

# Federal Credit Unions

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## Considerations for a Credit Union Becoming a Federal Credit Union

Addendum #1 — February 2019

Prepared by McDougall Gauley LLP  
with assistance from  
Centre for the Study of Co-operatives  
University of Saskatchewan



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## Introduction

THE DECISION TO BECOME A FEDERAL CREDIT UNION (FCU) is a weighty one. Beyond the strategic considerations, the process can be complicated, time consuming, and costly. This addendum to the original paper on the legal considerations around the federal option — *Federal Credit Unions: Considerations for a Credit Union Becoming a Federal Credit Union* — digs deeper into two little-known and unique provisions of the *Bank Act* that provide an alternative route to the “go-it-alone” federal option.<sup>1</sup>

The figure on the following page illustrates what these options look like.<sup>2</sup> In the middle is the well-known go-it-alone option, where a provincial credit union goes through the normal federal continuance process — getting the necessary member support, obtaining a blessing from the Office of the Superintendent of Financial Institution (OSFI) on the soundness of the business plan, and ultimately receiving ministerial sign-off on the application.

These steps are still present in options two and three, but with an important twist: they allow for a collective or group application. In option two, on the right, a provincial credit union joins with an existing federal credit union to continue into federal incorporation. The provincial credit union is not required, as a stand-alone financial institution, to qualify to be an FCU. The OSFI reviews and approves, as appropriate, all qualification tests, business plans, financial reviews, and governance structures on the basis of the combined result of amalgamating the FCU and the credit union(s).

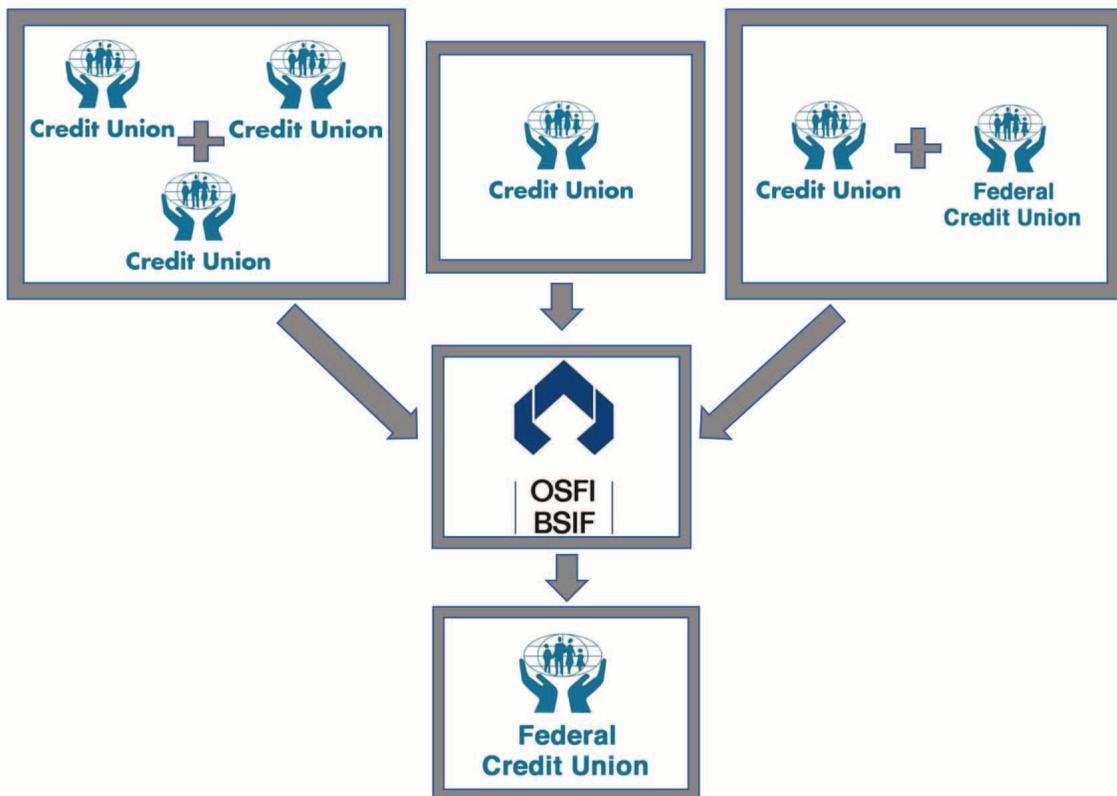
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<sup>1</sup> This introduction was written by Marc-André Pigeon, director, Centre for the Study of Co-operatives, University of Saskatchewan.

<sup>2</sup> There are additional examples in the schedules below on pages 6–7.

In option three, shown on the left, two or more provincial credit unions submit a joint application, which the OSFI reviews based on the final amalgamated structure. There is no requirement for each credit union to continue separately.

Clearly, there is more to say about these options. The interested reader can find the details in the pages that follow.



## Addendum #1

THIS ADDENDUM<sup>3</sup> PROVIDES FURTHER INFORMATION FOR THE application of subsections 33(2), (3), and (4) of the *Bank Act*.<sup>4</sup> The provisions of these subsections enable a credit union to become an FCU in a variety of ways:

- by applying individually to be an FCU — subsection 33(2)
- by amalgamating with an existing FCU — subsection 33(3)
- by amalgamating several credit unions, including from more than one province, to become an FCU — subsection 33(4)

### **Continuation Authority**

Section 33 of the *Bank Act* permits a variety of corporations to be continued as FCUs. This paper will be restricted to the continuation of credit unions.

A credit union is a provincially incorporated entity. As part of becoming an FCU, its corporate capacity must be converted to a federal entity. In the circumstances of subsection 33(2), this would be a separate application. In the case of subsections 33(3) and (4), the application would occur concurrent with the amalgamations contemplated by those subsections.

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<sup>3</sup> As with the original paper, this addendum is the work of J.J. (Joe) Dierker, QC, who has been involved in credit union and financial institution legislation at the provincial, national, and international levels for some fifty years. The comments here are intended to provide general information only. Those giving the matter serious consideration would also be wise to retain the services of other professionals with expertise in interpreting the *Bank Act*.

<sup>4</sup> All references to sections or subsections in this paper refer to those in the *Bank Act*. Due to frequent updates to the *Bank Act*, there are no direct links to the individual sections referred to in this paper. Readers will find it easy to navigate to particular sections by making use of the *Act's* “Table of Contents” on the home page.

Section 33(2) permits an individual credit union that meets the requirements of the *Bank Act* to be continued as an FCU on its own. Subsections 33(3) and (4) recognize the important consideration that an individual credit union may not be able to satisfy one or more conditions of the *Bank Act* to become a separate FCU. These subsections permit a credit union wishing to become an FCU to aggregate its business with that of an existing FCU or with one or more other credit unions in order to meet the requirements of the *Bank Act* and become an FCU. The option to combine individual business enterprises in order to achieve FCU status is available only to credit unions.

In the case of subsection 33(3), the credit union combines its business with that of an existing FCU. In the case of subsection 33(4), the credit union aggregates its business with that of one or more provincial credit unions. Both subsections are designed to significantly reduce the administrative work and costs associated with becoming an FCU.

Subsections 223(1.2) and (1.3) of the *Bank Act* permit the amalgamation of credit unions and/or federal credit unions that have applied under either subsection 33(3) or (4), with the continuance being part of the amalgamation. The regulatory review by the Office of the Superintendent of Financial Institutions (OSFI) is of the FCU that will result from the amalgamation. If the proposed FCU meets the *Bank Act* requirements, the combined businesses involved are approved to be one FCU. In other words, credit unions employing either subsection 33(3) or (4) may amalgamate and continue with one regulatory application and review process.

In addition, subsection 34(1.1) allows credit unions (and as applicable, an FCU) applying under subsection 33(3) or (4) to jointly publish one notice of the intent to amalgamate as a Federal Credit Union.

### **Subsection 33(3) — Purpose**

Subsection 33(3) is focused on bringing together one or more credit unions from one or more provinces to amalgamate with an *existing* FCU. For example, a British Columbia credit union may amalgamate with an Ontario FCU, or a combination of British Columbia, Alberta, and Saskatchewan credit unions may merge with an Ontario FCU.

The important principle in subsection 33(3) is that each credit union amalgamating with an FCU is not required, *on its own*, to qualify to be an FCU. All qualification tests, business plans, financial reviews, and governance structures are reviewed and approved, if appropri-

ate, on the basis of the combined businesses. The pre-continuance guide (“Part 11: Continuance,” pages 33–35 of the original paper) is applied only once.

### **Subsection 33(4) — Purpose**

Subsection 33(4) permits two or more credit unions from one or several provinces to come together as a new FCU. This is an important feature since credit unions, as provincial entities, are currently severely restricted in their ability to amalgamate with a credit union from another province. Section 33(4) resolves this issue.

The OSFI will review credit unions that employ subsection 33(4) to become one FCU on the basis of the final aggregated structure. As in section 33(3), there is no requirement for each credit union to be continued *separately*, prior to amalgamation, as an FCU. Continuance occurs concurrently with the amalgamation.

### **General Discussion**

Any credit union that wishes to use either subsection 33(3) or (4) must first take the necessary steps to authorize it to become part of the proposed FCU.

Each credit union must be authorized by its directors and members, in accordance with applicable provincial laws, to be part of the proposed FCU. It must also gain approval from its provincial authority to become part of the amalgamated FCU and advise depositors of the changes in matters related to the Canada Deposit Insurance Corporation (see “Part 10: Member Communication,” pages 32–33 of the original paper).

The fundamental concepts to keep in mind in the employment of either section 33(3) or (4) are:

- All OSFI qualification tests are based on the final amalgamated business plan; there is one test for the composite group.
- Prior to any amalgamation, there is no requirement for each credit union to make a separate application for continuance; this is accomplished through the combined process to create the FCU.
- There are no provincial boundary tests for the grouping together of credit unions to establish the final FCU.

**Restricted Information**

This addendum is not intended to provide a complete review of the concepts of continuance and should be read as part of the original paper. Readers who are considering having a credit union become an FCU should carefully review the comments and recommendations provided in the original paper, found here.

**Demonstrative Schedules**

Please review the examples in the schedules below to assist you in understanding the application of sections 33(2), 33(3), and 33(4).

*Subsection 33(2): Continuance of a Single Credit Union as an FCU*

*Conditions:* The single credit union must meet all of the requirements of the *Bank Act* to be an FCU. The rules for this continuance are discussed in the original paper.

*Explanatory Information***Provincial Credit Union****Applying to Be an FCU**

- Sagacity Credit Union

**OSFI Review**

- financial
- governance
- business plan (Parts 11 and 12 of the original paper)

**Continuance Approval**

- section 27 of the *Bank Act*

**Becomes an FCU**

- Sagacity Co-operative Bank

***Subsection 33(3): Continuance by Amalgamating One or More Credit Unions with an Existing FCU***

*Conditions:* One or more provincial credit unions amalgamating under subsection 33(3) with an existing FCU will result in a business plan that meets the requirements *of the group* to be an FCU.

*Explanatory Information*

Existing FCU	OSFI Review	Amalgamation Approval	Continuance Approval
<ul style="list-style-type: none"> <li>• Ontario FCU</li> </ul>	<ul style="list-style-type: none"> <li>• financial</li> <li>• governance</li> <li>• business plan</li> </ul>	<ul style="list-style-type: none"> <li>• section 224 of the <i>Bank Act</i> form of amalgamation agreement</li> </ul>	<ul style="list-style-type: none"> <li>• application under section 33(3)</li> </ul>
<p><b>Amalgamating Credit Unions</b></p> <ul style="list-style-type: none"> <li>• British Columbia credit union</li> <li>• Alberta credit union</li> </ul>	<ul style="list-style-type: none"> <li>• completed on the aggregation of the businesses of the FCU and the provincial credit unions (Parts 11 and 12 of original paper)</li> </ul>	<ul style="list-style-type: none"> <li>• amalgamation application: section 223(1.2)</li> <li>• amalgamation approval: section 228 (includes approval of the conditions for continuance)</li> </ul>	<ul style="list-style-type: none"> <li>• approval: section 27 of the <i>Bank Act</i>, concurrent with section 228 approval on the amalgamation</li> </ul>

***Subsection 33(4): Continuance by Amalgamating Several Credit Unions***

*Conditions:* Two or more credit unions amalgamating under subsection 33(4) will result in a business plan that meets the requirements *of the group* to be an FCU.

*Explanatory Information*

Amalgamating Credit Unions	OSFI Review	Amalgamation Approval	Continuance Approval
<ul style="list-style-type: none"> <li>• British Columbia credit union</li> <li>• Alberta credit union</li> <li>• Saskatchewan credit union</li> </ul>	<ul style="list-style-type: none"> <li>• financial</li> <li>• governance</li> <li>• business plan</li> <li>• completed on the aggregation of the total business of all the amalgamating credit unions (Parts 11 and 12 of the original paper)</li> </ul>	<ul style="list-style-type: none"> <li>• section 224 of the <i>Bank Act</i> form of amalgamation agreement</li> <li>• amalgamation application: section 223(1.2)</li> <li>• amalgamation approval: section 228 (includes approval of the conditions for continuance)</li> </ul>	<ul style="list-style-type: none"> <li>• application by each credit union under section 33(4)</li> <li>• approval: section 27 of the <i>Bank Act</i>, concurrent with section 228 approval on the amalgamation</li> </ul>