COMPARING THE STATE AND FEDERAL CHARTER
INTRODUCTION

- State Charter
  - The State Credit Union Act (Article XI of the Banking Law) was enacted in 1913.
  - Article XI was re-codified in 1996 and became effective January 1, 1997
  - In 2000, the State Charter Modification Act became law
  - In both instances, the Association rewrote the state law with the chief objective of obtaining, at a minimum, parity with federally-chartered credit unions.
  - 2014 – Field of membership bill enacted – allows state charters to apply for membership that include SEGs, associations and communities within single FOM

- Federal Charter
  - The Federal Credit Union Act was enacted in 1934
  - The most substantial changes were included in the Credit Union Membership Access Act (CUMAA), which was signed into law on August 7, 1998, in response to the adverse decision issued by the Supreme Court in NCUA vs. First National Bank and Trust Co., et al.
STATE CHARTERS – REGULATOR & INSURANCE

• Principal Regulator = Department of Financial Services (DFS)

• Subject to two exams – DFS and NCUA Insurance exam

• All state-chartered credit unions in New York are federally insured
  • Part 741 of the NCUA Rules and Regulations covers regulations that state-chartered, federally-insured credit unions must follow

• By law, the DFS can approve an alternate insurer. However, they have indicated they would be unlikely to do so
• State-chartered credit unions enjoy the same tax exemptions as federally chartered credit unions
  – Sales tax exemption granted in 2008
  – Mortgage recording tax exemption granted in 2009
  – Exception: state charters pay the MTA commuter tax
  ➢ Applies only to state chartered credit unions headquartered in counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island), Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.
  ➢ Tax rate is tiered and based on quarterly payroll expense

• State-chartered credit unions must file Form 990 with the IRS
• Unrelated Business Income Tax (UBIT)
  – State chartered credit unions are subject to UBIT on income derived from:
    ➢ Automobile warranties
    ➢ Dental insurance
    ➢ Cancer insurance
    ➢ Accidental death and dismemberment insurance
    ➢ Life insurance
    ➢ Health insurance
    ➢ ATM ‘per-transaction’ fees from nonmembers
  **but UBIT is not applied to the above if the credit union has a royalty arrangement for those products**
STATE WILD CARD POWERS

• Wild card power extended to credit unions in 2007

• Section 12-a of the Banking Law permits state charters to petition the DFS for authority to exercise any power that may be exercised by a federally chartered credit union

• Creates a vehicle for creating parity without the need for legislation – more expedient process

• 2014 – Wild Card provision extended for additional 5 years through September 10, 2019.
• State chartered credit unions FOM provisions more advantageous than those for federal charters:
  – FOMs can include SEG, association and community based groups within single FOM
  – State chartered community FOM is more expansive than allowed by NCUA
  – state chartered community charters can add underserved areas to their FOM; and
  – any state charter can offer a student membership
    • For students who do not otherwise qualify
    • Grades K-12
    • Students at schools where CU maintains an in-school branch
    • For educational purposes – student membership expires upon graduation
FIELD OF MEMBERSHIP

State and Federal Charters:

• Once a member always a member

• Immediate family and household members of person directly eligible for membership also eligible

• Any incorporated or unincorporated organization composed principally of persons eligible to membership in the credit union and that organization's employees.

• Any person who is eligible for membership by reason of the fact that he or she is an employee of a common employer or of a credit union shall not become ineligible, after the termination of such employment, as long as he or she receives a pension or annuity from, or under, a plan or other arrangement established by such common employer or credit union.
LOW INCOME DESIGNATION

State Charters

• A credit union may make written application to the Superintendent to be designated as a low income credit union.

• The term "low income credit union" shall mean a credit union in which a majority of the members: (a) make less than eighty percent of the average for all wage earners as established by the bureau of labor statistics of the United States department of labor or have annual household incomes that fall at or below eighty percent of the median household income for the nation as established by the United States census bureau; or (b) are residents of a public housing project who qualify for such residency because of low income; or (c) qualify to receive benefits from any program designed to assist the economically disadvantaged.
Federal Charters

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

• Low-income members are those members whose family income is 80% or less than the median family income for the metropolitan area where they live or national metropolitan area, whichever is greater, or those members who earn 80% or less than the total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater. Member earnings will be estimated based on data reported by the U.S. Census Bureau for the geographic area where the member lives.

• The term “low-income members” also includes those members enrolled as students in a college, university, high school, or vocational school.
LENDING

- **Interest Rates**
  - State charters – maximum rate = 25%
  - Federal charters – maximum rate = 18%

- **Mortgages – Escrow Interest**
  - State charters - must pay 2% interest on escrow accounts
  - Federal charters - not required to pay interest on escrow accounts; left up to FCU board

- **Mortgages – Appraisals**
  - State charters – must obtain appraisals on all 1st and 2nd loans
  - Federal charters – appraisals required for loans over $250,000

- **Participation loans & member business loans**
  - Same for state and federal charters

- **Minority and Women Owned Business Development and Lending Program**
  - State charters are authorized to participate in the State’s program
LENDING

State Charter Lending Limits

• Aggregate Amount
  – Aggregate of loans to one member can not exceed 10% of the credit union’s capital and undivided profits

• Lending limits per member
  – State charters - loans in excess of $1M to one member need approval of and notice to the Superintendent
    • Approval required only on first occurrence
    • Notice required on subsequent occurrences
    • No notice after exam – becomes part of exam cycle
TRUST POWERS

STATE CHARTERS

• Trust powers are authorized upon the Superintendent’s approval
• Trust powers include authority
  - To act as the fiscal or transfer agent of the United States, any state, municipality, political body or corporation
  - To act as trustee under any mortgage or bonds issued by any municipality, political body or corporation
  - To be appointed and to act under the order or appointment of any court of competent jurisdiction:
    (a) As guardian, receiver, trustee, committee or conservator of the estate of any minor, mentally ill person, mentally retarded person, person of unsound mind, alcohol abuser or conservatee or in any other fiduciary capacity;
    (b) As receiver, trustee, or committee of the property or estate of any person in insolvency or bankruptcy proceedings.
TRUST POWERS

- Trust Powers include
  - To be appointed and to accept the appointment of executor or of trustee under the last will and testament or administrator with or without the will annexed of the estate of any deceased person.
  - To take, accept and execute any and all such trusts, duties and powers of whatever nature or description as may be conferred upon or entrusted or committed to it by any person or persons, or any political body, corporation, domestic or foreign, or other authority by grant, assignment, transfer, devise, bequest or otherwise, or which may be entrusted or committed or transferred to it or vested in it by order of any court of competent jurisdiction, or any surrogate, and to receive, take, manage, hold and dispose of according to the terms of such trust, duty or power, any property or estate, real or personal, which may be the subject of any such trust, duty or power.

FEDERAL CREDIT UNIONS

- Not granted trust powers
INVESTMENTS

STATE CHARTERS
• State charter investment types/vehicles set in statute
• Superintendent can approve any specific request (2014 legislative change)

FEDERAL CHARTERS
• Federal charters investment types/vehicles set in Part 703 of NCUA regulations
AUTHORIZED INVESTMENTS – STATE CHARTERS

- Obligations of the United States
- Obligations of this State
- Obligations of any state of the United States
- Obligations of any city, county town, village, school district, poor district, water district, sewer district or fire district in this State
- Real estate for erecting a building for its business
- Bankers’ acceptance and bills of exchange which are eligible for purchase in the open market by the federal reserve banks
- Obligations of any corporation organized under the laws of any state maturing within 270 days
- Bonds of the federal home loan banks, Tennessee Valley Authority, FNMA, FHLMC or USPS
- Stock of a federal home loan bank to qualify for membership
- Collateral mortgage obligations in accordance with NCUA regulations
- Eligible obligations in accordance with NCUA regulations
- The lesser of ten percent of capital or net worth, but at least ten thousand dollars, in the shares of investment companies; provided that the portfolio of such investment company consists solely of securities in which credit unions are permitted to invest directly.
Authorized Investments – State Charters

• Additional investment powers for state charters in excess of $3 million in assets
  – Bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and transacting the business of supplying electrical energy or artificial gas, or natural gas purchased from another corporation and supplied in substitution for, or in mixture with, artificial gas, for light, heat, power and other purposes.
  – Bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and authorized to engage, and engaging, in the business of furnishing telephone service in the United States.

• Both of the above investments are subject to additional conditions set forth in Banking Law Section 235
ACTIVITIES OF CUO/CUSO

• Products and Services
  – State charters – permitted activities listed in state regulations
    ➢ Originating, investing in, purchasing, selling, servicing, directly or through participation, loans of any type which may be made by credit unions
    ➢ Providing services primarily for other credit unions (e.g. accounting, auditing, clerical, consulting, data processing, investment advisory, managerial)
    ➢ Tax preparation
    ➢ Financing leases of personal property
    ➢ Credit card issuing and operations
    ➢ Shared services
    ➢ Any other approved by Superintendent
ACTIVITIES OF CUO/CUSO

• Products and Services
  – Federal charters – Part 712 of NCUA Regulations
    ➢ Preapproved services
      ❖ Checking and currency services
      ❖ Clerical, professional and management services
      ❖ Business loan origination
      ❖ Consumer mortgage loan origination
      ❖ Electronic transaction services
      ❖ Financial counseling services
      ❖ Fixed asset services
      ❖ Insurance brokerage or agency
      ❖ Leasing
      ❖ Loan support services
      ❖ Record retention, security and disaster recovery services
      ❖ Securities brokerage services
      ❖ Shared branch services
      ❖ Student loan origination
      ❖ Travel agency services
      ❖ Trust and trust related services
      ❖ Real estate brokerage services
INVESTMENTS IN CUO/CUSO

• Investment
  – State charters - limited to 3 percent of the total sum due to the members on shares and deposits
  – Federal charters - limited to 1 percent of paid-in and unimpaired capital and surplus.
MEMBERSHIP – WITHDRAWAL AND EXPULSION

State Charter

- Allows for expulsion or suspension of membership with a written policy approved by the board of directors. Also allows for immediate expulsion for physical/verbal abuse

- Member must be notified in writing of charges against him/her and be provided with opportunity to be heard within 30 days of mailing of notification

- Member who has been physically abusive or made threats of physical harm or violence – suspension/expulsion is immediate upon mailing of notice. Must be advised of opportunity to request membership reinstatement and to be heard within 30 days of notice delivery

- A member who has been suspended may continue to maintain a share account and continue to vote at annual and special meetings
MEMBERSHIP — WITHDRAWAL AND EXPULSION

Federal Charter

• Allows for expulsion through 2 options:

  - FCU must call a special meeting of all members. Member to be expelled must be given opportunity to be heard at the meeting. Must have vote of two-thirds of membership to approve expulsion.

  - FCU board of directors may adopt expulsion policy for nonparticipation by a member in the affairs of the credit union.
    - Facts of nonparticipation to be considered would be: member’s failure to vote in annual elections; failure to purchase shares from FCU, obtain a loan from or lend to the FCU.

  - Membership must be notified of adoption of such a policy.
OTHER NOTABLE DISTINCTIONS

• Borrowing
  – State charters - may borrow up to 50% of assets
  – Federal charters – may borrow up to 50% of paid in and unimpaired capital and surplus

• Lands and Buildings
  – State charters –
    ➢ Investment in land and buildings limited to 6% of capital and retained earnings, BUT superintendent can approve higher amount.
    ➢ May rent, for profit, the portion of their building not needed for credit union business
  – Federal charters –
    ➢ FCUs with more than $1,000,000 in assets may not invest more than 5% of shares and retained earnings without prior approval of NCUA through FAM plan.
    ➢ Must fully utilize building within five (5) years of purchase and have limited ability to rent for profit
OTHER NOTABLE DISTINCTIONS

• Branches/change in location
  – State charters –
    ➢ Written application and Superintendent approval required for change of location.
    ➢ Branches also require approval and must be located where "a substantial portion of its actual or potential membership is employed or residing."
    ➢ Branch Application Fee = $750 per branch application

  – Federal charters – no comparable requirement
OTHER NOTABLE DISTINCTIONS

• Member voting
  – State charters – members may vote by proxy
  – Federal charters – proxy voting prohibited

• Lending limits per member
  – State charters - loans in excess of $1M to one member need approval of and notice to the Superintendent
    ➢ Approval required only on first occurrence
    ➢ Notice required on subsequent occurrences
    ➢ No notice after exam – becomes part of exam cycle
  – Federal charters – no comparable requirement
• Director compensation
  – State charters - No directors can be compensated
  – Federal charters - One board officer may be compensated

• Loan reports to directors
  – State charters - required of all loans approved/disapproved, including security for loans.
  – Federal charters – no similar requirement
OTHER NOTABLE DISTINCTIONS

Bylaws

• State charters –
  - Superintendent must approve bylaw amendments.
    ➢ Exception: adding a group of less than 3,000 to FOM
  - All bylaw amendments require board approval.
  - Certain types of changes involving shareholders' meetings, voting rights of shareholders and decreases in directors require membership approval.
  - Denial of bylaw approval can be appealed to New York Supreme Court

• Federal charters –
  - Standard bylaws and standard bylaw amendments which can be adopted by board resolution.
  - Non-standard amendments may be requested from NCUA.
  - Membership meetings are never required for bylaw changes
• Political contributions (state and local)
  – State charters – can contribute up to $5,000 to a PAC annually
  – Federal charters – prohibited from making political contributions

• Charitable Donations
  – State charters – no limits
  – Federal charters –
    ➢ All organizations must be 501(c)(3)
    ➢ Can establish Charitable Donation Accounts in accordance with NCUA regulation
ANNUAL FEES

• State Charter Calculation
  – Formula = Estimated # exam hours multiplied by per hour fee plus $0.00001866 x assets

• NCUA Calculation
  – Calculator

• State charters continue to pay insurance premium but no longer pay NCUA operating assessment

• State charter assessment less costly starting at $20M
  – Savings increase as asset size goes up
• Conversion to State Charter
  – Application Fee = $12,500
    ➢ Fee can be reduced or waived by Superintendent
  – Operational Costs
    ➢ Costs related to reissuing plastic cards, non-prominent signage, stationary, etc. resulting from conversion can be incurred over a reasonable time