized programs to assist community residents such as credit counseling and budgeting, and current or future service facility locations.

Community credit unions boards will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and/or business plan submitted with their application. The boards of community credit unions will also be expected to periodically review and update the CAP to determine if all segments of the community are being served. If a credit union fails to make reasonable efforts to follow its community action plan, NCUA may initiate appropriate supervisory action.

23. In IRPS 99–1, Chapter 3, Section III is revised to read as follows:

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for serving underserved areas in the Federal Credit Union Act. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as 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 ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.,* a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000 or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.,* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria and meets the definition of an investment area that is underserved, then it is presumed to be a local community, neighborhood, or rural district.

An investment area includes any of the following:

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or 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;
- 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;
- 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;
- An area where the unemployment rate is at least 1.5 times the national average;
- 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;
- An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent;

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first 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. 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 underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

24. In IRPS 99–1, Chapter 4, Section II is revised to read as follows:

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;
- 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 mandatory on-site examination by NCUA. 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. Subsequent changes must conform to NCUA chartering policy in effect at that time. The converting credit union may continue to serve members of record.

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. Any subsequent additions or amendments to the credit union's field of membership must comply with federal field of membership policies.

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. 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.

25. In IRPS 99–1, Chapter 4, Section III.A is revised to read as follows:

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.

26. In IRPS 99–1, Chapter 2, the title of Sections II.H, III.H, and IV.F is revised to read as ''Other Person's Eligible for Credit Union Membership.''

27. In IRPS 99–1, Appendix D, Form 4015EZ is revised to read as follows:

Application for Field of Membership Amendment NCUA Form 4015–EZ

Use Only for Expansions Covering Groups of 500 Persons or Less

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:
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2. Name and address of group:
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(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: □□□□□□□□□□□□□□□□□□□□□□□□
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4. How many primary potential members (excluding immediate family and household members) are in the group: □□□□□□□□
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5. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

☐ How the group shares the occupational or associational common bond (for single common bond additions only);

☐ 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 proximity to the credit union's nearest service facility (for multiple common bond additions only).

Name and title of credit union board-authorized representative (*e.g.,* President/CEO):

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(Date)

28. In IRPS 99–1, Appendix D, Form 4015 is revised to read as follows:

Application for Field of Membership Amendment NCUA Form 4015

Use Only for Expansions Covering Groups of More Than 500 Persons

For expansions covering groups of 500 or less persons—use the *short form application, NCUA 4015–EZ.*

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:
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2. Name and address of the group:
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(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 II.A for single occupational common bond groups;

□ Section III.A for single associational common bond groups; or

□ Section IV.A for multiple common bond fields of membership.

4. How many primary potential members (excluding immediate family and household members) are in the group: □□□□□□□□□

5. (a) For multiple common bond expansions, what is the distance between the group's location and your credit union's nearest service facility [6] to which the group has access (Reference Chapter 2, Section IV.A.1):
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(b) What is the address of this service facility:
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(c) Describe the service area [7] 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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□ 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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7. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

□ How the group shares the occupational or associational common bond (for single common bond additions only);

□ 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 (for multiple common bond additions only); and

□ Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards (for multiple common bond additions only). 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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[6] A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed.

[7] 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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–96–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes. This proposal would require repetitive inspections to detect chafing and the existence of repairs of the harness of the high-level sensor of the fuel surge tanks, and to detect chafe marks on the support canisters of the magnetic level indicators; and follow-on corrective actions, if necessary. This proposal also would require modification of the harness for the high-level sensor of the outer wing fuel tanks, which would terminate certain repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent chafing of the harness of the high-level sensor, which could result in a short circuit and consequent fuel ignition source inside the outer wing fuel tanks.

DATES: Comments must be received by July 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by